G.R. No. 204869 – TECHNICAL EDUCATION AND SKILLS DEVELOPMENT AUTHORITY, Petitioner, versus THE COMMISSION ON AUDIT, et al., Respondents.

Promulgated:

MARCH 11, 2014

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CONCURRING AND DISSENTING OPINION

BRION, *J.*:

The Court once again faces another case where government employees invoke good faith to avoid the refund of illegally and excessively disbursed government funds.

I **concur** with the *ponencia's* ruling disallowing the payment of excess Extraordinary and Miscellaneous Expenses *(EME)* to the officials and employees of the Technical Education and Skills Development Authority *(TESDA)*. I likewise **agree** with the *ponencia's* conclusion that only the approving officers who acted in bad faith or with gross negligence amounting to bad faith should refund the illegal expenditures of public funds.

I **dissent**, however, from the *ponencia's* ruling that the approving officers' legal obligation to refund the illegal disbursement shall be limited to the amount that they illegally received. The Court's finding that the approving officers acted in bad faith in allowing the unauthorized expenditure of public funds necessarily dictates that these officers be also held **liable for the full amount** of the disallowance, as expressly prescribed by the Administrative Code in relation to Presidential Decree No. 1445 *(PD 1445)*.

THE CASE

TESDA paid its officials and personnel EME amounting to ₱5,498,706.60 from 2004 to 2007. The EME came from the General Fund for locally-funded projects, and from the Technical Education and Skills Development Project *(TESDP)* Fund for foreign-assisted projects.

The TESDA audit team disallowed the payment of EME for ***exceeding the allowable limit*** in the 2004-2007 General Appropriation Acts *(GAAs)*. Furthermore, the EME was ***disbursed to the TESDA officials and personnel who were neither enumerated in the GAAs nor considered as project officers occupying equivalent ranks as authorized by the Department of Budget and Management*** *(DBM)*.[1] Thus, the TESDA audit team ordered the payees and the TESDA approving officials to refund the excess EME.

TESDA appealed the disallowance to the Commission on Audit (*COA*) Cluster Director, arguing that it did not exceed the ceiling in the GAAs. It pointed out that the GAAs and the Government Accounting and Auditing Manual do not prohibit the charging of the excess EME against the TESDP Fund - an authorized source of funding separate from the General Fund.

The COA Cluster Director, Cluster VII, National Government Sector, **affirmed the disallowance**, adding that the TESDA officials and personnel (who were designated as project officers) were not included in the Personnel Service Itemization. There was not even a DBM document identifying the equivalent ranks of the designated positions as basis for the disbursement of EME. Subsequently, TESDA appealed the case to the COA.

The COA likewise affirmed the disallowance of the disbursement of EME for being illegal and excessive. It emphasized that the failure of the TESDA officials and personnel to comply with the GAAs negated their claim of good faith. It thus **ordered the TESDA approving officials and payees to refund the excess EME that they received.**

TESDA went to this Court on *certiorari* and posited that its officials and personnel should not refund the amount paid to them because they believed in good faith that they deserved the payment, even though the payment turned out to have no legal basis.

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[1] *Extraordinary and Miscellaneous Expenses.* – Appropriations authorized herein may be used for extraordinary expenses of the following officials and those of equivalent rank as may be authorized by the DBM, not exceeding:

(a) ₱180,000.00 for each Department Secretary;
(b) ₱65,000.00 for each Department Undersecretary;
(c) ₱35,000.00 for each head of bureau or organization of equal rank to a bureau and for each Department Regional Director
(d) ₱18,000.00 for each Bureau Regional Director; and
(e) ₱13,000.00 for each Municipal Trial Court Judge, Municipal Circuit Trial Court Judge, and Shari'a Circuit Court Judge.

In addition, miscellaneous expenses not exceeding Fifty Thousand Pesos (₱50,000.00) for each of the offices under the above named officials are authorized.

THE PONENCIA

The *ponencia* affirmed the disallowance of the excess EME, but exempted the payees, who did not participate in the approval of the excess EME, from the COA's order of refund. The *ponencia* found that these payees acted in good faith in receiving the excess EME because they honestly believed that the amount was a reimbursement for the expenses that they incurred as project officers.

In affirming the disallowance, **the *ponencia* ruled that the disbursement of EME to the TESDA officials and personnel was excessive** since the GAAs, COA Circular No. 2012-001 and COA Circular No. 89-300 expressly provide the limits for the amounts of EME that may be disbursed.

