Supreme Court E-Library

resolve.[18] The findings of fact of quasi-judicial bodies, like the NLRC, are accorded with respect, even finality, if supported by substantial evidence. Particularly, when passed upon and upheld by the CA, they are binding and conclusive upon the Court and will not normally be disturbed.[19]

IN LIGHT OF ALL THE FOREGOING, the petition is *DENIED* for lack of merit. The Decision dated May 31, 2000 and Resolution dated February 2, 2001 of the Court of Appeals in CA-G.R. SP No. 54109 are *AFFIRMED*.

SO ORDERED.

Puno, Quisumbing and *Tinga, JJ.*, concur.

Austria-Martinez, J., took no part.

EN BANC

[G.R. No. 147402. January 14, 2004]

ENGR. RANULFO C. FELICIANO, in his capacity as General Manager of the Leyte Metropolitan Water District (LMWD), Tacloban City, *petitioner, vs.* **COMMISSION ON AUDIT, Chairman CELSO D. GANGAN, Commissioners RAUL C. FLORES and EMMANUEL M. DALMAN, and Regional Director of COA Region VIII,** *respondents*.

---

[18] *Hacienda Fatima v. National Federation of Sugarcane Workers-Food, etc.*, G.R. No. 149440, January 28, 2003.

[19] *San Miguel Corporation v. MAERC Integrated Services, Inc.*, G.R. No. 144672, July 10, 2003.

Supreme Court E-Library

SYNOPSIS

Petitioner assailed before the Supreme Court the Resolution of the respondent Commission on Audit denying his request for COA to cease all audit services, and to stop charging auditing fees to Leyte Metropolitan Water District (LMWD) as well as to refund all auditing fees previously paid by it. Among other things, the petitioner maintained that Local Water Districts (LWDs) are not government-owned and controlled corporations with original charters that would place it within the audit jurisdiction of COA. He further argued that LWDs are private corporations.

The Constitution vests in the COA audit jurisdiction over government-owned and controlled corporations with original charters, as well as government-owned or controlled corporations without original charters. The nature or purpose of the corporation is not material in determining COA's audit jurisdiction. Neither is the manner of creation of a corporation, whether under a general or special law. The determining factor of COA's audit jurisdiction is government ownership or control of the corporation. Here, the Court held that the Local Water District is a government-owned or controlled corporation subject to audit jurisdiction of the COA. According to the Court, LWDs are not private corporations because they are not created under the Corporation Code. LWDs are not registered with the Securities and Exchange Commission. LWDs have no articles of incorporation, no incorporators and no stockholders or members. There is no private party involved as co-owner in the creation of an LWD. There are no stockholders or members to elect the board of directors of LWDs as in the case of corporations registered with the Securities and Exchange Commission. The local mayor or the provincial governor appoints the directors of LWDs for a fixed term of office. The board of directors of LWDs are not co-owners of the LWDs. The board of directors and other personnel of LWDs are government employees subject to civil service laws and anti-graft laws. LWDs derive their legal existence and power from Presidential Decree 198, which constitutes their special charter. Since under the Constitution only government-owned or controlled corporations may have special charters, LWDs can validly exist only if they are government-owned or controlled. To claim that LWDs are private

Supreme Court E-Library

corporations with a special charter is to admit that their existence is constitutionally infirm.

SYLLABUS

1. **CONSTITUTIONAL LAW; CONSTITUTIONAL COMMISSIONS; COMMISSION ON AUDIT; AUDIT JURISDICTION.**— The Constitution and existing laws mandate COA to audit all government agencies, including government-owned and controlled corporations ("GOCCs") with original charters. An LWD is a GOCC with an original charter. Section 2(1), Article IX-D of the Constitution provides for COA's audit jurisdiction, as follows: x x x. The COA's audit jurisdiction extends not only to government "agencies or instrumentalities," but also to "government-owned and controlled corporations with original charters" as well as "other government-owned or controlled corporations" without original charters.

2. **ID.; ID.; ID.; NATURE OR PURPOSE AND MANNER OF CREATION OF CORPORATION IMMATERIAL IN DETERMINING AUDIT JURISDICTION THEREOF.**— Petitioner forgets that the constitutional criterion on the exercise of COA's audit jurisdiction depends on the government's ownership or control of a corporation. The nature of the corporation, whether it is private, quasi-public, or public is immaterial. The Constitution vests in the COA audit jurisdiction over "government-owned and controlled corporations with original charters," as well as "government-owned or controlled corporations" without original charters. GOCCs with original charters are subject to COA pre-audit, while GOCCs without original charters are subject to COA post-audit. GOCCs without original charters refer to corporations created under the Corporation Code but are owned or controlled by the government. The nature or purpose of the corporation is not material in determining COA's audit jurisdiction. Neither is the manner of creation of a corporation, whether under a general or special law.

3. **ID.; ID.; ID.; GOVERNMENT OWNERSHIP AND CONTROL OF THE CORPORATION, DETERMINING FACTOR OF AUDIT JURISDICTION THEREOF.**— The determining factor of COA's audit jurisdiction is *government ownership or control* of the corporation. In *Philippine Veterans Bank*

Supreme Court E-Library

Employees Union-NUBE v. Philippine Veterans Bank, the Court even ruled that the criterion of ownership and control is more important than the issue of original charter, thus: This point is important because the Constitution provides in its Article IX-B, Section 2(1) that "the Civil Service embraces all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters." *As the Bank is not owned or controlled by the Government although it does have an original charter in the form of R.A. No. 3518, it clearly does not fall under the Civil Service and should be regarded as an ordinary commercial corporation.* Section 28 of the said law so provides. The consequence is that the relations of the Bank with its employees should be governed by the labor laws, under which in fact they have already been paid some of their claims.

