SUPREME COURT OF THE PHILIPPINES
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Republic of the Philippines
Supreme Court
Manila

EN BANC

PHILIPPINE CHARITY SWEEPSTAKES OFFICE, REMELIZA M. GABUYO, ET AL.,	**G.R. No. 246313**
	Present:
Petitioners,	GESMUNDO, C.J.,
	PERLAS-BERNABE,
	LEONEN,
	CAGUIOA,
- versus -	HERNANDO,
	LAZARO-JAVIER,
	INTING,
	ZALAMEDA,
THE COMMISSION ON AUDIT,	LOPEZ, M.,
Respondent.	GAERLAN,
	ROSARIO,
	LOPEZ, J.,
	DIMAAMPAO, and
	MARQUEZ, *JJ.*
	Promulgated:
	February 15, 2022

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D E C I S I O N

ZALAMEDA, *J.*:

Before the Court is a Petition for *Certiorari*[1] under Rule 64, in relation to Rule 65, of the Rules of Court assailing Decision No. 2017-084[2] dated 07 April 2017 and Resolution No. 2018-328[3] dated 09 July 2018 of the Commission on Audit (COA) Proper. It affirmed the decision of the COA

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1 *Rollo*, pp. 3-20.
2 *Rollo*, pp. 27-30; penned by Chairperson Michael G. Aguinaldo with Commissioners Jose A. Fabia and Isabel D. Agito.
3 *Id.* at 31-41.

Regional Office IV-A dated 20 March 2014, which upheld Notice of Disallowance (ND) Nos. PCSO 2010-16-101(2010), PCSO 2010-17-101(2010), and PCSO 2010-18-101(2010), all dated 08 December 2010, disallowing the payment of several allowances to the personnel of the Laguna Provincial District Office (LPDO) of petitioner Philippine Charity Sweepstakes Office (PCSO) in the total amount of ₱1,601,067.49.[4]

Antecedents

In November 2010, the PCSO-LPDO granted certain monetary benefits to its personnel. Upon audit, however, the Audit Team Leader assigned to the PCSO-LPDO issued the following NDs:[5]

ND No.	Allowance/Benefit	Amount	Grounds for Disallowance
PCSO 2010-16-101(2010)	Christmas Bonus for calendar year (CY) 2010 equivalent to three months basic salary	[₱]1,459,050.60	Lack of legal basis since it was merely based on the PCSO-Sweepstakes Employees Union (SEU) Collective Negotiation Agreement (CNA) dated 04 March 2008 and PCSO Resolution No. A-0103, series of 2010.
PCSO 2010-17-101(2010)	Weekly Draw Allowance for the period of 8 to 28 November 2010	[₱]40,200.00	Lack of legal basis since it was merely based on the PCSO-SEU CNA
PCSO 2010-18-101(2010)	Staple Food Allowance, Hazard Pay, Cost of Living Allowance (COLA), and Medicine Allowance	[₱]101,816.89	Lack of legal basis, since it was merely based on the PCSO-SEU CNA; and the COLA was already integrated into the basic salary per Section 12 of Republic Act (RA) No. 6758, also known as the Salary Standardization Law (SSL)
	Total	**[₱]1,601,066.89**	

Petitioners failed to file the appeal on time causing the issuance of a Notice of Finality of Decision (NFD). Claiming inadvertence and that the disallowed benefits had supposedly been approved by the Office of the President *post facto*, PCSO sought reconsideration. COA Assistant Commissioner Elizabeth Zosa (Assistant Commissioner Zosa) granted PCSO's request and ordered the COA Regional Director to take cognizance of the appeal. The Regional Director, nevertheless, affirmed the validity of the NDs. Undaunted, petitioners filed a petition for review before the COA

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[4] *Id.* at 3-4.
[5] *Id.* at 32-33.