The *ponencia* also found the disbursement to be unauthorized by law. The TESDA officials and personnel who received the disallowed amounts were merely designated as project officers, contrary to what the GAA provides - that only those officials named in the GAAs, the officers of equivalent rank as may be authorized by the DBM, and the offices under these officials are entitled to EME. TESDA failed to point to a specific law that allows it to charge the excess EME from the TESDP Fund, contrary to Section 29(1), Article 6 of the 1987 Constitution.[2]

The *ponencia* likewise ordered TESDA Director Generals Alcestis Guiang and Augusto Boboy Syjuco, Jr., who negligently approved the illegal disbursements, to refund the excess EME that they received. The *ponencia* observed that the Director Generals personally received the excess EME in the amount of ₱809,691.11 despite their position that only TESDA officials and personnel designated as project officers were entitled to these payments.

I. Framework of review of the COA's ruling in disallowance cases: the constitutional remedy against the COA's ruling and the confines of a Rule 65 *certiorari* petition

A. Procedural framework: The COA did not commit any grave abuse of discretion that would justify the setting aside of its order to refund

Under the 1935 Constitution,[3] the decisions of the Auditor General of the General Auditing Office – the COA's precursor - "may be *appealed* to the President whose action shall be final." The 1973 and 1987 Constitutions,[4] however,

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2 No money shall be paid out of the Treasury except in pursuance of an appropriation made by law.

3 Article XI, General Auditing Office, Section 3.

4 Section 2(2), Article XII-D of the 1973 Constitution reads:

xxx Unless otherwise provided by law, any decision, order, or ruling of the Commission may be brought to the Supreme Court on *certiorari* by the aggrieved party within days from his receipt of a copy thereof. [italics ours]

changed the nature of the remedy by providing that the COA's decision, order or ruling may be brought to the Supreme Court on *certiorari*. This change of remedy narrowed down the scope and extent of the inquiry that the Court may undertake to what is strictly the office of *certiorari* as distinguished from review.[5]

A Rule 65 petition is a unique and special rule because it commands a limited review of the question raised. As an *extraordinary remedy,* its purpose is simply to keep the public respondent within the bounds of its jurisdiction or to relieve the petitioner from the public respondent's arbitrary acts. In this review, the Court is confined *solely* to questions of jurisdiction whenever a tribunal, board or officer exercising judicial or quasi-judicial functions acts without jurisdiction or in excess of jurisdiction, or with grave abuse of discretion amounting to lack of jurisdiction.[6] In concrete terms, the questioned ruling must stand **unless there is absolutely no evidence to support the public respondent's finding or unless the evidence does not meet the quantum of proof required by the rules**. The commission of mere abuse of discretion and mere errors of judgment does not warrant the issuance of a writ of *certiorari* to set aside or modify the questioned ruling.

The limitation of the Court's power of review over the COA rulings merely complements its nature as an ***independent constitutional body*** that is tasked to safeguard the proper use of the government and, ultimately, the people's property by vesting it with the power to (i) determine whether government entities comply with the law and the rules in disbursing public funds; and (ii) disallow illegal disbursements of these funds.[7]

Unfortunately, I observe that our jurisprudence has not laid down a clear legal framework in treating disallowance cases from a Rule 65 petition perspective. A review of jurisprudence[8] also shows that the Court has not really made a

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5 *Aratuc v. Comelec*, 177 Phil. 205, 223 (1979).

6 RULES OF COURT, Rule 65, Section 1.

7 *De Jesus v. Commission on Audit*, 451 Phil. 812, 818-819 (2003), citing *Caltex Philippines, Inc. v. Commission on Audit*, G.R. No. 92585, May 8, 1992, 208 SCRA 726. See 2009 REVISED RULES OF PROCEDURE OF THE COMMISSION ON AUDIT, Rule 2, Section 1(a).

8 The following summarizes some of the relevant disallowance cases that followed after the Court's promulgation of *Blaquera:*

In *De Jesus v. Commission on Audit* (*supra*), the Catbalogan Water District's interim Board of Directors awarded themselves additional allowances and bonuses pursuant to a resolution they issued. The Court disallowed the disbursements for being illegal. However, the Court did not order a refund because the board members honestly believed that they were entitled to these amounts under the resolution and because the Court had not yet decided *Baybay Water District v. COA* – where the Court ruled that the water district's board members were only entitled to *per diems* - when the grant was made. (See *Magno v. COA*)

In *HDMF v. COA,* the HDMF entered into three successive contracts (1995, 1996 and 1997 Contracts) with DBP Service Corporation *(DBPSC)* for manpower services. In mid-1997, the HDMF Board of Trustees approved a resolution granting amelioration allowance to DBPSC personnel that were assigned to the HDMF's head office and charged it against the HDMF's 1996 approved budget. The Court disallowed the payment to DBPSC personnel for lack of legal basis. It also held that the HDMF could not invoke the 1997 Contract to justify the disbursement for 1996. However, the Court did not order the refund of the disbursed amounts despite its finding that the HDMF trustees were negligent in not examining the 1996 Contract. It also found that the DBPSC personnel acted in good faith because they performed the work of regular government employees and received the amount in the belief that they were entitled to the allowance.