4. ID.; ID.; ID.; PERSONNEL THEREOF ARE PROHIBITED FROM RECEIVING ANY KIND OF COMPENSATION FROM ANY GOVERNMENT ENTITY; EXCEPTION.— Section 18 of RA 6758 prohibits COA personnel from receiving any kind of compensation from any government entity except *"compensation paid directly by COA out of its appropriations and contributions."* Thus, RA 6758 itself recognizes an exception to the statutory ban on COA personnel receiving compensation from GOCCs. In *Tejada v. Domingo,* the Court declared: There can be no question that Section 18 of Republic Act No. 6758 is designed to strengthen further the policy . . . to preserve the independence and integrity of the COA, by explicitly PROHIBITING: (1) COA officials and employees from receiving salaries, honoraria, bonuses, allowances or other emoluments from any government entity, local government unit, GOCCs and government financial institutions, *except such compensation paid directly by the COA out of its appropriations and contributions,* and (2) government entities, including GOCCs, government financial institutions and local government units from assessing or billing other government entities, GOCCs, government financial institutions or local government units for services rendered by the latter's officials and employees as part of their regular functions for purposes of paying additional compensation to said officials and employees. x x x The first aspect of the strategy is directed to the COA itself, while the second aspect is addressed directly

Supreme Court E-Library

against the GOCCs and government financial institutions. *Under the first, COA personnel assigned to auditing units of GOCCs or government financial institutions can receive only such salaries, allowances or fringe benefits paid directly by the COA out of its appropriations and contributions. The contributions referred to are the cost of audit services earlier mentioned which cannot include the extra emoluments or benefits now claimed by petitioners.* The COA is further barred from assessing or billing GOCCs and government financial institutions for services rendered by its personnel as part of their regular audit functions for purposes of paying additional compensation to such personnel. x x x.

5. **ID.; ID.; ID.; ACTUAL AUDIT COST MUST BE PAID BY GOVERNMENT-OWNED AND CONTROLLED CORPORATIONS DIRECTLY TO THE COA AND NOT TO COA AUDITORS.**— In *Tejada*, the Court explained the meaning of the word "*contributions*" in Section 18 of RA 6758, which allows COA to charge GOCCs the cost of its audit services: . . . the contributions from the GOCCs are limited to the cost of audit services which are based on the actual cost of the audit function in the corporation concerned plus a reasonable rate to cover overhead expenses. The actual audit cost shall include personnel services, maintenance and other operating expenses, depreciation on capital and equipment and out-of-pocket expenses. In respect to the allowances and fringe benefits granted by the GOCCs to the COA personnel assigned to the former's auditing units, the same shall be directly defrayed by COA from its own appropriations . . . . COA may charge GOCCs "actual audit cost" but GOCCs must pay the same directly to COA and not to COA auditors. Petitioner has not alleged that COA charges LWDs auditing fees in excess of COA's "actual audit cost." Neither has petitioner alleged that the auditing fees are paid by LWDs directly to individual COA auditors. Thus, petitioner's contention must fail.

6. **ID.; NATIONAL ECONOMY AND PATRIMONY; PROHIBITION AGAINST CREATION OF PRIVATE CORPORATIONS BY SPECIAL CHARTERS.**— The Constitution recognizes two classes of corporations. The first refers to private corporations created under a general law. The second refers to government-owned or controlled corporations created by special charters. Section 16, Article XII of the Constitution

Supreme Court E-Library

provides: x x x. The Constitution emphatically prohibits the creation of private corporations except by a general law applicable to all citizens. The purpose of this constitutional provision is to ban private corporations created by special charters, which historically gave certain individuals, families or groups special privileges denied to other citizens. In short, Congress cannot enact a law creating a private corporation with a special charter. Such legislation would be unconstitutional. Private corporations may exist only under a general law. If the corporation is private, it must necessarily exist under a general law. Stated differently, only corporations created under a general law can qualify as private corporations. Under existing laws, that general law is the Corporation Code, except that the Cooperative Code governs the incorporation of cooperatives.

7. **ID.; ID.; ID.; ONLY GOVERNMENT-OWNED AND CONTROLLED CORPORATIONS MAY HAVE SPECIAL CHARTERS; LOCAL WATER DISTRICTS WERE CREATED PURSUANT TO A SPECIAL LAW.**— The Constitution authorizes Congress to create government-owned or controlled corporations through special charters. Since private corporations cannot have special charters, it follows that Congress can create corporations with special charters only if such corporations are government-owned or controlled. Obviously, LWDs are not private corporations because they are not created under the Corporation Code. LWDs are not registered with the Securities and Exchange Commission. Section 14 of the Corporation Code states that "[A]ll corporations organized under this code shall file with the Securities and Exchange Commission articles of incorporation x x x." LWDs have no articles of incorporation, no incorporators and no stockholders or members. There are no stockholders or members to elect the board directors of LWDs as in the case of all corporations registered with the Securities and Exchange Commission. The local mayor or the provincial governor appoints the directors of LWDs for a fixed term of office. This Court has ruled that LWDs are not created under the Corporation Code, thus: From the foregoing pronouncement, it is clear that what has been excluded from the coverage of the CSC are those corporations created pursuant to the Corporation Code. *Significantly, petitioners are not created under the said code, but on the contrary, they were created*

Supreme Court E-Library

pursuant to a special law and are governed primarily by its provision.

8. **ID.; ID.; ID.; LOCAL WATER DISTRICTS DERIVE THEIR LEGAL EXISTENCE AND POWER FROM PRESIDENTIAL DECREE 198.**— LWDs exist by virtue of PD 198, which constitutes their special charter. Since under the Constitution only government-owned or controlled corporations may have special charters, LWDs can validly exist only if they are government-owned or controlled. To claim that LWDs are private corporations with a special charter is to admit that their existence is constitutionally infirm. Unlike private corporations, which derive their legal existence and power from the Corporation Code, LWDs derive their legal existence and power from PD 198. Sections 6 and 25 of PD 198 provide: x x x. Clearly, LWDs exist as corporations only by virtue of PD 198, which expressly *confers on LWDs corporate powers*. Section 6 of PD 198 provides that LWDs "shall exercise the powers, rights and privileges given to private corporations under existing laws." Without PD 198, LWDs would have no corporate powers. Thus, PD 198 constitutes the special enabling charter of LWDs. The ineluctable conclusion is that LWDs are government-owned and controlled corporations with a special charter.

9. **ID.; ID.; ID.; LOCAL WATER DISTRICTS ARE OWNED AND CONTROLLED BY THE GOVERNMENT.**— Certainly, the government owns and controls LWDs. The government organizes LWDs in accordance with a specific law, PD 198. There is no private party involved as co-owner in the creation of an LWD. Just prior to the creation of LWDs, the national or local government owns and controls all their assets. The government controls LWDs because under PD 198 the municipal or city mayor, or the provincial governor, appoints all the board directors of an LWD for a fixed term of six years. The board directors of LWDs are not co-owners of the LWDs. LWDs have no private stockholders or members. The board directors and other personnel of LWDs are government employees subject to civil service laws and anti-graft laws. While Section 8 of PD 198 states that "[N]o public official shall serve as director" of an LWD, it only means that the appointees to the board of directors of LWDs shall come from the private sector. Once such private sector representatives assume office as directors, they become public officials governed by the civil service law

Supreme Court E-Library

and anti-graft laws. Otherwise, Section 8 of PD 198 would contravene Section 2(1), Article IX-B of the Constitution declaring that the civil service includes "government-owned or controlled corporations with original charters."