Proper.[6]

Ruling of the Commission Proper

On 07 April 2017, the COA Proper dismissed the petition for review for being filed out of time. Upon motion, however, the COA Proper granted reconsideration and went on to resolve the case on the merits.[7]

In its assailed Decision, the COA Proper affirmed the disallowance. It held that Republic Act No. (RA) 1169,[8] or the PCSO Charter, does not give absolute authority to the PCSO Board of Directors (PCSO Board) to fix the salaries and other monetary benefits of PCSO's officials and employees. This power is always subjected to the "pertinent civil service and compensation laws," and PCSO has the duty to follow these laws relating to disbursement of public funds.[9]

It was also ruled that petitioners cannot rely on the alleged *post facto* approval given by the Office of the President through the letter dated 19 May 2011 of then Executive Secretary Paquito N. Ochoa, Jr. (Executive Secretary Ochoa). The COA Proper explained that the letter is not an omnibus approval of all past grants and should not be taken as a ratification of benefits granted in violation of compensation laws. The COA Proper also noted that the Supreme Court already held that said *post facto* approval was invalid.[10]

Further, the COA Proper explained that petitioners did not acquire vested rights over the benefits as there were no evidence that they were part of the employees' compensation for a reasonable length of time. Nonetheless, the COA Proper ruled that the employee-recipients need not return what they received in good faith, leaving the approving/certifying officers liable for the total disallowed amount.[11]

Issues

Petitioners now come before the Court to assail the COA Proper's decision. They argue that the COA Proper erred when it dismissed the petition for review for being filed out of time. They claim that since their late appeal was allowed by Assistant Commissioner Zosa, the petition for review should have also been accepted and decided on the merits. As regards the

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6 *Id.* at 6-8.
7 Id. at 29.
8 Entitled "An Act Providing for Charity Sweepstakes Horse Races and Lotteries," approved on 18 June 1954.
9 *Id.* at 34-36.
10 *Id.* at 36-38.
11 *Id.* at 38-39.

grant of the disallowed benefits, petitioners argue that it was within the power of the PCSO Board under RA No. 1169, and that it bears the *post facto* approval of the President through the letter dated 19 May 2011 of Executive Secretary Ochoa. They claim that while the letter only authorized the benefits paid to PCSO employees prior to 07 September 2010, it does not state that PCSO is no longer authorized to grant the same. Petitioners also allege that the disallowed benefits form part of the employees' compensation and disallowing them would violate the principle of non-diminution of benefits. Finally, PCSO asserts that the named petitioners acted in good faith in authorizing the benefits as they were only following the orders of the PCSO Board. Thus, they should not be made to suffer the burden of returning the disallowed amount.[12]

Ruling of the Court

The Petition lacks merit.

The Court accords respect and finality to the decisions of administrative authorities, like the COA, in deference to 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 the Court entertains a petition questioning its rulings. Abuse of discretion is present 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.[13]

To overturn the assailed decision, it must be shown that the COA committed grave abuse of discretion when it affirmed the NDs disallowing the benefits PCSO-LPDO granted to its employees. Petitioner, however, failed miserably in this undertaking.

At the outset, it must be stressed that petitioners are mistaken in their belief that the COA Proper merely applied technicality in dismissing their petition for review for being filed out of time. It is clear from the COA Proper's decision that the arguments on the merits forwarded by petitioners were sufficiently discussed and considered.

Make no mistake, the relaxation of procedural rules still cannot be made without any valid reasons to support it. To merit liberality, petitioners must show reasonable cause justifying its non-compliance with the rules and must convince the tribunal concerned that the outright dismissal of the

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[12] *Id.* at 10-18.

[13] *Veloso v. Commission on Audit*, 672 Phil. 419, 432 (2011) [Per J. Peralta].

petition would defeat the administration of substantive justice.[14]

In this case, the COA, in fact, relaxed its own rules when Assistant Commissioner Zosa allowed petitioners to file its memorandum of appeal, and even proceeded to resolve the merits of their petition for review.