In *Philippine Ports Authority (PPA) v. COA* (517 Phil. 677 [2006]), the PPA granted hazard pay to its officials and employees from January 1, 1997 to June 30, 1997 through a special order, issued pursuant to PPA Memorandum Circular No. 34-95 and DBM National Compensation Circular No. 76. The Court disallowed the

concrete ruling in terms of setting clear and definite standards to determine when good faith exists in disallowance cases. Furthermore, jurisprudence is obscure on the exact amount that the responsible public officers shall refund in disallowances.[9] For these reasons, I submit this Concurring and Dissenting Opinion.

B. Substantive framework: Refund of amounts disallowed in audit is the legal norm

1. Constitutional tenet: The trust resulting from holding public office demands accountability from the public officer

Section 1, Article II of the 1987 Constitution declares that the Philippines is a democratic and republican state where *sovereignty resides in the people* and all government authority emanates from them. A republican government is a responsible government whose officials hold and discharge their position as a public trust that renders them at all times accountable to the people they are sworn

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disbursement because President Ramos had vetoed the hazard pay provision in the GAA. However, the disbursement was done in good faith because President Ramos only vetoed the hazard pay provision on February 2, 1997. Furthermore, the DBM only issued DBM Circular Letter No. 13-97 apprising the government entities of the presidential veto on December 15, 1997. Thus, the officials and employees honestly believed that the grant was authorized by PPA Special Order No. 407-97.

In *Lumayna v. Commission on Audit* (G.R. No. 185001, September 25, 2009, 601 SCRA 163), the DBM issued Local Budget Circular No. 74 *(LBC 74)* authorizing a 5% adjustment in the salaries of local government personnel. Subsequently, the *Sangguniang Bayan* of Mayoyao, Ifugao appropriated the salaries for newly created positions in Resolution No. 41. The *Sangguniang Panlalawigan* of the Province of Ifugao declared the appropriations operative subject to certain conditions. Thereafter, the *Sangguniang Bayan* approved Resolution No. 66 implementing the salary increase for its personnel. The Court found that the salary increase exceeded the total allowable appropriations under the law. However, the municipality personnel disbursed the amount under the color of resolutions that were issued pursuant to LBC No. 74. Furthermore, the approving officers disbursed the amount only after the *Sangguniang Panlalawigan* had declared the appropriations operative. (See also *Singson v. COA*, *Veloso v. COA, Kapisanan ng mga Manggagawa (KMG) v. COA*)

In *Nazareth v. Villar* (G.R. No. 188635, January 29, 2013, 689 SCRA 385), the Department of Science and Technology *(DOST)* Regional Office released Magna Carta benefits to its officials and employees despite the absence of a specific appropriation in the GAA and without prior authority from the President to utilize the DOST's savings. After the COA disallowed the payment of benefits, the OP authorized the DOST to utilize its savings to pay the benefits. The Court held that the payment of benefits without a specific item in the GAA and without the President's prior authority was repugnant to Republic Act No. 8439 *(RA 8439)*, the 1987 Constitution, and the GAA. However, the approving officers and the recipients acted in good faith because they honestly believed that Section 7 of RA 8439 allowed the payment of these benefits. Furthermore, the DOST earnestly asked for authorization from the OP after the disallowance.

[9] In at least two cases, however, the Court ordered a refund of the amount on the basis of bad faith. In *Home Development Mutual Fund (HDMF) v. COA* (483 Phil. 666 [2004]), the HDMF granted productivity incentive bonus to all its personnel pursuant to Republic Act No. 6971 *(RA 6971)* and its implementing rules. The Court disallowed the disbursement on the ground that RA 6971 does not cover government-owned and controlled corporations *(GOCC)* with original charter as stated in jurisprudence. The Court also ordered the refund of the disbursed amounts because the HDMF still granted the bonus despite the DBM's advice to await a definite ruling on this matter. In *Casal v. COA,* the National Museum granted an incentive award to its officials and employees pursuant to Provision No. 8 of Employees Suggestions and Incentive Awards System which the CSC had approved. The Court disallowed the award for being illegal However, the Court distinguished on who should refund the disallowed amounts. Accordingly, the approving officers should refund the disallowed amounts for acting in bad faith in allowing the disbursements. In so ruling, the Court made factual distinctions between *Casal* and *Blaquera.* In *Blaquera,* the incentive benefits were paid prior to the issuance of AO No. 29. In *Casal,* these benefits were released subsequent to the issuance of AO 29. Moreover, the CSC notified the National Museum of the prohibition in AO No. 268. On the other hand, the Court ruled that the recipients who did not participate in the approval of the award should not refund the amounts they received. The approving officers' imprimatur gave the award a color of legality.

to serve.[10] This principle of accountability proceeds from the constitutional tenet that public office is a public trust[11] and its corollary that the stability of our public institutions relies on the ability of our civil servants to serve their constituencies well.[12]

Public officers are stewards who must use government resources efficiently, effectively, honestly and economically to avoid the wastage of public funds.[13] The prudent and cautious use of these funds is dictated by their nature as funds and property **held in trust** by the public officers for the benefit of the sovereign trustees – the people themselves – and for the specific public purposes for which they are appropriated.[14] Thus, Article VI, Section 29(1) of the Constitution provides that no money shall be paid out of any public treasury except in pursuance of an appropriation law or other specific statutory authority.