10. ID.; ID.; ID.; LOCAL WATER DISTRICT IS A PUBLIC NOT A PRIVATE ENTITY.— If LWDs are neither GOCCs with original charters nor GOCCs without original charters, then they would fall under the term "agencies or instrumentalities" of the government and thus still subject to COA's audit jurisdiction. However, the stark and undeniable fact is that the government owns LWDs. Section 45 of PD 198 recognizes government ownership of LWDs when Section 45 states that the board of directors may dissolve an LWD only on the condition that "*another public entity* has acquired the assets of the district and has assumed all obligations and liabilities attached thereto." The implication is clear that an LWD is a public and not a private entity.

11. ID.; ID.; ID.; LOCAL WATER DISTRICT IS SUBJECT TO THE AUDIT JURISDICTION OF THE COMMISSION ON AUDIT.— Petitioner does not allege that some entity other than the government owns or controls LWDs. Instead, petitioner advances the theory that the "Water District's owner is the District itself." Assuming for the sake of argument that an LWD is "self-owned," as petitioner describes an LWD, the government in any event controls all LWDs. First, government officials appoint all LWD directors to a fixed term of office. Second, any *per diem* of LWD directors in excess of ₱50 is subject to the approval of the Local Water Utilities Administration, and directors can receive no other compensation for their services to the LWD. Third, the Local Water Utilities Administration can require LWDs to merge or consolidate their facilities or operations. This element of government control subjects LWDs to COA's audit jurisdiction.

12. ID.; ID.; ID.; LOCAL WATER DISTRICTS DO NOT BECOME PRIVATE ENTITIES THROUGH THE TRANSFER OF OWNERSHIP OF WATER FACILITIES FROM LOCAL GOVERNMENT UNITS TO THEIR RESPECTIVE WATER DISTRICTS.— Petitioner argues that upon the enactment of PD 198, LWDs became private entities through the transfer of ownership of water facilities from local government units to their respective water districts as mandated by PD 198.

Supreme Court E-Library

Petitioner is grasping at straws. Privatization involves the transfer of government assets to a private entity. Petitioner concedes that the owner of the assets transferred under Section 6 (c) of PD 198 is no other than the LWD itself. The transfer of assets mandated by PD 198 is a transfer of the water systems facilities "managed, operated by or under the control of such city, municipality or province to such (water) district." In short, the transfer is from one government entity to another government entity. PD 198 is bereft of any indication that the transfer is to privatize the operation and control of water systems.

13. **ID.; ID.; ID.; LOCAL WATER DISTRICTS ARE NOT EXEMPTED FROM COA'S AUDIT JURISDICTION.**— PD 198 cannot prevail over the Constitution. No amount of clever legislation can exclude GOCCs like LWDs from COA's audit jurisdiction. Section 3, Article IX-C of the Constitution outlaws any scheme or devise to escape COA's audit jurisdiction, thus: Sec. 3. No law shall be passed exempting any entity of the Government or its subsidiary *in any guise whatever*, or any investment of public funds, from the jurisdiction of the Commission on Audit. The framers of the Constitution added Section 3, Article IX-D of the Constitution precisely to annul provisions of Presidential Decrees, like that of Section 20 of PD 198, that exempt GOCCs from COA audit. There is an irreconcilable conflict between the second sentence of Section 20 of PD 198 prohibiting COA auditors from auditing LWDs and Sections 2(1) and 3, Article IX-D of the Constitution vesting in COA the power to audit all GOCCs. We rule that the second sentence of Section 20 of PD 198 is unconstitutional since it violates Sections 2(1) and 3, Article IX-D of the Constitution.

14. **ID.; ID.; PHRASE "GOVERNMENT-OWNED AND CONTROLLED CORPORATIONS WITH ORIGINAL CHARTERS" DEFINED.**— The phrase "government-owned and controlled corporations with original charters" means GOCCs created under special laws and not under the general incorporation law. There is no difference between the term "original charters" and "special charters." The Court clarified this in *National Service Corporation v. NLRC* by citing the deliberations in the Constitutional Commission, as follows: x x x. Again, in *Davao City Water District v. Civil Service Commission*, the Court reiterated the meaning of the phrase "government-owned and controlled corporations with original

Supreme Court E-Library

charters" in this wise: By "*government-owned or controlled corporation with original charter,*" *We mean government owned or controlled corporation created by a special law and not under the Corporation Code of the Philippines.* Thus, in the case of *Lumanta v. NLRC* (G.R. No. 82819, February 8, 1989, 170 SCRA 79, 82), We held: "*The Court, in National Service Corporation (NASECO) v. National Labor Relations Commission, G.R. No. 69870, promulgated on 29 November 1988, quoting extensively from the deliberations of the 1986 Constitutional Commission in respect of the intent and meaning of the new phrase 'with original charter,' in effect held that government-owned and controlled corporations with original charter refer to corporations chartered by special law as distinguished from corporations organized under our general incorporation statute — the Corporation Code.* In NASECO, the company involved had been organized under the general incorporation statute and was a subsidiary of the National Investment Development Corporation (NIDC) which in turn was a subsidiary of the Philippine National Bank, a bank chartered by a special statute. Thus, government-owned or controlled corporations like NASECO are effectively, excluded from the scope of the Civil Service."

15. **ID.; ID.; NO PROHIBITION ON CREATION OF SEVERAL GOVERNMENT-OWNED AND CONTROLLED CORPORATIONS OF THE SAME CLASS UNDER ONE SPECIAL ENABLING CHARTER.**— Petitioner further contends that a law must create directly and explicitly a GOCC in order that it may have an original charter. In short, petitioner argues that one special law cannot serve as enabling law for several GOCCs but only for one GOCC. Section 16, Article XII of the Constitution mandates that "Congress *shall not*, except by general law," provide for the creation of private corporations. Thus, the Constitution *prohibits* one special law to create one private corporation, requiring instead a "general law" to create private corporations. In contrast, the same Section 16 states that "Government-owned or controlled corporations *may* be created or established by special charters." Thus, the Constitution *permits* Congress to create a GOCC with a special charter. There is, however, no prohibition on Congress to create several GOCCs of the same class under one special enabling charter. The rationale behind the prohibition on private corporations having special charters does not apply to GOCCs. There is no

Supreme Court E-Library

danger of creating special privileges to certain individuals, families or groups if there is one special law creating each GOCC. Certainly, such danger will not exist whether one special law creates one GOCC, or one special enabling law creates several GOCCs. Thus, Congress may create GOCCs either by special charters specific to each GOCC, or by one special enabling charter applicable to a class of GOCCs, like PD 198 which applies only to LWDs.