The Board of Directors of PCSO has no unrestricted authority to fix the monetary benefits of PCSO's employees and officials.

Petitioners also erroneously assert that the benefits granted are authorized by law because the PCSO Board had the power to do so. The PCSO Board's power to fix the salaries of employees is not plenary and unfettered. In *Philippine Charity Sweepstakes Office v. Commission on Audit,*[15] the Court held:

> The Court already ruled that R.A. 1169 or the PCSO Charter, does not grant its Board the unbridled authority to fix salaries and allowances of its officials and employees. PCSO is still duty bound to observe pertinent laws and regulations on the grant of allowances, benefits, incentives and other forms of compensation. The power of the Board to fix the salaries and determine the reasonable allowances, bonuses and other incentives are still subject to the review of the DBM.[16]

The PCSO Board has the duty to ensure that, in exercising its power to fix the salaries and determine the reasonable allowances, benefits, and other incentives of PCSO's employees, the pertinent budgetary legislation laws and rules are observed to the letter. It may not grant additional salaries, incentives, and benefits unless all the laws relating to these disbursements are complied with.

The disallowed Weekly Draw Allowance, Staple Food Allowance, Cost of Living Allowance (COLA), and Medicine Allowance are already deemed integrated into the new standardized salary rate and should each require presidential approvals for their separate grant.

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[14] *Daikoku Electronics Phils., Inc. v. Raza,* 606 Phil. 796, 803 (2009) [Per J. Velasco. Jr].
[15] G.R. No. 243607, 09 December 2020 [Per J. Carandang].
[16] *Id.*

Section 12 of RA 6758[17] provides that, as a rule, allowances due to government employees are deemed integrated into the new standardized salary rate save for some specific exceptions. Meanwhile, Department of Budget and Management (DBM) Budget Circular (BC) No. 16, s. 1998 prohibits the grant of food, rice, gift checks, or any other form of incentives/allowances, except those authorized by an Administrative Order from the Office of the President.[18]

Since the disallowed Weekly Draw Allowance, Staple Food Allowance, COLA, and Medicine Allowance are not among the enumerated exceptions in Section 12 of RA No. 6758, they are, therefore, deemed included in the standardized salary. The only way to justify their separate grant is to show that it was sanctioned by the DBM, or it was authorized by the President.

Sections 5.4, 5.5 and 5.6 of DBM-Corporate Compensation Circular 10 (DBM-CCC 10) to implement RA 6758 provides the allowances excepted by DBM.[19] Notably, the Weekly Draw Allowance, Staple Food Allowance,

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[17] Section 12. *Consolidation of Allowances and Compensation.* — All allowances, except for representation and transportation allowances, clothing and laundry allowances; subsistence allowance of marine officers and crew on board government vessels and hospital personnel; hazard pay; allowances of foreign service personnel stationed abroad; and such other additional compensation not otherwise specified herein as may be determined by the DBM, shall be deemed included in the standardized salary rates herein prescribed. Such other additional compensation, whether in cash or in kind, being received by incumbents only as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized.

[18] *Bureau of Fisheries v. Commission on Audit*, 584 Phil. 132, 138 (2008) [Per J. Puno].

[19] 5.4 The following allowances/fringe benefits which were authorized to GOCCs/GFIs under the standardized Position Classification and Compensation Plan prescribed for each of the five (5) sectoral groupings of GOCCs/GFIs pursuant to P.D. No. 985, as amended by P.D. No. 1597, the Compensation Standardization Law in operation prior to R.A. No. 6785, and to other related issuances are not to be integrated into the basic salary and allowed to be continued after June 30, 1989 only to incumbents of positions who are authorized and actually receiving such allowances/benefits as of said date, at the same terms and conditions provided in said issuances.