To ensure *accountability* enforcement in the disbursement of public funds,[15] the 1987 Constitution created the COA as an independent constitutional office charged to audit government financial transactions. The Constitution empowered the COA to **examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property**, owned, held in trust by, or pertaining to, the Government and its instrumentalities. Furthermore, our Constitution exclusively authorized the COA to promulgate accounting and auditing rules and regulations, including those for **the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures or uses of government funds and properties.**

2. Standard of diligence in the utilization of public funds; the obligation to return

To maintain inviolate the public trust reposed on them, public officers must exercise **ordinary diligence** or the **diligence of a good father of a family**.[16] This means that they should observe the relevant laws and rules as well as exercise ordinary care and prudence in the disbursement of public funds.[17] If they do not, the disbursed amounts are disallowed in audit, and the law[18] imposes upon public officers the obligation to return these amounts.

Section 43, Chapter V, Book VI of the Administrative Code expressly states that the approving public officers and the recipients of illegal disbursements must

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10 Isagani Cruz, Philippine Political Law, 1998 ed., p. 52.

11 1987 CONSTITUTION, Article XI, Section 1.

12 *Office of the Ombudsman v. Andutan, Jr.*, G.R. No. 164679, July 27, 2011, 654 SCRA 539, 557.

13 REPUBLIC ACT NO. 6713, Section 4.

14 *Rosalinda Dimapilis-Baldoz, etc. v. Commission on Audit, etc.*, G.R. No. 199114, July 16, 2013.

15 *Veloso v. Commission on Audit,* G.R. No. 193677, September 6, 2011, 656 SCRA 767, 776.

16 PD 1445, Section 104. See also Section 8, par. 3, Rule 6 of the Rules Implementing the Code of Conduct and Ethical Standards for Public Officials and Employees.

17 *Al-Amanah Islamic Investment Bank of the Phils. v. Civil Service Commission,* G.R. No. 100599, April 8, 1992, 207 SCRA 801, 812.

18 THE ADMINISTRATIVE CODE OF 1987, Book VI, Chapter V, Section 43.

solidarily refund the disbursed amounts to the government. The obligation to refund also finds support under the principle of *solutio indebiti* which enunciates the rule that the obligation to return arises if something is received when there is no right to demand it, and when it was unduly delivered through mistake.[19]

Despite this clear obligation to refund, the Court, in several cases, has spared the public officers from this duty if they acted in "good faith" in disbursing and/or receiving the illegal disbursements. Decided in 1998, *Blaquera v. Hon. Alcala*[20] was the first instance when the Court used **the *good faith of the recipients and the approving officers*** as a consideration in determining whether they should be required to refund the disallowed amounts.

In *Blaquera*, the respondents (Alcala, et al.), as heads of several government agencies, caused the deduction from the petitioners' (government employees) salaries the amounts allegedly in excess of those authorized under the challenged administrative orders pursuant to which the respondents acted. **To prevent further deduction**, the petitioners went to this Court and challenged the constitutionality of the administrative orders. The Court upheld the administrative orders and, in effect, **gave its approval to the refund that the respondents already carried out**. Nonetheless, the Court did not allow further refunds because it found that "all the parties xxx acted in good faith."[21]

A closer look at *Blaquera* shows that it rests on the following circumstances that justified a ruling against the further refund of the disallowed amounts, without actual regard to the good faith ***of the recipients*** in that case: *first*, *Blaquera* involved numerous petitioners, numbering in several hundreds, that would make a refund very cumbersome; *second*, it involved small amounts (about ₱1,000.00 per plaintiff) whose aggregate sum was not commensurate with the administrative costs of enforcing the refund; and *third*, the Court adopted a policy in favor of labor as a matter of equity. In other words, there were ***practical and equitable considerations that rendered unnecessary the application of the legal concept of good faith to those who were merely recipients of the disallowed amounts.***

On the part of the approving officers, *Blaquera* simply stated that "the officials and chiefs of offices concerned disbursed the incentive benefits in the honest belief that the amounts given were due to the recipients."[22] **In short, *Blaquera* found them to have acted in good faith.**

II. Application of the legal norm: balancing with other considerations

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19 CIVIL CODE, Article 2154.
20 356 Phil. 678 (1998).
21 Id. at 765.
22 Id. at 766.