16. **POLITICAL LAW; LOCAL GOVERNMENT CODE; *SANGGUNIANG BAYAN* HAS NO POWER TO CREATE A CORPORATE ENTITY THAT WILL OPERATE ITS WATER WORKS SYSTEM.**— Petitioner's contention that the *Sangguniang Bayan* resolution creates the LWDs assumes that the *Sangguniang Bayan* has the power to create corporations. This is a patently baseless assumption. The Local Government Code does not vest in the *Sangguniang Bayan* the power to create corporations. What the Local Government Code empowers the *Sangguniang Bayan* to do is to provide for the establishment of a waterworks system "subject to existing laws." Thus, Section 447(5)(vii) of the Local Government Code provides: x x x. The *Sangguniang Bayan* may establish a waterworks system only in accordance with the provisions of PD 198. The *Sangguniang Bayan* has no power to create a corporate entity that will operate its waterworks system. However, the *Sangguniang Bayan* may avail of existing enabling laws, like PD 198, to form and incorporate a water district. Besides, even assuming for the sake of argument that the *Sangguniang Bayan* has the power to create corporations, the LWDs would remain government-owned or controlled corporations subject to COA's audit jurisdiction. The resolution of the *Sangguniang Bayan* would constitute an LWD's special charter, making the LWD a government-owned and controlled corporation with an original charter. In any event, the Court has already ruled in *Baguio Water District v. Trajano* that the *Sangguniang Bayan* resolution is not the Special Charter of LWD, thus: While it is true that a resolution of a local *sanggunian* is still necessary for the final creation of a district, this Court is of the opinion that said resolution cannot be considered as its charter, the same being intended only to implement the provisions of said decree.

Supreme Court E-Library

APPEARANCES OF COUNSEL

Nathanille P. Roa for petitioner.
The Solicitor General for respondent.

D E C I S I O N

CARPIO, *J.:*

The Case

This is a petition for *certiorari*[1] to annul the Commission on Audit's ("COA") Resolution dated 3 January 2000 and the Decision dated 30 January 2001 denying the Motion for Reconsideration. The COA denied petitioner Ranulfo C. Feliciano's request for COA to cease all audit services, and to stop charging auditing fees, to Leyte Metropolitan Water District ("LMWD"). The COA also denied petitioner's request for COA to refund all auditing fees previously paid by LMWD.

Antecedent Facts

A Special Audit Team from COA Regional Office No. VIII audited the accounts of LMWD. Subsequently, LMWD received a letter from COA dated 19 July 1999 requesting payment of auditing fees. As General Manager of LMWD, petitioner sent a reply dated 12 October 1999 informing COA's Regional Director that the water district could not pay the auditing fees. Petitioner cited as basis for his action Sections 6 and 20 of Presidential Decree 198 ("PD 198"),[2] as well as Section 18 of Republic Act No. 6758 ("RA 6758"). The Regional Director referred petitioner's reply to the COA Chairman on 18 October 1999.

On 19 October 1999, petitioner wrote COA through the Regional Director asking for refund of all auditing fees LMWD previously paid to COA.

---

[1] Under Rule 64 of the 1997 Revised Rules of Court.

[2] As amended by Presidential Decrees Nos. 768 and 1479.

Supreme Court E-Library

On 16 March 2000, petitioner received COA Chairman Celso D. Gangan's Resolution dated 3 January 2000 denying his requests. Petitioner filed a motion for reconsideration on 31 March 2000, which COA denied on 30 January 2001.

On 13 March 2001, petitioner filed this instant petition. Attached to the petition were resolutions of the Visayas Association of Water Districts (VAWD) and the Philippine Association of Water Districts (PAWD) supporting the petition.

The Ruling of the Commission on Audit

The COA ruled that this Court has already settled COA's audit jurisdiction over local water districts in *Davao City Water District v. Civil Service Commission and Commission on Audit,*[3] as follows:

> The above-quoted provision [referring to Section 3(b) PD 198] definitely sets to naught petitioner's contention that they are private corporations. It is clear therefrom that the power to appoint the members who will comprise the members of the Board of Directors belong to the local executives of the local subdivision unit where such districts are located. In contrast, the members of the Board of Directors or the trustees of a private corporation are elected from among members or stockholders thereof. It would not be amiss at this point to emphasize that a private corporation is created for the private purpose, benefit, aim and end of its members or stockholders. Necessarily, said members or stockholders should be given a free hand to choose who will compose the governing body of their corporation. But this is not the case here and this clearly indicates that petitioners are not private corporations.

The COA also denied petitioner's request for COA to stop charging auditing fees as well as petitioner's request for COA to refund all auditing fees already paid.

The Issues

Petitioner contends that COA committed grave abuse of discretion amounting to lack or excess of jurisdiction by auditing

---

[3] G.R. No. 95237-38, 13 September 1991, 201 SCRA 593.

Supreme Court E-Library

LMWD and requiring it to pay auditing fees. Petitioner raises the following issues for resolution:

1. Whether a Local Water District ("LWD") created under PD 198, as amended, is a government-owned or controlled corporation subject to the audit jurisdiction of COA;
2. Whether Section 20 of PD 198, as amended, prohibits COA's certified public accountants from auditing local water districts; and
3. Whether Section 18 of RA 6758 prohibits the COA from charging government-owned and controlled corporations auditing fees.

The Ruling of the Court

The petition lacks merit.

The Constitution and existing laws[4] mandate COA to audit all government agencies, including government-owned and controlled corporations ("GOCCs") with original charters. An LWD is a GOCC with an original charter. Section 2(1), Article IX-D of the Constitution provides for COA's audit jurisdiction, as follows:

SECTION 2. (1) The Commission on Audit shall have the power, authority and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, *including government-owned and controlled corporations with original charters*, and on a post-audit basis: (a) constitutional bodies, commissions and offices that have been granted fiscal autonomy under this Constitution; (b) autonomous state colleges and universities; (c) other government-owned or controlled corporations and their subsidiaries; and (d) such non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the government, which are required by law or the granting institution to submit to such audit as a condition of subsidy or equity. However, where the internal control system of the audited agencies is inadequate, the Commission may adopt such measures, including temporary or special

[4] Section 26, Government Auditing Code of the Philippines.