5.4.1 Representation and Transportation Allowance (RATA);
5.4.2 Uniform and Clothing Allowance;
5.4.3 Hazard Pay as authorized by law;
5.4.4 Honoraria/additional compensation for employees on detail with special projects or inter-agency undertakings;
5.4.5 Honoraria for services rendered by researchers, experts and specialists who are of acknowledged authorities in their fields of specialization;
5.4.6 Honoraria for lecturers and resource persons/speakers;
5.4.7 Overtime pay as authorized by law;
5.4.8 Laundry and subsistence allowance for marine officers and crew on board GOCCs/GFIs owned vessels, and used in their operations, and of hospital personnel who attend directly to patients and who by nature of their duties are required to wear uniforms;
5.4.9 Quarters Allowance of officials and employees who are entitled to the same;
5.4.10 Overseas, Living Quarters and other allowances presently authorized for personnel stationed abroad;
5.4.11 Night Differential of personnel on night duty;
5.4.12 Per Diems of members of the governing Boards of GOCCs/GFIs at the rate prescribed in their respective Charters;
5.4.13 Flying Pay of personnel undertaking aerial flights;
5.4.14 Per Diems/Allowances of Chairman and Members/Staff of collegial bodies and Committees; and
5.4.15 Per Diems/Allowances of officials and employees on official foreign and local travel outside of their official station.

COLA, and Medicine Allowance are not among those excepted by the DBM. Petitioners, however, maintain, that all these benefits were granted *post facto* approval by the late former President Benigno Aquino III (President Aquino), through the letter of Executive Secretary Ochoa dated 19 March 2011.

In its effort to maintain the validity of the benefits subject of the NDs, PCSO has repeatedly utilized the letter of Executive Secretary Ochoa supposedly containing the *post facto* approval of then President Aquino However, the Court has been consistent in rejecting *post facto* approval to justify disallowed disbursements. In *Philippine Charity Sweepstakes Office v. Pulido-Tan (Pulido-Tan),*[20] We ruled:

> In this petition, We cannot rule on the validity of the alleged *post facto* approval by the Office of the President as regards the grant of COLA to the PCSO officials and employees. The PCSO failed to prove its existence since no documentary evidence, original copy or otherwise, was submitted before Us. Even so, where there is an express provision of the law prohibiting the grant of certain benefits, the law must be enforced even if it prejudices certain parties on account of an error committed by public officials in granting the benefit. An executive act shall be valid only when it is not contrary to the laws or the Constitution.[21]

Meanwhile, in the 2020 case of *Philippine Charity Sweepstakes Office v. Commission on Audit,*[22] which, interestingly, also involved PCSO-LPDO, the Court rejected the same *post facto* approval after it was found that the 19 May 2011 letter was vague for failing to specify what benefits and allowances were being allowed.

There appears to be no reason to depart from these rulings. Interestingly, the PCSO failed to attach the 19 May 2011 letter in its petition before the Court. Be that as it may, said executive act cannot be accorded

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5.5 The following allowances/fringe benefits authorized to GOCCs/GFIs pursuant to the aforementioned issuances are not likewise to be integrated into the basic salary and allowed to be continued only for incumbents of positions as of June 30, 1989 who are authorized and actually receiving such allowances/benefits as of said date, at the same terms and conditions prescribed in said issuances[.]

5.5.1 Rice Subsidy;
5.5.2 Sugar Subsidy;
5.5.3 Death Benefits other than those granted by the GSIS;
5.5.4 Medical/dental/optical allowances/benefits;
5.5.5 Children's allowance;
5.5.6 Special Duty Pay/Allowance;
5.5.7 Meal Subsidy;
5.5.8 Longevity Pay; and
5.5.9 Teller's Allowance.

5.6 Payment of other allowance/fringe benefits and all other forms of compensation granted on top of basic salary, whether in cash or in kind, not mentioned in Sub-Paragraphs 5.4 and 5.5 above shall continue be not authorized. Payment made for such unauthorized allowances/fringe benefits shall be considered as illegal disbursements of public funds.

[20] 785 Phil. 266 (2016) [Per J. Peralta].

