Republic of the Philippines
Supreme Court
Manila

EN BANC

RONALD S. ABRIGO, ANABELLA S. ALTUNA, RYAN JAMES V. AYSON, FLORENDO B. BATASIN, JR., LEONOR C. CLEOFAS, ALL OF WHOM WERE OFFICERS AND EMPLOYEES OF METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM CORPORATE OFFICE [MWSS-CO], *Petitioners,*	**G.R. No. 253117**
- *versus* -	Present: GESMUNDO, *CJ*, PERLAS-BERNABE, LEONEN, CAGUIOA, HERNANDO, LAZARO-JAVIER, INTING, ZALAMEDA, LOPEZ, M., GAERLAN, ROSARIO, LOPEZ, J., DIMAAMPAO, MARQUEZ, and KHO, JR., *JJ.*
COMMISSION ON AUDIT (COA)-COMMISSION PROPER; RUFINA S. LAQUINDANUM, DIRECTOR IV, CORPORATE GOVERNMENT SECTOR CLUSTER 3-PUBLIC UTILITIES; EYREN MARANAN-YULDE, IN HER CAPACITY AS MWSS-CO RESIDENT COA AUDITOR; AND ANGELA B. BULOS, AUDIT TEAM LEADER, *Respondents.*	Promulgated: March 29, 2022

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DECISION

ZALAMEDA, *J.*:

This petition for *certiorari*[1] under Rule 64, in relation to Rule 65, of the Rules of Court seeks to reverse and set aside the Decision No. 2019-019[2] dated

[1] *Rollo*, pp. 3-49.
[2] Id. at 50-54; penned by Chairperson Michael G. Aguinaldo and Commissioners Jose A. Fabia and

20 February 2019 and Resolution No. 2020-038[3] dated 21 January 2020 of respondent Commission on Audit (COA) Proper, upholding the disallowance of the meal allowances granted to officials and employees of the Metropolitan Waterworks and Sewerage System (MWSS)-Corporate Office (CO) for calendar years 2012 and 2013 in the aggregate amount of ₱8,173,730.00.

Antecedents

Petitioners are current and former employees and officials of the MWSS-CO.[4] In 2012 and 2013, they approved and/or received varying amounts representing meal allowances, purportedly granted pursuant to board resolutions of the MWSS Board of Trustees (MWSS Board).[5]

Subsequently, the Audit Team Leader and Supervising Auditor of the COA issued four notices of disallowance (NDs) against said payments.[6] The details of the NDs are summarized as follows:

ND No. and Date	Particulars	Amount
ND No. 14-005-05-(12) dated 30 June 2014	Meal allowance paid to incumbents as of 30 June 1989 for the year 2012	₱2,142,850.00
ND No. 14-006-05-(12) dated 30 June 2014	Meal allowance paid to non-incumbents as of 30 June 1989 for the year 2012	₱2,033,200.00
ND No. 14-007-05-(13) dated 30 June 2014	Meal allowance paid to incumbents as of 30 June 1989 for the year 2013	₱2,086,800.00
ND No. 14-008-05-(13) dated 30 June 2014	Meal allowance paid to non-incumbents as of 30 June 1989 for the year 2013	₱1,910,880.00
	Total	₱8,173,730.00

The NDs stated that the payment and increase of meal allowances had no legal basis. As to the meal allowance given to incumbents as of 30 June 1989, the COA noted that the amounts paid were in excess of the meal allowance of ₱66.00 per month, as authorized in the Corporate Operating Budget (COB)

Roland C. Pondoc.

3 Id. at 62-63.

4 Id. at 5.

5 Id. at 172-184 (Resolution No. 48-80 dated 06 March 1980, granting a meal allowance of ₱3.00 per day for a maximum of 22 days a month; Resolution No. 187-91 dated 26 September 1991, increasing the meal allowance to ₱25.00 per day; Board Resolution No. 140-92 dated 09 July 1992, authorizing the continued grant of meal allowance of ₱25.00 per day; and Resolution No. 2007-134 dated 05 July 2007, approving the Collective Negotiation Agreement, which provides for a meal allowance of ₱150.00 per day).

6 Id. at 77-169.

approved by the Department of Budget and Management (DBM).[7] Thus, only ₱66.00 per month was allowed in audit. As to non-incumbents of positions as of 30 June 1989, the COA emphasized that they are not entitled to any meal allowance. The ₱66.00 meal allowance in the DBM-approved COB was only for MWSS employees who were incumbents as of 30 June 1989.[8] Hence, the full amount of the meal allowance granted to non-incumbents was disallowed.

