

G. R. No. 185812 – MARITIME INDUSTRY AUTHORITY v. COMMISSION ON AUDIT.

Promulgated:

January 13, 2015

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CONCURRING OPINION

BRION, J.:

I write this Concurring Opinion to reflect my former Concurring and Dissenting Opinion to the circulated **original draft ponencia** of Justice Marvic M.V.F. Leonen and to express my concurrence with the **revised ponencia's** position.

The original draft *ponencia* held that only Erlinda Baltazar, the cashier, shall reimburse the Government as a result of the disallowance. With respect to the approving officers and other recipients, the *ponencia* stated that they were presumed to have acted in good faith since they faithfully relied on the memorandum dated February 10, 2000.

I dissented from the original draft *ponencia* on the ground that the non-receipt of the approving officers of the disallowed amounts does not automatically exempt them from solidary liability in disallowance cases. As I explained in my dissent in *TESDA v. COA*,¹ the **approving officer's** receipt of a portion of the disallowed amount is not an element of liability under Section 43, Chapter V, Book VI of the Administrative Code² in relation with Section 52, Chapter IX, Title I-B, Book V of the Administrative Code³ and Section 103 of Presidential Decree No. 1445⁴. These provisions do not require that the approving officer must first receive the illegal disbursement as a necessary prerequisite for his personal and solidary liability.

¹ G.R. No. 204869, March 11, 2014.

² **Section 43. Liability for Illegal Expenditures.** - Every expenditure or obligation authorized or incurred in violation of the provisions of this Code or of the general and special provisions contained in the annual General or other Appropriations Act shall be void. Every payment made in violation of said provisions shall be illegal and every official or employee authorizing or making such payment, or taking part therein, and every person receiving such payment shall be jointly and severally liable to the Government for the full amount so paid or received.

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

³ **Section 52. 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.

⁴ **Section 103. 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.

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Thereafter, Justice Leonen circulated the present revised *ponencia* whose disposition follow the lines of my dissent in *TESDA v. COA*.⁵

Based on these developments, I submit this Concurring Opinion to the present and revised *ponencia*.

THE CASE

To briefly summarize the case, Republic Act No. 6758 (*RA 6758*), which took effect on July 1, 1989, standardized the salaries of government employees. Section 12 of *RA 6758* provides:

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.

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. (Underlines and emphasis ours)

On September 30, 1989, the Department of Budget and Management (*DBM*) issued National Compensation Circulars Nos. 56 and 59, enumerating additional allowances that are deemed integrated into the basic salary.

Due to these developments, Marina discontinued the grant of several allowances to its employees. In a memorandum dated February 10, 2000, Marina recommended to President Estrada the restoration of allowances of its employees. The President approved and signed the memorandum on October 16, 2000.

Relying on this approval, Marina restored the grant of allowances and incentives to its employees beginning January 2001.

The COA disallowed the granted allowances and incentives, except *per diems* and monthly commutable allowances of Marina board members. In particular, the COA held the following persons liable for the disallowance:

1. Elenita Delgado – Approving Officer
2. Yolanda Quinones – Chief Accountant

⁵ *Supra* note 1.

3. Agrifina Lacson – Certifying Officer
4. Erlinda Baltazar – Cashier
5. Myrna Colag – Alternate Approving Officer
6. Miriam Dimayuga – Alternate Approving Officer

The COA held that allowances are already integrated as part of the salaries of government employees under RA 6758. The COA did not give probative value to the memorandum to President Estrada dated February 10, 2000 for Marina's failure to present its original copy. The COA noted that the Malacanang Records Office did not have a copy of this memorandum. Furthermore, the COA ruled that the President's approval of the memorandum was insufficient, since a law was required for the grant of additional allowances and incentives.

THE ISSUES

- (1) Whether the grant of allowances to Marina employees has legal basis; and
- (2) Whether the approving officers and the recipients should solidarily refund the disallowance.