A. Direct Responsibility

Interestingly, while the Civil Code provisions on *solutio indebiti*, in general, and Section 43, Chapter V, Book VI of the Administrative Code, in particular, impose upon public officials and employees the solidary obligation to refund the illegal disbursements, Section 52, Chapter 9, Title I-B, Book V of the Administrative Code[23] expressly provides that **only persons who are directly responsible for the illegal expenditures of public funds shall be liable**:

> General Liability for Unlawful Expenditures. - Expenditures of government funds or uses of government property in violation of law or regulations shall be a personal liability of the official or employee **found to be directly responsible therefor**.

The imposition of this direct responsibility for expenditures in violation of law and/or regulations justified the creation of a jurisprudential exception[24] (from the obligation to refund) in favor of mere payees of amounts disallowed in audit.[25] Notwithstanding the payee's liability for disallowances, these **mere passive recipients** of good graces have every right to rely on the presumptions of regularity and good faith accorded to the public officers directly responsible for the disbursement and expenditure of public funds. As mere passive recipients, they could not possibly fail to meet the legal standard of ordinary diligence. The presumption is, in fact, irrelevant to them for the reason that they are merely at the receiving end of the disbursement process. A contrary construction of these interrelated legal provisions and principles would lead to an ***inequitable and unduly burdensome*** result that would oblige a mass of public officials and employees to refund amounts received *through no fault (direct or indirect) of their own*.

Based on these premises, I agree with the *ponencia* that the COA committed grave abuse of discretion when it ordered the TESDA employees, who were mere *passive recipients* of the excess EME, to refund the amounts they had received. *For the COA to hold these passive recipients liable despite the lack of evidence showing their direct responsibility in the illegal disbursements (much less, the lack of evidence that they had acted in bad faith*

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23 Section 103 of PD 1445 similarly provides:

> General liability for unlawful expenditures. Expenditures of government funds or uses of government property in violation of law or regulations shall be a personal liability of the official or employee found to be directly responsible therefor.

24 See *MIAA v. COA,* G.R. No. 194710, February 14, 2012, 665 SCRA 655, 677-678.

25 Payees of disallowed disbursements may, however be held liable to return the amount they have received based on the other grounds stated in COA Circular 2009-006, to wit:

> 16.1.4. Public officers and other persons **who confederated or conspired** in a transaction which is disadvantageous or prejudicial to the government shall be held liable jointly and severally with those who benefited therefrom.
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> **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**. [emphases ours]

together with the rest of the TESDA approving officers) is an act of grave abuse of discretion. Indeed, the *imprimatur* given by the approving officers on the excess EME even gave the disbursement a color of legality *from the perspective of these recipients*.[26]

Since mere passive recipients of disallowed amounts are generally exempted from personal liability, direct responsibility can only possibly lie at the upper levels of an agency's administrative structure. These public officers are largely the approving officials who are *directly responsible* for the disbursement of public funds. The following elements must be established before a public officer can be held personally liable for illegal expenditures of public funds:

1. There must be an expenditure of government funds or use of government property;
2. The expenditure is in violation of law or regulation; and
3. The public officer is **directly responsible** for the irregular, unnecessary, excessive, extravagant or unconscionable disbursement of public funds.[27]

With respect to the third element, Section 19 of COA Circular No. 94-001 provides the determinants of "direct responsibility":

> SECTION 19. DETERMINATION OF PERSONS LIABLE FOR AUDIT DISALLOWANCES OR CHARGES
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> 19.1. The liability of public officers and other persons for **audit disallowances** shall be determined on the basis of: (a) the nature of the disallowance; **(b) the duties, responsibilities or obligations of the officers/persons concerned; (c) the extent of their participation or involvement in the disallowed transaction**; (d) the amount of losses or damages suffered by the government thereby. *The following are illustrative examples:*
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> **19.1.3. Public officers who approve or authorize transactions involving the expenditure of government funds and uses of government properties shall be liable for all losses arising out of their negligence or failure to exercise the diligence of a good father of a family.**

What the statutory requirement of direct responsibility and its determinants show is that **personal liability does not automatically attach simply because one took part in the disbursement approval process**. Both the public officer's duties and the extent of his participation in the disallowed transaction significantly impact on the possible defenses that he may raise against his potential liability. This

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26 *Executive Director Casal v. Commission on Audit,* 538 Phil. 634, 801 (2006).

27 *Albert v. Gangan*, 406 Phil. 231, 245 (2001).

means that **direct responsibility is anchored on his failure to exercise ordinary diligence.**

1. Valid Defense: Public officers enjoy the presumption of regularity in the performance of official duty and of good faith

A finding that a public officer failed to exercise ordinary diligence should not automatically translate into a personal obligation to refund as the public officer, to avoid personal liability, may still invoke the twin presumptions of regularity and good faith in the performance of official duties.[28] These are merely presumptions *juris tantum,* however, and may be rebutted by contrary evidence.