The persons held liable by the COA under the NDs were the payees of the disallowed amounts and the signatories who authorized the disbursements.[9] Petitioners, totaling 81 current and former MWSS employees[10], were either passive payees or both recipients and approving/certifying officers.[11]

Aggrieved, petitioners appealed[12] to the Office of the Cluster Director of the COA's Corporate Government Sector, Cluster 3 (Public Utilities). They argued that the MWSS Charter[13] vests the MWSS Board of Trustees with the

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7 Id. at 30 and 129.
8 Id. at 105 and 152.
9 Id. at 77-169.
10 Id. at 22-25.
11 Id. at 77-169.
12 Id. at 64-76.
13 *See* Republic Act No. 6234, as amended, Secs. 4 and 13.

> Section 4. The Board of Trustees, composition; qualification; appointment; tenure. The corporate powers and functions of the System shall be vested in and exercised by a Board of Trustees composed of a Chairman, the General Manager as ex-officio Vice-Chairman and three members, one of whom shall be nominated by the Labor Union representing the majority of the rank and file of the employees in the System. They shall possess any one or a combination of the following qualifications; duly licensed professional of recognized competence in civil engineering and/or sanitary engineering, business management and finance, and law, or recognized labor leader within the ranks with sufficient training, particularly in the field of labor-management relations or corporate practice, all of good moral character with at least five (5) years of actual and distinguished experience in their respective fields of expertise.
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> The Chairman and the three members of the Board shall be appointed by the President of the Philippines with the consent of the Commission on Appointments. The Chairman and the three members of the Board shall hold office for a period of three years, except that the members initially appointed shall serve, as designated in their appointments, one for one year, one for two years and one for three years: Provided, That, any person chosen to fill a vacancy shall serve only for the unexpired term of the member whom he succeeds: Provided, further, That the term of the member nominated by labor maybe terminated sooner than as above provided if so requested by the nominating union in which case the President of the Philippines shall appoint a replacement who shall similarly be nominated by said union.
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> Section 13. Disposition of Income. The income of the System shall be dispose of according to the following priorities:
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> First, to pay its contractual and statutory obligations and to meet its essential current operating expenses;
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> Second, to serve at least fifty per cent (50%) of the balance exclusively for the expansion, development and improvement of the System; and

requisite power and autonomy to grant employee benefits.[14] Specific to the meal allowance, its grant preceded the standardization of government salaries and benefits, as evinced by the Concession Agreements executed by MWSS.[15] In Exhibit "F" of the Concession Agreements, meal allowance was enumerated as among the existing MWSS fringe benefits, and the Concession Agreements were approved by the President.[16] Hence, meal allowance should continue to be granted, lest there be diminution of salaries and benefits.[17] Petitioners further emphasized that MWSS-CO is exempt from the compensation and position classification system.[18]

Ruling of the COA Cluster Director

In its Decision No. 2016-08[19] dated 29 March 2016, the COA Cluster Director affirmed the NDs.[20] The COA Cluster Director ruled that the appeal was filed beyond the reglementary period, but nonetheless passed upon the merits. It held that the payment of meal allowance to non-incumbents had no legal basis because there was no prior Presidential approval, as required by prevailing regulations.[21] The grant of meal allowance in the Concession Agreement only applies to MWSS employees who were absorbed by the concessionaire and, thus, are considered private employees. Petitioners, as government employees, are not similarly situated and are governed by laws specifically applicable to government personnel.[22]

The COA Cluster Director further highlighted that the non-grant of a meal allowance to non-incumbents does not result in diminution of pay. The standardized salaries under RA 6758[23] integrated all allowances and benefits.[24]

In any case, since there is no legal basis for the grant of the allowance, it cannot be said that there was any impairment of vested rights. An illegal act cannot result in a vested right.[25] Hence, pursuant to the principle of *solutio indebiti*, the disputed amount should be returned, even assuming that

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Third, to allocate the residue enhancing the efficient operation and maintenance of the System which include increases of administrative expenses or increases or adjustment of salaries and other benefits of the employees.

14 *Rollo*, pp. 66-68.
15 Id. at 69-70.
16 Id.
17 Id. at 68.
18 Id.
19 Id. at 56-61; penned by Director IV Rufina S. Laquindanum, Commission on Audit, Corporate Government Sector Cluster 3 – Public Utilities, Quezon City.
20 Id. at 59.
21 Id. at 60.
22 Id.
23 RA 6758 – AN ACT PRESCRIBING A REVISED COMPENSATION AND POSITION CLASSIFICATION SYSTEM IN THE GOVERNMENT AND FOR OTHER PURPOSES, otherwise known as the "Compensation and Postion Classification Act of 1989, Approved: August 21,1989
24 *Rollo*, p. 60.
25 Id.

petitioners acted in good faith.[26]

Petitioners then elevated the matter to the COA Proper *via* a petition for review.[27]