Supreme Court E-Library

pre-audit, as are necessary and appropriate to correct the deficiencies. It shall keep the general accounts of the Government and, for such period as may be provided by law, preserve the vouchers and other supporting papers pertaining thereto. (Emphasis supplied)

The COA's audit jurisdiction extends not only to government "agencies or instrumentalities," but also to "government-owned and controlled corporations with original charters" as well as "other government-owned or controlled corporations" without original charters.

Whether LWDs are Private or Government-Owned and Controlled Corporations with Original Charters

Petitioner seeks to revive a well-settled issue. Petitioner asks for a reexamination of a doctrine backed by a long line of cases culminating in *Davao City Water District v. Civil Service Commission*[5] and just recently reiterated in *De Jesus v. Commission on Audit.*[6] Petitioner maintains that LWDs are not government-owned and controlled corporations with original charters. Petitioner even argues that LWDs are private corporations. Petitioner asks the Court to consider certain interpretations of the applicable laws, which would give a "new perspective to the issue of the true character of water districts."[7]

Petitioner theorizes that what PD 198 created was the Local Waters Utilities Administration ("LWUA") and not the LWDs. Petitioner claims that LWDs are created "pursuant to" and not created directly by PD 198. Thus, petitioner concludes that PD 198 is not an "original charter" that would place LWDs within the audit jurisdiction of COA as defined in Section 2(1), Article IX-D of the Constitution. Petitioner elaborates that PD 198 does not create LWDs since it does not expressly direct the creation of such entities, but only provides for their formation on an optional or voluntary basis.[8] Petitioner adds that the operative

---

[5] *Supra,* note 3.

[6] G.R. No. 149154, 10 June 2003.

[7] *Rollo,* p. 7.

[8] *Ibid.,* p. 29.

Supreme Court E-Library

act that creates an LWD is the approval of the Sanggunian Resolution as specified in PD 198.

Petitioner's contention deserves scant consideration.

We begin by explaining the general framework under the fundamental law. The Constitution recognizes two classes of corporations. The first refers to private corporations created under a general law. The second refers to government-owned or controlled corporations created by special charters. Section 16, Article XII of the Constitution provides:

> Sec. 16. The Congress shall not, except by general law, provide for the formation, organization, or regulation of private corporations. Government-owned or controlled corporations may be created or established by special charters in the interest of the common good and subject to the test of economic viability.

The Constitution emphatically prohibits the creation of private corporations except by a general law applicable to all citizens.[9] The purpose of this constitutional provision is to ban private corporations created by special charters, which historically gave certain individuals, families or groups special privileges denied to other citizens.[10]

In short, Congress cannot enact a law creating a private corporation with a special charter. Such legislation would be unconstitutional. Private corporations may exist only under a general law. If the corporation is private, it must necessarily exist under a general law. Stated differently, only corporations created under a general law can qualify as private corporations. Under existing laws, that general law is the Corporation Code,[11] except that the Cooperative Code governs the incorporation of cooperatives.[12]

---

[9] See *National Development Company v. Philippine Veterans Bank*, G.R. Nos. 84132-33, 10 December 1990, 192 SCRA 257.

[10] BERNAS, *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 1181 (2003).*

[11] Batas Pambansa Blg. 68.

[12] Republic Act No. 6938. *See* also Republic Act No. 6939 or the Cooperative Development Authority Law.

Supreme Court E-Library

The Constitution authorizes Congress to create government-owned or controlled corporations through special charters. Since private corporations cannot have special charters, it follows that Congress can create corporations with special charters only if such corporations are government-owned or controlled.

Obviously, LWDs are not private corporations because they are not created under the Corporation Code. LWDs are not registered with the Securities and Exchange Commission. Section 14 of the Corporation Code states that "[A]ll corporations organized under this code shall file with the Securities and Exchange Commission articles of incorporation . . .." LWDs have no articles of incorporation, no incorporators and no stockholders or members. There are no stockholders or members to elect the board directors of LWDs as in the case of all corporations registered with the Securities and Exchange Commission. The local mayor or the provincial governor appoints the directors of LWDs for a fixed term of office. This Court has ruled that LWDs are not created under the Corporation Code, thus:

> From the foregoing pronouncement, it is clear that what has been excluded from the coverage of the CSC are those corporations created pursuant to the Corporation Code. *Significantly, petitioners are not created under the said code, but on the contrary, they were created pursuant to a special law and are governed primarily by its provision.*[13] (Emphasis supplied)

LWDs exist by virtue of PD 198, which constitutes their special charter. Since under the Constitution only government-owned or controlled corporations may have special charters, LWDs can validly exist only if they are government-owned or controlled. To claim that LWDs are private corporations with a special charter is to admit that their existence is constitutionally infirm.

Unlike private corporations, which derive their legal existence and power from the Corporation Code, LWDs derive their legal

---

[13] *Supra*, note 3.

Supreme Court E-Library

existence and power from PD 198. Sections 6 and 25 of PD 198[14] provide:

Section 6. Formation of District. — *This Act is the source of authorization and power to form and maintain a district. For purposes of this Act, a district shall be considered as a quasi-public corporation performing public service and supplying public wants. As such, a district shall exercise the powers, rights and privileges given to private corporations under existing laws, in addition to the powers granted in, and subject to such restrictions imposed, under this Act.*

(a) The name of the local water district, which shall include the name of the city, municipality, or province, or region thereof, served by said system, followed by the words "Water District".

(b) A description of the boundary of the district. In the case of a city or municipality, such boundary may include all lands within the city or municipality. A district may include one or more municipalities, cities or provinces, or portions thereof.

(c) A statement completely transferring any and all waterworks and/or sewerage facilities managed, operated by or under the control of such city, municipality or province to such district upon the filing of resolution forming the district.

(d) A statement identifying the purpose for which the district is formed, which shall include those purposes outlined in Section 5 above.

(e) The names of the initial directors of the district with the date of expiration of term of office for each.

(f) A statement that the district may only be dissolved on the grounds and under the conditions set forth in Section 44 of this Title.

(g) A statement acknowledging the powers, rights and obligations as set forth in Section 36 of this Title.

Nothing in the resolution of formation shall state or infer that the local legislative body has the power to dissolve, alter or affect the district beyond that specifically provided for in this Act.

---

[14] As amended by PD 1479.