What the presumption of regularity establishes is merely *compliance with the ordinary procedures and the usual standards* in the processing and approval of a disbursement. On the other hand, the presumption of good faith aids the public officer in establishing *substantial or colorable compliance with the law* that would exempt him from pecuniary liability *even if* he had erred in the application of the law or *even if* he had been found guilty of simple negligence in the performance of his duties. In this respect, good faith denotes freedom from knowledge of circumstances that ought to put the responsible public officer on inquiry and the honest intention to abstain from taking advantage of another – in the present case, of the government – even through technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render a transaction irregular.[29]

2. The required diligence of a good father of a family and the presumption of good faith

Should the COA, on audit, find nothing illegal or irregular in the disbursement of public funds, the presumption of good faith in favor of the public officer is deemed confirmed: the COA's finding shows that the public officer had indeed exercised ordinary diligence.

An audit disallowance, however, is an entirely different matter. When the COA issues a notice of disallowance, it disapproves the transaction for being illegal, irregular, unnecessary, excessive, extravagant, or unconscionable, and,

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[28] The presumption is indulged by law for the following reasons: *first,* innocence, and not wrongdoing, is to be presumed; *second*, an official oath will not be violated; and *third,* a republican form of government cannot survive long unless a limit is placed upon controversies and certain trust and confidence reposed in each governmental department or agent by every other such department or agent, at least to the extent of such presumption. The presumption evidences a rule of convenient public policy, without which great distress would spring in the affairs of men. (*People v. De Guzman*, G.R. No. 106025, February 9, 1994, 229 SCRA 796, 798-799.)

[29] *Philippine Economic Zone Authority (PEZA) v. Commission on Audit, et al.,* G.R. No. 189767, July 3, 2012, 657 SCRA 514, 524.

determines the persons liable for the disallowed amounts.[30] Two scenarios may arise: *first*, the Court agrees with the disallowance; and *second,* the Court disagrees with the disallowance.

2a. The Court agrees with the disallowance and/or the finding of bad faith

For emphasis, at any time before the final approval of the disbursement, a public officer must exercise ordinary diligence in ensuring that the disbursement is in accordance with the laws.[31] However, once the COA disallows the disbursement, the presumption of good faith[32] assumes significance as a matter of defense. The public officer can claim that he exercised ordinary diligence in the performance of his official duties to avoid liability. If he is shown to have exercised the diligence required of him, then no personal liability will attach. However, if he is shown to have failed to exercise ordinary diligence, then the public officer can rely on the ***presumption of good faith that is consistent with simple negligence***. To reiterate, the public officer's failure to exercise ordinary diligence does not automatically mean that he has acted in bad faith because good faith is a presumption of law. If the COA's findings show that the required diligence has not been observed, then the Court, on *certiorari,* must consider whether the presumption of good faith has also been overcome based on the COA's findings.

If there is a clear COA finding, express or implied, that the public officer acted with bad faith or was guilty of gross negligence amounting to bad faith that resulted in the illegal disbursement of public funds, then the defense of

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30 COA Circular 2009-006, Sec. 4.17.

31 The fact that a disbursement turns out to be illegal does not automatically mean that all of the approving officials did not exercise ordinary diligence. For instance, the mere fact that a public officer is the **head of an agency** does not necessarily mean that he is inescapably liable in case of disallowance of expenses for questionable transactions of his agency. Personal liability for the disallowed amounts does not automatically attach simply because the public officer was the final approving authority of the transaction in question and that the erring officers/employees who processed the same were directly under his supervision. As stated in the seminal case of *Arias v. Sandiganbayan* (259 Phil. 797 [1989]), practical necessity affords all heads of offices the right to rely to a *reasonable extent* on their subordinates and on the good faith of those who took part to consummate the disbursement of public funds. *Arias* requires that -

> There has to be some added reason why he should examine each voucher in such detail. Any executive head of even *small* government agencies or commissions can attest to the volume of papers that must be signed. There are hundreds of document, letters and supporting paper that routinely pass through his hands. The number in bigger offices or departments is even more appalling. (Id. at 801-802.)

The Court has since applied the *Arias* ruling to determine not only criminal (*Magsuci v. Sandiganbayan*, 310 Phil. 14 [1995], a case involving estafa through falsification of public documents) civil (*Leycano, Jr. v. Commission on Audit,* 517 Phil. 426 [2006]; and *Albert v. Gangan*, *supra* note 27), and administrative (*Alfonso v. Office of the President*, G.R. No. 150091, April 2, 2007, 520 SCRA 64) liability, but even the existence of probable cause to file an information (*Sistoza v. Desierto,* 437 Phil. 117 [2002]), in the context of an allegation of conspiracy. In this instance, what constitutes reliance to a "reasonable extent" thus depends on a case-to-case basis.