Ruling of the COA Proper

In its Decision No. 2019-09[28] dated 20 February 2019, the COA Proper denied the petition for review and sustained the NDs, thus:

> **WHEREFORE**, premises considered, the Petition for Review is hereby **DENIED** for having been filed out of time and for lack of merit. Accordingly, Commission on Audit Corporate Government Sector-Cluster 3 Decision No. 2016-08 dated March 31, 2016, which affirmed Notice of Disallowance Nos. 14-005-05-(12), 14-006-05-(12), 14-007-05-(13), and 14-008-05-(13), all dated June 30, 2014, on the payment to the officials and employees of Metropolitan Waterworks and Sewerage System of meal allowance for calendar years 2012 and 2013, in the total amount of P8,173,730.00, is **FINAL and EXECUTORY**.[29]

The COA Proper ruled that the NDs had become final and executory for petitioners' failure to file an appeal within the six (6)-month reglementary period prescribed in Section 48[30] of Presidential Decree No. (PD) 1445.[31] Relatedly, laches had already set in due to petitioners' delayed action.[32]

In any case, the COA Proper found that the appeal should still be denied even if it were to be decided on the merits. The power of the MWSS Board is not absolute, and must be exercised in accordance with the standards laid down by law.[33] Pursuant to Section 12[34] RA 6758, the grant of meal allowance is

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26 Id. at 61.

27 Id. at 293-303.

28 Supra note 2.

29 *Rollo*, p. 54.

30 Section 48 of PD 1445, reads:

> SECTION 48. Appeal from Decision of Auditors. — Any person aggrieved by the decision of an auditor of any government agency in the settlement of an account or claim may within six months from receipt of a copy of the decision appeal in writing to the Commission.

31 ORDAINING AND INSTITUTING A GOVERNMENT AUDITING CODE OF THE PHILIPPINES, otherwise known – as the "Government Auditing Code of the Philippines."

32 *Rollo*, p. 52.

33 Id.

34 Section 12 of RA 6758 reads:

> 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.

allowed to be continued only for qualified incumbents.[35] In the absence of the appropriate authorization, meal allowance may not be granted or increased.[36] Prior to the issuance of the NDs subject of this case, several NDs had already been issued pertaining to various allowances and incentives granted to MWSS employees. Given the statements in the COB and the prior NDs on other benefits, MWSS officials and employees cannot claim good faith.[37]

Petitioners moved for reconsideration,[38] but this was denied by the Commission Proper in Resolution No. 2020-038[39] dated 21 January 2020.

Hence, this petition.

Issues

The focal issue for the Court's resolution is whether the COA Proper committed grave abuse of discretion in denying petitioners' appeal for having been filed out of time and for lack of merit.

Before passing upon the substantive issues, We will pass upon the timeliness of this petition.

Ruling of the Court

The petition is partly granted.

The petition was filed out of time; nevertheless, substantive justice demands a relaxation of the rules

Section 3,[40] Rule 64 of the Rules of Court provides for a thirty (30)-day period to assail the COA Proper Decision. The filing of a motion for reconsideration shall interrupt the reglementary period, but the movant shall not be granted a fresh period of thirty (30) days. Instead, if the motion for reconsideration is denied, the petition for *certiorari* must be filed within the

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Existing additional compensation of any national government official or employee paid from local funds of a local government unit shall be absorbed into the basic salary of said official or employee and shall be paid by the National Government.

35 *Rollo*, p. 53.

36 Id.

37 Id. at 53-54.

38 Id. at 463-475.

39 Id. at 62-63.

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

SECTION 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.

remaining period, which shall not be less than five (5) days in any event.

In this case, petitioners received the COA Proper Decision on 20 March 2019.[41] They filed a motion for reconsideration on the 26th day, or on 15 April 2019.[42] Thus, upon receipt of the COA Resolution on 18 August 2020, petitioners only had five (5) days, or until 24 August 2020,[43] to file the petition before the Court. However, they only filed the petition on 11 September 2020, or eighteen (18) days late.

Petitioners admit this procedural lapse, but they plead for leniency. They cite the current pandemic as an excuse, arguing that the restrictions rendered coordination and collation of documents very difficult.[44] They also claim that they only received the COA Resolution through the MWSS' finance department, which supposedly added to the delay in the preparation of this petition.