THE PONENCIA'S RULING

The *ponencia* explained that RA 6758 provides a new system in the position classification and compensation of government employees. Under this new system, all allowances are deemed part of the standardized salary. However, there are allowances that may be given on top of the standardized salary – (1) the non-integrated allowances specifically enumerated under Section 12 of RA 6758; and (2) additional compensation as may be determined by the DBM.

Consequently, if the allowance does not fall under these two exceptions, it is deemed part of the standardized salary. In *Napocor Employees Consolidation Union v. The National Power Corporation*,⁶ the Court held that Section 12 of RA 6758 is self-executing and the allowance need not be specifically enumerated to be integrated in the standardized salary.

The *ponencia* upheld the disallowance on the ground that the subject allowances were neither non-integrated allowances nor additional compensation allowed by the DBM. Furthermore, the President's alleged approval of the memorandum would not suffice since it was not a law. The *ponencia* further ruled that the receipt of additional allowances and incentives contravene Section 12 of RA 6758 and the constitutional prohibition against double compensation.

⁶ G.R. No. 157492, March 10, 2006, 484 SCRA 409.

The *ponencia* held that the approving officers and Erlinda Baltazar are solidarily liable to refund the disallowed amounts received by Erlinda Baltazar. The *ponencia* observed that only Erlinda Baltazar received hundreds of thousands of pesos in allowances while other recipients only received a few thousand pesos.⁷ The exorbitant amount that she received should have alerted her and the approving officers to the dubious legality of the allowances. These officers should be knowledgeable of the amounts allowed for allowances and benefits.

The *ponencia* exempted the directors, officers, and other employees of Marina from liability. It does not appear from the records of the case that these employees were informed prior to the illegal disbursements that the allowances and benefits were in violation of existing rules and regulations.

THE CONCURRENCE

I concur with the *ponencia*. While only Erlinda was the recipient of the disallowances among the persons the COA held liable, **the circumstances surrounding the release of her allowances, appears to me to be questionable.**

From January to May 2001, Erlinda successively received unconscionable allowances from Marina. How this escaped the attention of the approving officers is puzzling and leaves many unanswered questions. The given facts, in fact, raise doubts on whether or not these officers had colluded with Erlinda. There appears indicia of bad faith, if not gross negligence, on the part of these officers among them, the following:

1. Marina failed to present the original of the memorandum dated February 10, 2000.
2. The Malacanang Records Office does not have a copy of this memorandum.
3. No guideline appears on record as to the amount and the qualifications for the receipt of the allowances. (In the Supreme Court, prior to the release of allowances, the Office of the Chief Justice issues a guideline on the amount and qualifications for the receipt of allowances).
4. Erlinda received P550,000.00, P565,400.00, P561,000.00, P552,200.00 as *monthly* rice and medical allowance; P139,000.00, P186,000.00, P124,000.00 as birthday and employment anniversary bonus for February 2001; and P835,376.33, P893,910.14, and P877,270.30 as performance incentive allowance. This is in contrast to a few thousand of pesos received by other employees of Marina.

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See pages 23-25 of the Decision.

Consistent with my dissent in *TESDA v. COA*,⁸ I take the position that the officers found by COA to be solidarily liable should be so held for the full amount of the disallowance. Section 43, Chapter V, Book VI of the Administrative Code expressly provides that every official or employee authorizing 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. The non-receipt of the approving officers of the disallowance should not exempt them from solidary liability. Otherwise, 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 would not be documented.

Finally, the facts of the case *prima facie* show signs of irregularities in the handling of public funds – particularly in the release of exorbitant amounts of allowances despite the clear intent of the law to standardize salaries, as well as the failure to produce the memorandum issued by former President Estrada. In this light, and to foster public accountability in government, I highly recommend that we forward a copy of the records of this case to the Ombudsman, that it may investigate the public officers involved for possible criminal and/or administrative liabilities.


ARTURO D. BRION
Associate Justice

⁸*Supra* note 1.