[21] *Id.* at 285.

[22] *Supra* note 15.

validity as it sanctions benefits that are in clear violation of existing budgetary and auditing laws. Further, the COA correctly pointed out in its Comment that the disallowed benefits were no longer covered by Executive Secretary Ochoa's letter. The letter approved only those given prior to 07 September 2010, while the benefits were granted starting November 2010. There is no other proof that the authority was extended to that date.

The PCSO's grant of Christmas Bonus exceeded the amount authorized by the relevant law, rules, and regulations, while the grant of Hazard Duty Pay did not meet the requirements set forth by the DBM.

RA 6686,[23] as amended by RA 8441,[24] allows the grant of Christmas Bonus equivalent to one month salary plus additional cash gift of ₱5,000.00. In this case, the Christmas Bonus authorized by the PCSO Board was equivalent to three months' salary. Thus, We affirm its disallowance on the ground that the amounts given by PCSO to its employees in this case exceeded those authorized by law. **The disallowance, however, should be limited to the excess.** In this regard, the COA should compute anew the correct disallowed amount.

The Court also sustains the disallowance of the Hazard Pay given to each official and employee, even if it is among those exempted under RA 6758 and DBM-CCC 10. The latter provides that for recipient-employees to be entitled to hazard pay, it must be shown that they are assigned to and performing their duties and responsibilities in strife-torn and embattled areas for a certain period. Petitioners, however, failed to establish that the recipients of the Hazard Pay met these requirements.

The disallowance of the subject benefits did not diminish the existing benefits enjoyed by the concerned employees.

There is, likewise, no merit in petitioners' argument that the disallowance would violate the principle of non-diminution of benefits

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[23] Entitled "An Act Authorizing Annual Christmas Bonus to National and Local Government Officials and Employees Starting CY 1988," approved on 14 December 1988.

[24] Entitled "An Act Increasing the Cash Gift to Five Thousand Pesos ([₱]5,000.00), Amending for the Purpose Certain Sections of Republic Act Numbered Six Thousand Six Hundred Eighty-Six, and for Other Purposes," approved on 22 December 1997.

because the subject benefits form part of the employees' compensation.

The fact of diminution of benefits should be proved by sufficient evidence. In *Pulido-Tan*, We ruled:

> The Court has steadily held that, in accordance with second sentence (first paragraph) of Section 12 of R.A. No. 6758, allowances, fringe benefits or any additional financial incentives, whether or not integrated into the standardized salaries prescribed by R.A. No. 6758, should continue to be enjoyed by employees who were incumbents and were actually receiving those benefits as of July 1, 1989. Here, the PCSO failed to establish that its officials and employees who were recipients of the disallowed COLA actually suffered a diminution in pay as a result of its consolidation into their standardized salary rates. It was not demonstrated that such officials and employees were incumbents and already receiving the COLA as of July 1, 1989. Therefore, the principle of non-diminution of benefits finds no application to them.
>
> Neither is there merit in the contention that the PCSO officials and employees already acquired vested rights over the COLA as it has been a part of their compensation for a considerable length of time. Such representation was not supported by any evidence showing that a substantial - period of time had elapsed. Nevertheless, practice, without more — no matter how long continued - cannot give rise to any vested right if it is contrary to law. While We commiserate with the plight of most government employees who have to make both ends meet, the letter and the spirit of the law should only be applied, not reinvented or modified.[25]

In this case, petitioners could only proffer mere allegations bereft of any evidence to support their claim of diminished benefits.

Based on the foregoing, We rule that the COA Proper did not commit grave abuse of discretion in upholding the validity of the NDs. With this issue finally resolved, the Court now turns its attention to determine whether petitioners, all approving/certifying officers, are liable to return the disallowed amount.

The COA Proper's exoneration of the payees on the ground of good faith already attained finality and may no longer be disturbed.