Admittedly, the reasons proffered by petitioners do not ordinarily warrant a relaxation of the rules. We have repeatedly emphasized that procedural rules should be treated with utmost regard and respect, because they are designed to facilitate the adjudication of cases and de-clog our already crowded dockets.[45]

Nonetheless, where strong considerations of substantive justice are manifest in the petition, the Court may relax the strict application of the rules of procedure in the exercise of its legal jurisdiction.[46] The Court has allowed some meritorious cases to proceed despite inherent procedural defects and lapses. This is in keeping with the principle that rules of procedure are mere tools designed to facilitate the attainment of justice, and that strict and rigid application of rules which should result in technicalities that tend to frustrate rather than promote substantial justice must always be avoided.[47]

The merits of this petition impel Us to resolve the substantive issues elevated before the Court. The disallowed amount is substantial, and would greatly affect the MWSS officers and employees. It would not be judicious to simply dismiss the petition, seeing that some of the petitioners should be absolved from liability. Moreover, while the pandemic may not be casually invoked as an excuse, We are aware that this petition involves 81 petitioners.

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41 *Rollo*, p. 8.

42 Id.

43 The last day of the period, 23 August 2020, fell on a Sunday. Pursuant to Section 1, Rule 22 of the 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, petitioners had until the next working day, 24 August 2020, to file the petition.

44 *Rollo*, p. 9.

45 *The Officers and Employees of Iloilo Provincial Government v. Commission on Audit*, G.R. No. 218383, 05 January 2021.

46 *Osmeña v. Commission on Audit*, 665 Phil. 116 (2011).

47 *City of Lapu-Lapu v. Phil. Economic Zone Authority*, 748 Phil. 473 (2014), *citing* Municipality of Pateros v. Court of Appeals, 607 Phil. 104 (2009).

Surely, this number resulted in logistical difficulties occasioned by quarantine restrictions. Taken together, these circumstances move Us to finally settle the controversy.

For the same reasons, We would pass upon the merits even if the appeals before the COA Cluster Director and the COA Proper were belatedly filed.[48]

Indeed, petitioners filed their appeal beyond the six (6)-month period prescribed under The 2009 Revised Rules of Procedure of the COA,[49] in relation to Sections 48 and 51 of PD 1445.[50] Nonetheless, We have ruled that such belated appeal would not preclude Us from reviewing a case on the merits, where stubborn obedience to the Rules would defeat rather than serve the ends of justice.[51] The Court has the prerogative to relax the rule on finality of judgments when there are special or compelling circumstances, or when the case is meritorious.[52]

Here, since the rendition of the assailed Decision, jurisprudence has taken a trajectory that is more faithful to civil law and administrative law principles. We have since revisited the rules on return and the basis for imposing liability on approving/certifying officers. As such, We deem it prudent to resolve the substantive issues of the case.

Grave abuse of discretion requires proof of capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. Mere reversible error or abuse of discretion is not enough. The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.[53]

In this case, petitioners failed to show that the COA gravely abused its discretion in affirming the NDs. However, We modify the dates in the NDs and the liability of the approving/certifying officers enumerated therein, in

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[48] *See* id.

[49] Rule V, Sec. 4 and Rule VII, Sec. 3.

> SECTION 4. When Appeal Taken – An Appeal must be filed within six (6) months after receipt of the decision appealed from.
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> SECTION 3.Period of Appeal. – The appeal shall be taken within the time remaining of the six (6) months period under Section 4, Rule V, taking into account the suspension of the running thereof under Section 5 of the same Rule in case of appeals from the Director's decision, or under Sections 9 and 10 of Rule VI in case of decision of the ASB.

[50] Presidential Decree 1445, Sec. 48, supra note 30, and Sec. 51 reads:

> SECTION 51. Finality of Decisions of the Commission or Any Auditor. – A decision of the Commission or of any auditor upon any matter within its or his jurisdiction, if not appealed as herein provided, shall be final and executory.

[51] Subic Bay Metropolitan Authority v. Commission on Audit, G.R. No. 230566. 22 January 2019.

[52] *See Bigler v. People*, 782 Phil. 158 (2016).

[53] *Estalilla v. Commission on Audit*, G.R. No. 217448, 10 September 2019.

conformance with prevailing jurisprudence.

The COA Proper did not gravely abuse its discretion in sustaining the disallowances; the authority of the MWSS Board is circumscribed by prevailing laws and regulations on salaries and benefits

The arguments raised by petitioners had already been passed upon and threshed out by the Court in *Metropolitan Waterworks and Sewerage System v. Commission on Audit* (*MWSS*).[54] In said case, the Court ruled that the MWSS is covered by RA 6758, which repealed all charters exempting agencies from the coverage of the compensation and position classification system. As such, the grant of additional benefits by the MWSS Board is an *ultra vires* act:

> COA rightly submits that the grant by the Board of Trustees of the MWSS of the benefits constituted an *ultra vires* act. Verily, what is *ultra vires* or beyond the power of the MWSS to do must also be *ultra vires* or beyond the power of its Board of Trustees to undertake. The powers of the Board of Trustees, who under the law were authorized to exercise the corporate powers, were necessarily limited by restrictions imposed by law on the MWSS itself, considering that Board of Trustees only acted in behalf of the latter. Upon the effective repeal of the MWSS Charter, the Board of Trustees could no longer fix salaries, pay rates or allowances of its officials and employees upon the effectivity of R.A. No. 6758.[55]

The Court further held that, under Section 12 of RA 6758, all allowances are deemed included in the standardized salary, unless excluded by law or by a DBM issuance:

> 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.
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> Existing additional compensation of any national government official or employee paid from local funds of a local government unit shall be absorbed into the basic salary of said official or employee and shall be paid by the National Government.