32 If an approving official has exercised ordinary diligence in the performance of his official duties, his good faith would enjoy a stronger presumption. If he failed to exercise ordinary diligence, however, this does not mean that his good faith presumption becomes weaker. Presumption of good faith stands unless rebutted by evidence to the contrary.

presumption of good faith should be deemed completely rebutted.[33] If this element of bad faith is established, then the public officer's mantle of immunity is removed because his act is considered to be outside the scope of his official duties.[34]

2b. If the Court disagrees with the disallowance

If the Court finds that the COA gravely abused its discretion in disallowing the disbursement, it necessarily follows that any discussion of good faith is irrelevant since there would be no order of refund. Similarly, if the Court finds that the COA gravely abused its discretion in concluding that bad faith existed for lack of factual and legal bases, then the issue of refund cannot possibly arise since the presumption of good faith should rightfully come to the public officer's aid.

3. The valid defenses vis-à-vis the legal consequence of the COA's disallowance: its interface under a certiorari petition

In resolving a petition of this nature, the Court must proceed on the premise that the ***COA's finding of an illegal disbursement coupled with its finding of bad faith on the part of the approving officers*** should give rise to their personal obligation to refund the disallowed amounts. Since a petitioner in a *certiorari* proceeding has the burden of proving the public respondent's grave abuse of discretion, then **to the petitioner likewise falls the burden of *re-establishing* his good faith that has *already been rebutted by the COA's findings***. Simply stated, the petitioner's perfunctory reliance on the presumption of good faith would not warrant the setting aside of the COA's disallowance.

III. The TESDA approving officials should be held personally and solidarily liable for the full amount of the disallowed amounts

A. The point of concurrence

Based on these discussions, I agree with the *ponencia* that no reason exists to find that the COA capriciously and whimsically exercised its judgment when it found **bad faith *on the part of the approving officers*** and, consequently, ordered ***these TESDA officials*** to refund the amount disallowed in audit.

The COA emphasized that the GAAs clearly ***provide a ceiling for the grant of EME*** and expressly state that ***only officials named in the GAAs, officers of equivalent rank as may be authorized by the DBM, and offices under these officials are entitled to EME***. In other words, the COA did not abuse its discretion

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[33] See *Lumayna v. Commission on Audit, supra* note 8, at 182-183; and *Albert v. Gangan, supra* note 27, at 245-246.

[34] *Meneses v. Court of Appeals,* G.R. Nos. 82220, 82251 and 83059, July 14, 1995, 246 SCRA 162, 174.

but merely applied the clear provisions of the law that the TESDA approving officials patently violated. These are very clear standards where violations are not difficult to determine and which the COA, in fact, fully accounted for and determined.

B. The point of dissent

However, contrary to the *ponencia's* conclusion, I submit that the approving officers should be held personally liable for the full amount of the disallowance. My disagreement with the *ponencia's* ruling on the approving officers' extent of liability stems from the observation that the *ponencia* departed from the clear provisions of the law.

To reiterate, Section 43, Chapter V, Book VI of the Administrative Code expressly provides that **every official or employee authorizing or making an illegal payment** and every person receiving the illegal payment shall be **jointly and severally liable** to the Government for the **full amount so paid or received**. This provision should be interpreted in relation with Section 52, Chapter IX, Title I-B, Book V of the Administrative Code and Section 103 of PD 1445 which state that illegal expenditures of public funds shall be a **personal liability** of the official or employee found to be **directly responsible** for the illegal disbursements. As the *ponencia* itself ruled, this direct responsibility only attaches to public officers who actively and maliciously participated in the illegal disbursement of funds. In the present case, the *ponencia* correctly found that only the approving officers (among them, the Director Generals) are liable for the disbursement of the excess EME.

A plain reading of Section 42, Chapter V, Book VI of the Administrative Code shows that this provision does not qualify that the approving officer *must* first receive the illegal disbursement as a necessary prerequisite for his personal and solidary liability in disallowances. This provision unequivocably holds a public officer personally and solidarily liable with other responsible officers for *merely* authorizing or making an illegal payment of public funds. **That the approving officer must receive a portion of the disallowed amount is not an element of liability under the Administrative Code. The *ponencia's* conclusion in this regard is plainly and patently incorrect.**

I also stress that Section 42, Chapter V, Book VI of the Administrative Code used the phrase "**the full amount so paid or received**." This phrase directly refers to the earlier phrase "every person receiving the illegal payment." Indisputably, the law holds the public officer who merely authorized the illegal payment personally liable for **the full amount of the illegal expenditures**. The law clearly intended to hold the approving officers liable, **not just for the amount that they received, if any, but also for the illegal payments that the payees have received**. In fact, the law characterizes the responsible officers' pecuniary liability as *direct, personal and solidary;* this strict pecuniary liability embodies the spirit and intent of the law to subject the public officers to the highest standards of accountability and service.