In *Madera v. Commission on Audit*,[26] the Court laid down a definitive set of rules (*Madera* Rules) to determine the liability of government officers and employees being made to return employee benefits that were disallowed in audit. Thus:

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[25] *Supra* note 20 at 285-286.

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

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.[27]

Good faith is a defense no longer available to payees of disallowed benefits. Nevertheless, their liability to return may still be excused based on these grounds now embodied in Rules 2c and 2d of the *Madera* Rules: (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.[28]

In *Abellanosa v. Commission on Audit (Abellanosa),*[29] the Court supplemented *Madera* and explained that for the first exception under Rule 2c to apply, certain requisites must be present. Thus:

> 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:
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> (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

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[27] *Id.*
[28] *Id.*
[29] G.R. No. 185806, 17 November 2020 [Per J. Perlas-Bernabe].

> (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.[30]

Abellanosa instructs us that the legality of the expenditure is the primary consideration before a benefit could be considered as genuinely given in consideration of services rendered.[31] This "legality" includes compliance with all the legal conditions for the disbursement. Further, the disallowance should have been the result of some procedural error not affecting the genuineness of the payout.[32] These circumstances would show that the payees would have no issue receiving the benefit disallowed were it not for that minor mistake.[33]

As regards the second requisite, *Abellanosa* explains:

> **Aside from having proper basis in law, the disallowed incentive or benefit must have a clear, direct, 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 "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. (Emphasis supplied)[34]

Finally, on the grounds of undue prejudice, social justice or humanitarian considerations, or other *bona fide* exceptions, all of which are subsumed under Rule 2d of the *Madera* Rules, *Abellanosa* explains:

> The same considerations ought to underlie the application of Rule 2d as a ground to excuse return. In *Madera*, the Court also recognized that the existence of undue prejudice, social justice considerations, and other *bona*

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30 *Id.*
31 *Supra* note 29.
32 *Id.*
33 *Id.*
34 *Supra* at note 29.

> *fide* exceptions, as determined on a case-to-case basis, may also negate the strict application of *solutio indebiti*. This exception was borne from the recognition that in certain instances, the attending facts of a given case may furnish an equitable basis for the payees to retain the amounts they had received. While Rule 2d is couched in broader language as compared to Rule 2c, the application of Rule 2d should always remain true to its purpose: **it must constitute a *bona fide* instance which strongly impels the Court to prevent a clear inequity arising from a directive to return.** Ultimately, it is only in **highly exceptional circumstances, after taking into account all factors** (such as the nature and purpose of the disbursement, and its underlying conditions) that the civil liability to return may be excused. For indeed, it was never the Court's intention for Rules 2c and 2d of *Madera* to be a jurisprudential loophole that would cause the government fiscal leakage and debilitating loss. (Emphasis supplied)[35]

Notwithstanding the deletion of good faith as a defense, the COA Proper's exoneration of the payees here on the ground of good faith must be upheld. Their absolution was no longer raised as an issue here, and therefore, already attained finality.[36] To disturb their exoneration is to violate the doctrine of immutability of final judgments.

The exoneration, nonetheless, does not extend to the individually named petitioners' liability as recipient of the disallowed benefit, if they received any. By filing the present petition, their liability in general, *i.e.*, whether as approving/authorizing officers or as payees, had not yet attained finality. More importantly, We ruled in *Pastrana v. Commission on Audit,*[37] that approving/certifying officers who are also payees cannot benefit from the COA Proper's exoneration if said officers acted in bad faith, to wit:

> At this juncture, it is well to clarify that while petitioners were also payee-recipients of the CNA incentives, they were explicitly named as approving/certifying officers liable for the disallowance. In the recent case of *Securities and Exchange Commission v. Commission on Audit,* the Court held that the approving/certifying officers in good faith are on the same plane as the payee-recipients absolved at the COA level. Hence, the absolution of civil liability extended by the COA to the payee-recipients equally applies to the approving/certifying officers in good faith who have also received the disallowed amounts. The Court concluded that the SEC officers would suffer undue prejudice should they be compelled to return the amounts paid under their names in the provident fund using SEC's retained earnings, a scenario contemplated in Rule 2d of the *Madera* Rules. Under Rule 2d, payee-recipients may be excused from returning the disallowed amount when undue prejudice will result from requiring them to return or where social justice or humanitarian considerations are attendant.
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> Unfortunately, in this case, petitioners — who had also received the CNA incentives — are not in good faith as they are grossly negligent in the performance of their duties as approving/certifying officers. Consequently,

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[35] *Id.*

[36] *Pastrana v. Commission on Audit,* G.R. Nos. 242082 & 242083, 15 June 2021 [Per J. Delos Santos].

[37] *Id.*

> they cannot avail of the equitable exceptions under Rule 2d because equity should not be accorded to a party in bad faith or who is grossly negligent. On this score, petitioners should individually return the amounts they respectively received.[38]

In the present case, good faith cannot be appreciated in petitioners' favor because they were grossly negligent in approving the disallowed benefits.

The approving and certifying officers were grossly negligent in failing to observe the clear and unequivocal provisions of laws and rules applicable to the disbursement of the disallowed benefits.

Rules 2a and 2b of the *Madera* Rules were based on Sections 38[39] and 39,[40] Chapter 9, Book I, in relation to Section 43,[41] Chapter 5, Book VI of the Administrative Code,[42] which provide that government officials who approved and certified the grant of disallowed benefits are held solidarily liable to return said disallowed amount when they are found to have acted in evident bad faith, with malice, or if they were grossly negligent in the performance of their official duties. These rules are further anchored on the principle that "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

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38 *Id.*

39 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.

x x x x

(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.

40 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.

41 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.

42 Executive Order No. 292, 25 July 1987.

manner prescribed and by an officer authorized by law to do it."[43]

In *Pulido-Tan,* the Court declared the approving/certifying officers liable to return the disallowed amount by reason of their failure to abide by the provisions of the pertinent laws and rules. Thus:

> In view of the above issuances, the PCSO Board of Directors who approved Resolution No. 135 are liable. Their authority under Sections 6 and 9 of R.A. No. 1169, as amended, is not absolute. They cannot deny knowledge of the DBM and PSLMC issuances that effectively prohibit the grant of the COLA as they are presumed to be acquainted with and, in fact, even duty-bound to know and understand the relevant laws/rules and regulations that they are tasked to implement. Their refusal or failure to do do not exonerate them since mere ignorance of the law is not a justifiable excuse. As it is, the presumptions of "good faith" and "regular performance of official duty" are disputable and may be contradicted and overcome by other evidence.
>
> The same thing can be said as to the five PCSO officials who were held accountable by the COA. They cannot approve the release of funds and certify that the subject disbursement is lawful without ascertaining its legal basis. If they acted on the honest belief that the COLA is allowed by law/rules, they should have assured themselves, prior to their approval and the release of funds, that the conditions imposed by the DBM and PSLMC, particularly the need for the approval of the DBM, Office of the President or legislature, are complied with. Like the members of the PCSOBoard, the approving/certifying officers' positions dictate that they are familiar of governing laws/rules. Knowledge of basic procedure is part and parcel of their shared fiscal responsibility. They should have alerted the PCSO Board of the validity of the grant of COLA. Good faith further dictates that they should have denied the grant and refrained from receiving the questionable amount.[44]

The Court ruled in a similar fashion in *Philippine Charity Sweepstakes Office, et al. v. Commission on Audit,*[45] thus:

> Accordingly, the named PCSO-LPDO officials in this case, who implemented the same, authorized its release without ascertaining its legal basis and even received the disallowed amounts, are held liable. Despite the lack of authority for granting the said allowances and benefits, they still approved its grant and release in excess of the allowable amounts and extended the same benefits to other officials and employees, as well as to themselves, in deliberate violation of the letter and spirit of R.A. 6758 and related laws. x x x[46]