Thus, the benefits granted to MWSS employees were not excluded from,

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[54] 821 Phil. 117.
[55] Id. at 132.

but integrated into, the standardized salaries. The receipt of the disallowed benefits and allowances amounted to double compensation. The requirement of prior Presidential approval was also reiterated in *MWSS*, where We emphasized that additional allowances and other fringe benefits could only be granted to government employees upon approval of the President, applying PD 985, as amended by PD 1597.[56]

As to petitioners' reliance on the Concession Agreements, both as a source of a right and to satisfy the requirement of prior Presidential approval, this argument had also been rebuffed by the Court in *MWSS*, thus:

> The MWSS relies primarily on Exhibit F of the Concession Agreement captioned "Existing MWSS Fringe Benefits" to support the Board of Trustees' grant of the questioned allowances. It must be noted, however, that it was not the 1997 Concession Agreement that authorized the release or grant of the allowances, as borne by the records, but the resolutions of the Board of Trustees, which were done contrary to the express mandate of R.A. No. 6758. We cannot subscribe to the MWSS's argument that the allowances already bore the imprimatur of the Office of the President through Secretary Vigilar of the DPWH on the basis of the latter's signing of the Concession Agreement because such part of the agreement contravened R.A. No. 6758; hence, the same was invalid. Under Section 16.13 of the Concession Agreement, any invalid or unenforceable portion or provision should be deemed severed from the agreement. Accordingly, Exhibit F of the Concession Agreement, being contrary to R.A. No. 6758, could not be made a source of any right or authority to release the precluded allowances. Moreover, the law is clear that it should be DBM, not the DPWH, that must determine the other additional compensation not specified under the law.[57]

All told, petitioners in this case may no longer invoke the MWSS Charter[58] and the Concession Agreements in challenging the NDs. As it stands, MWSS officials and employees are covered by RA 6758, PD 985,[59] PD 1597, and their implementing regulations.

As such, following Section 12 of RA 6758, allowances that have not been integrated into the standardized salary are allowed to be continued only for incumbents of positions as of 01 July 1989 who were actually receiving the allowances as of such date.[60] This is consistent with the policy of non-diminution of pay adopted by the legislature to protect the interest of employees who were already receiving certain allowances when the law was enacted.[61] Upon the effectivity of RA 6758, additional allowances may be granted or increased only upon the approval of the President.[62]

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[56] FURTHER RATIONALIZING THE SYSTEM OF COMPENSATION AND POSITION CLASSIFICATION IN THE NATIONAL GOVERNMENT. Dated: 11 June 1978.

[57] Supra note 54, page 135-136.

[58] *See* Republic Act No. 6234, Secs. 4 (c) and 13.

[59] PD No. 985 or the Budgetary Reform Decree on Compensation and Position Classification of 1976.

[60] *Metropolitan Waterworks and Sewerage System v. Commission on Audit*, supra.

[61] *Hagonoy Water District v. Commission on Audit*, G.R. No. 247228, 02 March 2021.

[62] Presidential Decree 1597, Sec. 5.

In this case, meal allowance is one of the non-integrated benefits allowed to be continuously granted to qualified incumbents.[63] Thus, officers and employees incumbent as of 01 July 1989, and who were actually receiving meal allowance as of said date, may continue receiving the allowance. Letter of Implementation No. 97 fixed the amount of meal allowance at ₱3.00 per working day, while MWSS Resolution No. 48-80 imposed a cap of 22 days a month.[64] Hence, for incumbents as of 01 July 1989, the maximum meal allowance is ₱66.00 per month. This amount may only be increased upon approval of the President. Relatedly, in the absence of Presidential approval, meal allowance may not be given to non-incumbents as of 01 July 1989.

Applying the foregoing, the COA correctly disallowed the amount exceeding ₱66.00 granted to qualified incumbents. Similarly, the disallowance of the benefit to non-incumbents is warranted. Both were not preceded by the requisite Presidential approval and, thus, lacked legal basis.