He who occupies public office should render service to the people and must not abuse the public trust as a means to promote his personal interests.

My disagreement with the *ponencia's* imposition of limited civil liability arises from the observation that **this conclusion has no legal or jurisprudential basis**. The *ponencia's* requirement that the approving officers must have **received an amount** from an illegal expenditure and limiting **his solidary liability to this amount** does not find any support in the law. By adding this requirement, the *ponencia* ignored the basic principle in statutory construction that where the language of the law is clear and unequivocal, it must be given its literal application and applied without additional interpretation.[35]

If any distinction should be made between the approving officials who received a portion of the disallowed amounts and those who did not, the former should bear the additional liability of paying legal interests on the disallowed amount received, as provided by law.[36] The Court should not give an "incentive" to a public official to care less in approving the disbursement of public funds by exempting him from the obligation to refund simply because he did not receive any amount, however grossly negligent he may have been.

I fear that the Court dangerously treads in judicial legislation by deviating from the clear mandate of the law. This case sets a dangerous precedent that the approving officers would have to receive an illegal disbursement first before they can be made civilly liable in disallowance cases. This subverts the clear provisions of the law and **would render inutile the COA disallowances in cases where the grossly negligent approving officers do not receive any portion of the illegal disbursement and where the payees are mere passive recipients.** Under this scenario, **no public officer shall refund the government for the unwarranted wastage of its coffers.** Furthermore, this ruling ignores the reality that the approving officers can easily evade liability by merely ordering or colluding with others so that their receipt of the portion of the illegal disbursement is not documented. I believe that the law does not intend the approving officers to go scot-free for their acts or omissions that are detrimental to the public interest. This offends the very core of the law on public officers that public office exacts the highest standards of accountability and service.

Also, Section 102 of PD 1442 provides that the agency head directing any illegal disposition of funds or property shall be immediately and primarily responsible for ***all* government funds and property pertaining to his agency.** Similar to the Administrative Code, PD 1442 unequivocably holds the agency head responsible for **all** illegally disposed funds and property.

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35 *Bolos v. Bolos,* G.R. No. 186400, October 20, 2010, 634 SCRA 429, 437.

36 CIVIL CODE, Art. 2159. Whoever in bad faith accepts an undue payment, shall pay legal interest if a sum of money is involved, or shall be liable for fruits received or which should have been received if the thing produces fruits.

He shall furthermore be answerable for any loss or impairment of the thing from any cause, and for damages to the person who delivered the thing, until it is recovered.

The approving officers in this case are *not ordinary* public employees. The TESDA Director General is the **chief executive officer** of the TESDA Secretariat; he occupies one of the highest positions in TESDA. He exercises general supervision and control over TESDA's technical and administrative personnel. He also heads the TESDA Secretariat which proposes the specific allocation of its resources. In other words, the Director General, as the head of a government agency, is charged with the duty of diligently supervising the accountable officers and other subordinates to prevent the loss of government funds or property.[37] His approval or disapproval to the disbursement of TESDA's funds is a *core function* that he has to discharge in the performance of his official duties. Pursuant to Section 102 of PD 1442, the Director General's functions dictate that he be immediately and primarily liable for the full amount of the excess EME.

The consequences for the government of any contrary ruling are to deplete the government's coffers and to render the COA's auditing functions meaningless. In blunter terms, notices of disallowance would eventually serve no practical purpose if the Court limits the refund of disallowed disbursements to the amounts that the responsible officer has received. This kind of ruling would result in impunity for those who did not receive but carelessly approved the illegal expenditures, not to mention the level of comfort it would add to those who, in case of doubt, would allow the payment of public funds because the Court would ultimately not order any refund anyway.

In these lights, due deference and respect for the Constitution and the laws demand that we strictly scrutinize the good faith defense before us vis-à-vis the COA's own finding of bad faith before we recognize this type of defense in disallowance cases. **In other words, any disbursement contrary to the provisions of the law should be declared illegal and the parties responsible for the illegal disbursement should refund the full amount of the disallowance. It is only in those clearly meritorious cases where the COA's own findings are not inconsistent with good faith or where the COA gravely abused its discretion in concluding, expressly or impliedly, that bad faith exists that they may be relieved from the obligation to refund.** As for **mere passive recipients, they are generally not liable to refund the amount they received *unless* they themselves participated in the illegal disbursement.**

ARTURO D. BRION
Associate Justice

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37 PD 1445, Sections 104 and 105.