Supreme Court E-Library

If two or more cities, municipalities or provinces, or any combination thereof, desire to form a single district, a similar resolution shall be adopted in each city, municipality and province.

xxx xxx xxx

Sec. 25. Authorization. — *The district may exercise all the powers which are expressly granted by this Title or which are necessarily implied from or incidental to the powers and purposes herein stated.* For the purpose of carrying out the objectives of this Act, a district is hereby granted the power of eminent domain, the exercise thereof shall, however, be subject to review by the Administration. (Emphasis supplied)

Clearly, LWDs exist as corporations only by virtue of PD 198, which *expressly confers on LWDs corporate powers.* Section 6 of PD 198 provides that LWDs "shall exercise the powers, rights and privileges given to private corporations under existing laws." Without PD 198, LWDs would have no corporate powers. Thus, PD 198 constitutes the special enabling charter of LWDs. The ineluctable conclusion is that LWDs are government-owned and controlled corporations with a special charter.

The phrase "government-owned and controlled corporations with original charters" means GOCCs created under special laws and not under the general incorporation law. There is no difference between the term "original charters" and "special charters." The Court clarified this in *National Service Corporation v. NLRC*[15] by citing the deliberations in the Constitutional Commission, as follows:

THE PRESIDING OFFICER (Mr. Trenas). The session is resumed.

Commissioner Romulo is recognized.

MR. ROMULO. Mr. Presiding Officer, I am amending my original proposed amendment to now read as follows: "including government-owned or controlled corporations WITH ORIGINAL CHARTERS." The purpose of this amendment is to indicate that government corporations such as the GSIS and SSS, which have original charters, fall within the ambit of the civil service. However, corporations

[15] G.R. No. L-69870, 29 November 1988, 168 SCRA 122.

Supreme Court E-Library

which are subsidiaries of these chartered agencies such as the Philippine Airlines, Manila Hotel and Hyatt are excluded from the coverage of the civil service.

THE PRESIDING OFFICER (Mr. Trenas). What does the Committee say?

MR. FOZ. Just one question, Mr. Presiding Officer. By the term "original charters," what exactly do we mean?

MR. ROMULO. We mean that they were created by law, by an act of Congress, or by special law.

MR. FOZ. And not under the general corporation law.

MR. ROMULO. That is correct. Mr. Presiding Officer.

MR. FOZ. With that understanding and clarification, the Committee accepts the amendment.

MR. NATIVIDAD. Mr. Presiding Officer, so those created by the general corporation law are out.

MR. ROMULO. That is correct. (Emphasis supplied)

Again, in *Davao City Water District v. Civil Service Commission*,[16] the Court reiterated the meaning of the phrase "government-owned and controlled corporations with original charters" in this wise:

By "government-owned or controlled corporation with original charter," We mean government owned or controlled corporation created by a special law and not under the Corporation Code of the Philippines. Thus, in the case of *Lumanta v. NLRC* (G.R. No. 82819, February 8, 1989, 170 SCRA 79, 82), We held:

> *"The Court, in National Service Corporation (NASECO) v. National Labor Relations Commission, G.R. No. 69870, promulgated on 29 November 1988, quoting extensively from the deliberations of the 1986 Constitutional Commission in respect of the intent and meaning of the new phrase 'with original charter,' in effect held that government-owned and controlled corporations with original charter refer to corporations chartered by special law as distinguished from*

[16] *Supra*, note 3.

Supreme Court E-Library

> *corporations organized under our general incorporation statute — the Corporation Code.* In NASECO, the company involved had been organized under the general incorporation statute and was a subsidiary of the National Investment Development Corporation (NIDC) which in turn was a subsidiary of the Philippine National Bank, a bank chartered by a special statute. Thus, government-owned or controlled corporations like NASECO are effectively, excluded from the scope of the Civil Service." (Emphasis supplied)

Petitioner's contention that the *Sangguniang Bayan* resolution creates the LWDs assumes that the *Sangguniang Bayan* has the power to create corporations. This is a patently baseless assumption. The Local Government Code[17] does not vest in the *Sangguniang Bayan* the power to create corporations.[18] What the Local Government Code empowers the *Sangguniang Bayan* to do is to provide for the establishment of a waterworks system "subject to existing laws." Thus, Section 447(5)(vii) of the Local Government Code provides:

> SECTION 447. *Powers, Duties, Functions and Compensation.* — (a) The *sangguniang bayan*, as the legislative body of the municipality, shall enact ordinances, approve resolutions and appropriate funds for the general welfare of the municipality and its inhabitants pursuant to Section 16 of this Code and in the proper exercise of the corporate powers of the municipality as provided for under Section 22 of this Code, and shall:
>
> xxx xxx xxx
>
> (vii) *Subject to existing laws*, provide for the establishment, operation, maintenance, and repair of an efficient waterworks system to supply water for the inhabitants; regulate the construction, maintenance, repair and use of hydrants, pumps, cisterns and reservoirs; protect the purity and quantity of the water supply of the municipality and, for this purpose, extend the coverage of appropriate ordinances over all territory within the drainage area of said water supply and within one

---

[17] Republic Act No. 7160.

[18] *See* Section 447 of the Local Government Code on the powers of the *Sangguniang Bayan*.

Supreme Court E-Library

> hundred (100) meters of the reservoir, conduit, canal, aqueduct, pumping station, or watershed used in connection with the water service; and regulate the consumption, use or wastage of water;
>
> . . . (Emphasis supplied)

The *Sangguniang Bayan* may establish a waterworks system only in accordance with the provisions of PD 198. The *Sangguniang Bayan* has no power to create a corporate entity that will operate its waterworks system. However, the *Sangguniang Bayan* may avail of existing enabling laws, like PD 198, to form and incorporate a water district. Besides, even assuming for the sake of argument that the *Sangguniang Bayan* has the power to create corporations, the LWDs would remain government-owned or controlled corporations subject to COA's audit jurisdiction. The resolution of the *Sangguniang Bayan* would constitute an LWD's special charter, making the LWD a government-owned and controlled corporation with an original charter. In any event, the Court has already ruled in *Baguio Water District v. Trajano*[19] that the *Sangguniang Bayan* resolution is not the special charter of LWDs, thus:

> While it is true that a resolution of a local sanggunian is still necessary for the final creation of a district, this Court is of the opinion that said resolution cannot be considered as its charter, the same being intended only to implement the provisions of said decree.

Petitioner further contends that a law must create directly and explicitly a GOCC in order that it may have an original charter. In short, petitioner argues that one special law cannot serve as enabling law for several GOCCs but only for one GOCC. Section 16, Article XII of the Constitution mandates that "Congress *shall not,* except by general law,"[20] provide for the creation of private corporations. Thus, the Constitution *prohibits* one special law to create one private corporation, requiring instead a "general law" to create private corporations. In contrast, the same Section 16 states that "Government-owned or controlled corporations

---

[19] 212 Phil. 674 (1984).