On this score, there is a need to modify the qualifying date specified in the NDs. The NDs used 30 June 1989 as the date for reckoning incumbency. However, as clarified by the Court in *MWSS*, We have consistently prescribed 01 July 1989 as the qualifying date to determine whether or not an employee was an incumbent entitled to the continued grant of an allowance. This is in keeping with the express text of RA 6758 and its date of effectivity.[65]

The use of 30 June 1989, instead of 01 July 1989, is a plain error that the Court may correct, notwithstanding its non-assignment as an error.[66] The modification would not affect the substance of the controversy, as both the COA Proper and COA Cluster Director relied on Section 12 of RA 6758 in resolving the petition.[67] The correction would merely rectify the ambiguity in the dates used and make the dates consistent with the express text of the cited law.

Thus, it is hereby clarified that the reckoning date for the incumbency requirement in the NDs should be 01 July 1989, and not 30 June 1989. All

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SECTION 5. *Allowances, Honoraria, and Other Fringe Benefits.* Allowances, honoraria and other fringe benefits which may be granted to government employees, whether payable by their respective offices or by other agencies of government, shall be subject to the approval of the President upon recommendation of the Commissioner of the Budget. For this purpose, the Budget Commission shall review on a continuing basis and shall prepare, for the consideration and approval of the President, policies and levels of allowances and other fringe benefits applicable to government personnel, including honoraria or other forms of compensation for participation in projects which are authorized to pay additional compensation.

[63] DBM Corporate Compensation Circular No. 10, Sec. 5.5; *See also Public Estates Authority v. Commission on Audit*, 541 Phil. 412 (2007); *Metropolitan Waterworks and Sewerage System v. Commission on Audit*, supra.

[64] *Rollo*, pp. 172-173.

[65] *See also Hagonoy Water District v. Commission on Audit*, supra.

[66] *See C.F. Sharp & Co., Inc. v. Northwest Airlines, Inc.*, 431 Phil. 11 (2002).

[67] *Rollo*, pp. 53 and 58; *See Locsin v. Paredes*, 63 Phil. 87 (1936).

other unaffected portions of the ND stand. The COA should revise the NDs to reflect the correct cut-off date and make the necessary changes on the disallowed payments and amounts, if any.

The payees are required to return the amounts they received pursuant to the principle of solutio indebiti

In *MWSS*, the Court absolved both the payee-recipients and the MWSS officials from returning the disallowed amounts. The Court ruled that the payees received the benefits in good faith, while the MWSS officials merely implemented the board resolutions approving the allowances.

Notwithstanding the similarities between this case and *MWSS*, We only deem instructive the Court's previous disquisition on the propriety of the NDs. We cannot arrive at a similar conclusion regarding petitioners' liability to return. *MWSS* involved a different set of allowances and NDs. Accordingly, the actions of the approving/certifying officers, as well as the possible bases of their good faith, vary. Also, the civil liability of petitioners in *MWSS* was adjudged under a different framework. As mentioned, jurisprudence had since evolved to clarify the rules on return.

Specifically, in *Madera v. Commission on Audit* (*Madera*),[68] the Court harmonized conflicting rulings on the liability to return disallowed amounts (*Madera* Rules), 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.
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> 2. If a Notice of Disallowance is upheld, the rules on return are as follows:
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> 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.
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> 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.
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> 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

[68] G.R. No. 244128, 08 September 2020.

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.

In *Abellanosa v. Commission on Audit*,[69] the Court further clarified the requisites to be excused from return, as provided in Rule 2 (c) of the *Madera* Rules:

(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.

Hence, regardless of their good faith, the payee-recipients, including the certifying/approving officers who also received the meal allowance, are individually liable for the disallowed amounts they respectively received. This is pursuant to the principle of *solutio indebiti*, which imposes an obligation to return what has been received in error.[70]

None of the exceptions in Rules 2 (c) and 2 (d) are present in this case. The grant of the meal allowance to those not entitled thereto had no legal basis. The defect in payment was not merely procedural. Hence, refund cannot be excused under Rule 2 (c).

Refund cannot also be excused under Rule 2 (d). Unlike in *Madera* where the exception in Rule 2 (d) was applied, the disallowed amounts were not meant to aid the employees amidst an extraordinary and unique circumstance, similar to the onslaught of Typhoon Yolanda. No compelling humanitarian considerations exist in this case. Indeed, the exception in Rule 2 (d) should only be applied in highly exceptional circumstances, lest the *Madera* Rules be diluted into insignificance. As there are no grounds to excuse the return of the disallowed amounts, the payee-recipients should return the amounts they respectively received.

Those who only certified on the completeness of supporting documents and the availability of funds are excused from solidary liability; the rest of the approving and certifying officers

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[69] G.R. No. 185806, 17 November 2020.