We find no reason to treat the approving/certifying officers of PCSO differently here. In *The Officers and Employees of Iloilo Provincial*

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[43] *Madera v. Commission on Audit, supra* note 26.
[44] *Supra* note 20 at 290.
[45] *Supra* note 15.
[46] *Id.*

Government v. Commission on Audit,[47] We held that failure to follow a clear and straightforward legal provision constitutes gross negligence, to wit:

> 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. 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."[48] (Citations omitted)

Indeed, Section 12 of RA 6758 and DBM-CCC 10 clearly provided for the benefits, allowances, and incentives not included in the standardized salary rates. Further, laws governing the other benefits disallowed for being excessive were also unequivocal as to the amount authorized to be given. Thus, an interpretation of these laws that seems to permit the grant of a higher amount could not be countenanced. Finally, the approving/certifying officials cannot feign ignorance of PCSO's own charter that restricts the power of the PCSO Board to fix the salaries and benefits of PCSO's officials and employees.

Thus, for their gross negligence, the Court finds the approving/certifying officers solidarily liable for the disallowed amount pursuant to Section 43, Chapter 5, Book VI 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)

There is also no merit in petitioners' contention that they were mere

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[47] G.R. No. 218383, 05 January 2021 [Per J. Zalameda].
[48] *Id.*

good soldiers and had no choice but to obey the PCSO Board's directives to authorize the benefits. We are mindful that in the determination of who among the approving/certifying officers should be held liable, the Court should also inquire about the nature and extent of the participation of the officers concerned, so much so that those merely performing ministerial duties should be exonerated because they were not involved in the decision-making process.[49] Such is not the case here. The assailed NDs indicate that the approving/certifying officers found liable were: (1) members of the PCSO Board who issued the resolution authorizing the grant; (2) officers of the employees' union who issued the collective negotiation agreement on which the benefits were also based; and (3) officers who certified the propriety and correctness of the claim or approved the transaction. As such, these officers' acts were discretionary and not merely ministerial. Indeed, without their participation, the grant of the disallowed benefits would not have been possible.

In any event, petitioners are solidary liable only for the **net disallowed amount**, which is the total disallowed amount minus the amounts excused to be returned by the payees.[50] For the net disallowed amount, the COA may proceed against any of the approving/certifying officers named liable in the NDs, without prejudice to the latter's claim against the rest of the persons liable.[51] In addition, petitioners should be individually liable for any of the disallowed amounts they received as payees. However, these amounts are practically the same as the net disallowed amount. For obvious reasons, petitioners should only be held liable for the latter.[52]

WHEREFORE, the petition is **DISMISSED**. The Decision No. 2017-084 dated 07 April 2017 and Resolution No. 2018-328 dated 09 July 2018 of the Commission on Audit are hereby **AFFIRMED WITH MODIFICATION.** Petitioners are solidarily liable to return the net disallowed amount. This pronouncement is without prejudice to the filing of appropriate administrative or criminal charges against the officials responsible for the illegal disbursement. Further, the Commission on Audit is **DIRECTED** to compute the correct amount of the disallowed benefits to be returned.

SO ORDERED.

RODIL V. ZALAMEDA
Associate Justice

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[49] *Celeste v. Commission on Audit,* G.R. No. 237843, 15 June 2021 [Per J. Caguioa].
[50] *Madera v. Commission on Audit,* supra note 20.
[51] *Supra* note 36.
[52] *Id.*

WE CONCUR:

ALEXANDER G. GESMUNDO
Chief Justice

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

JAPAR B. DIMAAMPAO
Associate Justice

JOSE MIDAS P. MARQUEZ
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.

ALEXANDER G. GESMUNDO
Chief Justice

CERTIFIED TRUE COPY
MARIFE M. LOMIBAO-CUEVAS
Clerk of Court
Supreme Court