[20] Emphasis supplied.

Supreme Court E-Library

may be created or established by special charters." Thus, the Constitution *permits* Congress to create a GOCC with a special charter. There is, however, no prohibition on Congress to create several GOCCs of the same class under one special enabling charter.

The rationale behind the prohibition on private corporations having special charters does not apply to GOCCs. There is no danger of creating special privileges to certain individuals, families or groups if there is one special law creating each GOCC. Certainly, such danger will not exist whether one special law creates one GOCC, or one special enabling law creates several GOCCs. Thus, Congress may create GOCCs either by special charters specific to each GOCC, or by one special enabling charter applicable to a class of GOCCs, like PD 198 which applies only to LWDs.

Petitioner also contends that LWDs are private corporations because Section 6 of PD 198[21] declares that LWDs "shall be considered quasi-public" in nature. Petitioner's rationale is that only private corporations may be deemed "quasi-public" and not public corporations. Put differently, petitioner rationalizes that a public corporation cannot be deemed "quasi-public" because such corporation is already public. Petitioner concludes that the term "quasi-public" can only apply to private corporations. Petitioner's argument is inconsequential.

Petitioner forgets that the constitutional criterion on the exercise of COA's audit jurisdiction depends on the government's ownership or control of a corporation. The nature of the corporation, whether it is private, quasi-public, or public is immaterial.

The Constitution vests in the COA audit jurisdiction over "government-owned and controlled corporations with original charters," as well as "government-owned or controlled corporations" without original charters. GOCCs with original charters are subject to COA pre-audit, while GOCCs without

---

[21] As amended by PD 1479.

Supreme Court E-Library

original charters are subject to COA post-audit. GOCCs without original charters refer to corporations created under the Corporation Code but are owned or controlled by the government. The nature or purpose of the corporation is not material in determining COA's audit jurisdiction. Neither is the manner of creation of a corporation, whether under a general or special law.

The determining factor of COA's audit jurisdiction is government ownership or control of the corporation. In *Philippine Veterans Bank Employees Union-NUBE v. Philippine Veterans Bank,*[22] the Court even ruled that the criterion of ownership and control is more important than the issue of original charter, thus:

> This point is important because the Constitution provides in its Article IX-B, Section 2(1) that "the Civil Service embraces all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters." *As the Bank is not owned or controlled by the Government although it does have an original charter in the form of R.A. No. 3518,*[23] *it clearly does not fall under the Civil Service and should be regarded as an ordinary commercial corporation.* Section 28 of the said law so provides. The consequence is that the relations of the Bank with its employees should be governed by the labor laws, under which in fact they have already been paid some of their claims. (Emphasis supplied)

Certainly, the government owns and controls LWDs. The government organizes LWDs in accordance with a specific law, PD 198. There is no private party involved as co-owner in the creation of an LWD. Just prior to the creation of LWDs, the national or local government owns and controls all their assets. The government controls LWDs because under PD 198 the municipal or city mayor, or the provincial governor, appoints

---

[22] G.R. No. 67125, 24 August 1990, 189 SCRA 14.

[23] Under Section 3 of Republic Act No. 7169 which took effect on 2 January 1992, the "operations and changes in the capital structure of the Veterans Bank, as well as other amendments to its articles of incorporation and by-laws as prescribed under Republic Act No. 3518, shall be in accordance with the Corporation Code, the General Banking Act, and other related laws."

Supreme Court E-Library

all the board directors of an LWD for a fixed term of six years.[24] The board directors of LWDs are not co-owners of the LWDs. LWDs have no private stockholders or members. The board directors and other personnel of LWDs are government employees subject to civil service laws[25] and anti-graft laws.[26]

While Section 8 of PD 198 states that "[N]o public official shall serve as director" of an LWD, it only means that the appointees to the board of directors of LWDs shall come from the private sector. Once such private sector representatives assume office as directors, they become public officials governed by the civil service law and anti-graft laws. Otherwise, Section 8 of PD 198 would contravene Section 2(1), Article IX-B of the Constitution declaring that the civil service includes "government-owned or controlled corporations with original charters."

If LWDs are neither GOCCs with original charters nor GOCCs without original charters, then they would fall under the term "agencies or instrumentalities" of the government and thus still

---

[24] Section 3 (b) of PD 198 provides:

"(b) *Appointing Authority.* — The person empowered to appoint the members of the Board of Directors of a local water district depending upon the geographic coverage and population make-up of the particular district. In the event that more than seventy-five percent of the total active water service connections of local water districts are within the boundary of any city or municipality, the appointing authority shall be the mayor of the city or municipality, as the case may be; otherwise, the appointing authority shall be the governor of the province within which the district is located: Provided, That if the existing waterworks system in the city or municipality established as a water district under this Decree is operated and managed by the province, initial appointment shall be extended by the governor of the province. Subsequent appointments shall be as specified as herein.

If portions of more than one province are included within the boundary of the district, and the appointing authority is to be the governor, then the power to appoint shall rotate between the governors involved with the initial appointments made by the governor in whose province the greatest number of service connections exists."

[25] *Baguio Water District v. Trajano, supra,* note 20; *Davao City Water District v. Civil Service Commission, supra,* note 3.

[26] *Morales v. People*, G.R. No. 144047, 26 July 2002, 385 SCRA 259.

Supreme Court E-Library

subject to COA's audit jurisdiction. However, the stark and undeniable fact is that the government owns LWDs. Section 45[27] of PD 198 recognizes government ownership of LWDs when Section 45 states that the board of directors may dissolve an LWD only on the condition that *"another public entity* has acquired the assets of the district and has assumed all obligations and liabilities attached thereto." The implication is clear that an LWD is a public and not a private entity.

Petitioner does not allege that some entity other than the government owns or controls LWDs. Instead, petitioner advances the theory that the "Water District's owner is the District itself."[28] Assuming for the sake of argument that an LWD is "self-owned,"[29] as petitioner describes an LWD, the government in any event controls all LWDs. First, government officials appoint all LWD directors to a fixed term of office. Second, any *per diem* of LWD directors in excess of ₱50 is subject to the approval of the Local Water Utilities Administration, and directors can receive no other compensation for their services to the LWD.[30] Third, the Local Water Utilities Administration can require LWDs to merge or consolidate their facilities or operations.[31] This element of government control subjects LWDs to COA's audit jurisdiction.