[70] *Philippine Health Insurance Corp. v. Commission on Audit*, G.R. No. 222129, 02 February 2021.

are solidarily liable for the disallowed amounts

The approving and certifying officers in the NDs were classified into four (4): (a) those who certified that the expenses/advances are necessary, lawful, and incurred under direct supervision; (b) those who certified that the supporting documents are complete and proper and that cash is available; (c) those who approved the payments; and (d) those who approved the COB, or the MWSS Board.[71] MWSS officers and employees falling under (a), (c), and (d) are solidarily liable for the disallowed amounts, while those whose only participation pertained to (b) are absolved from liability.

We emphasize that, notwithstanding board resolutions authorizing the grant of meal allowance, approving and certifying officers may still be held solidarily liable for the disallowed amounts. Petitioners cannot simply seek refuge in the board resolutions authorizing the payments. While the power to approve the grant of allowances is indeed vested in the MWSS Board,[72] petitioners are nevertheless part of the disbursement process. Thus, they are still considered approving and certifying officers for return purposes. This was emphasized by Associate Justice Inting in his Concurring Opinion in *Madera*, where he classified approving/certifying officers according to their authority: (i) the authority to direct or instruct the payment of a disbursement *per se*; (ii) the authority to act on these instructions/directives and approve documents to effect payment thereof (i.e., vouchers, checks, etc.); and (iii) the authority to certify that funds are available for the disbursement and that the allotment therefor may be charged accordingly.[73]

The MWSS Board falls under the first category, while petitioners herein are in the second and third categories. In several cases,[74] We held liable those who signed off on the disallowed disbursements, despite board resolutions or ordinances authorizing the grant of allowances and benefits. These cases show that other persons who participated in the disbursement process are considered approving and certifying officers under the law, even if the authority to approve allowances is vested on a board or *sanggunian.*

Nonetheless, the liability of these officers should be based on the extent of their certifications and their specific participation.[75] The basis of the

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[71] *Rollo*, pp. 101, 128, 151, and 169.

[72] *See* Republic Act No. 6234, Sec. 4.

[73] *See* Concurring Opinion of J. Inting in *Madera v. Commission on Audit*, supra.

[74] *Small Business Corp. v. Commission on Audit*, G.R. No. 251178, 27 April 2021; *The Officers and Employees of Iloilo Provincial Government v. Commission on Audit*, G.R. No. 218383, 05 January 2021; *Paguio v. Commission on Audit*, G.R. No. 223547, 27 April 2021; *Philippine Charity Sweepstakes Office v. Pulido*-Tan, 785 Phil. 266 (2016).

[75] *See Celeste v. Commission on Audit*, G.R. No. 237843, 15 June 2021; *Madera v. Commission on Audit*, supra; Sec. 16.1.2 of COA Circular No. 006-09: "Public officers who certify as to the necessity, legality and availability of funds or adequacy of documents shall be liable according to their respective certifications."

disallowances should also be looked into to pinpoint the specific basis for liability.

In *Celeste v. Commission on Audit*,[76] the Court ruled that those performing ministerial duties may be excused from the solidary liability to return. Specifically, the duty to certify the availability of funds and the completeness of signatures and supporting documents prior to payment is merely ministerial. There is no room to refuse to perform these duties if the documents were indeed complete and cash was available. The Court ruled, thus:

> Hence, insofar as the disallowances in this case are anchored on the illegality of granting CNAI to managerial employees — **and not on the availability of funds nor adequacy of documents** — during the subject periods, Buted and De Leon acted in good faith and cannot be held liable for the amounts disallowed.[77]

Similarly, in this case, the basis for the disallowance is the illegality of granting meal allowance, and not the unavailability of funds or the inadequacy of supporting documents. Hence, officers who fall under (b), i.e., those who certified that the supporting documents are complete and proper and that cash is available, may be excused from returning the specific payments they certified.

Meanwhile, those who fall under (a), (c), and (d) are solidarily liable. These officers either certified that the disbursements are lawful, or approved the payments. Under (d) is the MWSS Board, which authorized the grant of meal allowance through board resolutions and prepared the COB. Before certifying that the payment is lawful and approving the release of funds, they should have ascertained the legal basis for the disbursement. Given the nature of their functions, these officers are expected to know the relevant rules and regulations. They should have ensured that the pertinent approval, particularly that from the President, through the DBM, is first secured.

The COA correctly ruled that these approving and certifying officials did not act in good faith. As noted by the COA, the MWSS officials had already been apprised of the limits of the MWSS Board's authority to approve the benefit. Yet, they still continued to grant the meal allowance.

Telling is the text of one of the board resolutions being cited by petitioners as basis for the grant. This board resolution was issued in 1992 following an increase in the meal allowance from ₱3.00 to ₱25.00 per day, the appropriation for which was disallowed by the Office of the President in MWSS' 1992 COB, thus:

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[76] *Celeste v. Commission on Audit*, supra.
[77] Emphasis in the original.

> WHEREAS, the MWSS Board of Trustees approved the meal allowance increase to P25 per day under Board Resolution No. 187-91 dated September 26, 1991 for officials and employees hired before October 31, 1989;
>
> **WHEREAS, in its approval of the CY 1992 Corporate Operating Budget of the MWSS, the Office of the President upon the recommendation of the Department of Budget and Management (DBM) disallowed a portion of the appropriation for the increase in meal allowance amounting to P16.07 million for lack of legal basis;**
>
> xxx
>
> WHEREAS, the fourteen (14) heads of the IUG-GOCCs signed a letter to DBM requesting authority to implement a maximum of P25 per day meal allowance subject to availability of funds;
>
> **WHEREAS, in a meeting with the MWSS-COA Auditor, 90 days is given as a period within which the approval of the DBM must be sought**, meanwhile, the benefit may be given due course considering the reasonableness of the amount as compared to the P50 per day of the PAGCOR;
>
> **NOW THEREFORE IT IS RESOLVED, AS IT IS HEREBY RESOLVED, that the implementation of the P25 per day meal allowance be continued effective October 1, 1991 subject to post-audit and refund if later on found not in order by higher authorities.**[78]

The board resolution itself shows that petitioners continued the payment of meal allowance, knowing that it has questionable legal basis and may be disapproved again. It was not shown that the requisite approval was obtained. The payments continued beyond the specified 90-day period, and persisted for more than ten (10) years. It is no surprise then, that the DBM excluded anew provisions for meal allowance in MWSS' 2012 COB for lack of legal basis.[79] Despite DBM's action on the 2012 COB, which came in January 2013,[80] petitioners continued to grant meal allowances for the rest of 2013.

We have consistently held that palpable disregard of laws, prevailing jurisprudence, and other applicable directives amounts to gross negligence, which betrays the presumption of good faith and regularity in the performance of official functions enjoyed by public officers.[81] Petitioners' actions manifestly show gross ignorance, if not willful violation of pertinent rules. Sheer reliance upon a board resolution does not satisfy the standard of good faith and diligence required by law.[82] This is especially the case when the very board resolution relied upon reveals the impropriety of the benefits given.

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[78] *Rollo*, p. 175; emphasis supplied.
[79] Id. at 186.
[80] Id. at 187.
[81] *Paguio v. Commission on Audit*, G.R. No. 223547, 27 April 2021.
[82] *Hagonoy Water District v. Commission on Audit*, G.R. No. 247228, 02 March 2021.

As such, the COA correctly imposed solidary liability for the disallowed amounts. We reiterate, however, that only those falling under (a), (c), and (d) should be held solidarily liable: (a) those who certified that the expenses/advances are necessary, lawful, and incurred under direct supervision; (c) those who approved the payments; and (d) the MWSS Board. Those under (b), whose certifications pertained to the completeness of supporting documents and the availability of funds, are absolved from liability.

In payments where the officer under (b) also made certifications under (a), or also approved the payment under (c), the officer shall still be held liable for their participation under (a) and/or (c). Otherwise put, the absolution shall be applied to those whose *only* participation in the specific payment falls under (b).

WHEREFORE, the petition is **PARTLY GRANTED**. The Decision No. 2019-09 dated 20 February 2019 and Resolution No. 2020-038 dated 21 January 2020 of the Commission on Audit Proper is **AFFIRMED with MODIFICATIONS**, in that:

(1) For purposes of determining incumbency, the cut-off date used in Notice of Disallowance Nos. 14-005-05-(12), 14-006-05-(12), 14-007-05-(13), and 14-008-05-(13) should be **MODIFIED** from 30 June 1989 to 01 July 1989, as provided under Section 12 of Republic Act No. 6758; and

(2) Officers who only certified the completeness of supporting documents and the availability of funds, or those classified as (b) under the Notices of Disallowance, are **EXONERATED** from their solidary liability to return the disallowed amounts. All other approving/certifying officers, or those classified as (a), (c), and (d) under the Notices of Disallowance, are solidarily liable for the disallowed amounts. All passive recipients, including the approving/certifying officers who had received the disallowed amounts in their capacity as payees, are liable only for the amounts they received.

The Commission on Audit is **DIRECTED** to determine the final list of disallowed amounts and persons liable based on the abovementioned guidelines.

SO ORDERED.

RODIL V. ZALAMEDA
Associate Justice

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
Associate Justice

AMY C. LAZARO-JAVIER
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

MARIO V. LOPEZ
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

RICARDO R. ROSARIO
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

JAPAR B. DIMAAMPAO
Associate Justice

JOSE MIDAS P. MARQUEZ
Associate Justice

ANTONIO T. KHO, JR.
Associate Justice

CERTIFICATION

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

ALEXANDER G. GESMUNDO
Chief Justice