Petitioner argues that upon the enactment of PD 198, LWDs became private entities through the transfer of ownership of water facilities from local government units to their respective water districts as mandated by PD 198. Petitioner is grasping at straws. Privatization involves the transfer of government assets to a private entity. Petitioner concedes that the owner of the assets transferred under Section 6 (c) of PD 198 is no other than the LWD itself.[32] The transfer of assets mandated by PD

---

[27] As amended by PD 768.

[28] *Rollo*, p. 16.

[29] *Ibid.*

[30] Section 13, PD 198.

[31] Section 43, PD 198.

[32] *Rollo*, p. 644.

Supreme Court E-Library

198 is a transfer of the water systems facilities "managed, operated by or under the control of such city, municipality or province to such (water) district."[33] In short, the transfer is from one government entity to another government entity. PD 198 is bereft of any indication that the transfer is to privatize the operation and control of water systems.

Finally, petitioner claims that even on the assumption that the government owns and controls LWDs, Section 20 of PD 198 prevents COA from auditing LWDs.[34] Section 20 of PD 198 provides:

> Sec. 20. System of Business Administration. — The Board shall, as soon as practicable, prescribe and define by resolution a system of business administration and accounting for the district, which shall be patterned upon and conform to the standards established by the Administration. *Auditing shall be performed by a certified public accountant not in the government service.* The Administration may, however, conduct annual audits of the fiscal operations of the district to be performed by an auditor retained by the Administration. Expenses incurred in connection therewith shall be borne equally by the water district concerned and the Administration.[35] (Emphasis supplied)

Petitioner argues that PD 198 expressly prohibits COA auditors, or any government auditor for that matter, from auditing LWDs. Petitioner asserts that this is the import of the second sentence of Section 20 of PD 198 when it states that "[A]uditing shall be performed by a certified public accountant not in the government service."[36]

PD 198 cannot prevail over the Constitution. No amount of clever legislation can exclude GOCCs like LWDs from COA's audit jurisdiction. Section 3, Article IX-C of the Constitution outlaws any scheme or devise to escape COA's audit jurisdiction, thus:

---

[33] Section 6(c) of PD 198, as amended by PD 768.

[34] *Supra,* note 2.

[35] Section 20 of PD 198, as amended by PD 768.

[36] *Rollo,* p. 9.

Supreme Court E-Library

Sec. 3. No law shall be passed exempting any entity of the Government or its subsidiary *in any guise whatever*, or any investment of public funds, from the jurisdiction of the Commission on Audit. (Emphasis supplied)

The framers of the Constitution added Section 3, Article IX-D of the Constitution precisely to annul provisions of Presidential Decrees, like that of Section 20 of PD 198, that exempt GOCCs from COA audit. The following exchange in the deliberations of the Constitutional Commission elucidates this intent of the framers:

MR. OPLE: I propose to add a new section on line 9, page, 2 of the amended committee report which reads: NO LAW SHALL BE PASSED EXEMPTING ANY ENTITY OF THE GOVERNMENT OR ITS SUBSIDIARY IN ANY GUISE WHATEVER, OR ANY INVESTMENTS OF PUBLIC FUNDS, FROM THE JURISDICTION OF THE COMMISSION ON AUDIT.

May I explain my reasons on record.

We know that a number of entities of the government took advantage of the absence of a legislature in the past to obtain presidential decrees exempting themselves from the jurisdiction of the Commission on Audit, one notable example of which is the Philippine National Oil Company which is really an empty shell. It is a holding corporation by itself, and strictly on its own account. Its funds were not very impressive in quantity but underneath that shell there were billions of pesos in a multiplicity of companies. The PNOC — the empty shell — under a presidential decree was covered by the jurisdiction of the Commission on Audit, but the billions of pesos invested in different corporations underneath it were exempted from the coverage of the Commission on Audit.

Another example is the United Coconut Planters Bank. The Commission on Audit has determined that the coconut levy is a form of taxation; and that, therefore, these funds attributed to the shares of 1,400,000 coconut farmers are, in effect, public funds. And that was, I think, the basis of the PCGG in undertaking that last major sequestration of up to 94 percent of all the shares in the United Coconut Planters Bank. The charter of the UCPB, through a presidential decree, exempted it from the jurisdiction of the Commission on Audit, it being a private organization.

Supreme Court E-Library

So these are the fetuses of future abuse that we are slaying right here with this additional section.

May I repeat the amendment, Madam President: NO LAW SHALL BE PASSED EXEMPTING ANY ENTITY OF THE GOVERNMENT OR ITS SUBSIDIARY IN ANY GUISE WHATEVER, OR ANY INVESTMENTS' OF PUBLIC FUNDS, FROM THE JURISDICTION OF THE COMMISSION ON AUDIT.

THE PRESIDENT: May we know the position of the Committee on the proposed amendment of Commissioner Ople?

MR. JAMIR: If the honorable Commissioner will change the number of the section to 4, we will accept the amendment.

MR. OPLE: Gladly, Madam President. Thank you.

MR. DE CASTRO: Madam President, point of inquiry on the new amendment.

THE PRESIDENT: Commissioner de Castro is recognized.

MR. DE CASTRO: Thank you. May I just ask a few questions of Commissioner Ople.

Is that not included in Section 2 (1) where it states: "(c) government-owned or controlled corporations and their subsidiaries"? So that if these government-owned and controlled corporations and their subsidiaries are subjected to the audit of the COA, any law exempting certain government corporations or subsidiaries will be already unconstitutional.

So I believe, Madam President, that the proposed amendment is unnecessary.

MR. MONSOD: Madam President, since this has been accepted, we would like to reply to the point raised by Commissioner de Castro.

THE PRESIDENT: Commissioner Monsod will please proceed.

MR. MONSOD:

I think the Commissioner is trying to avoid the situation that happened in the past, because the same provision was in the 1973 Constitution and yet somehow a law or a decree was passed where certain institutions were exempted from audit. We are just

Supreme Court E-Library

reaffirming, emphasizing, the role of the Commission on Audit so that this problem will never arise in the future.[37]

There is an irreconcilable conflict between the second sentence of Section 20 of PD 198 prohibiting COA auditors from auditing LWDs and Sections 2(1) and 3, Article IX-D of the Constitution vesting in COA the power to audit all GOCCs. We rule that the second sentence of Section 20 of PD 198 is unconstitutional since it violates Sections 2(1) and 3, Article IX-D of the Constitution.

On the Legality of COA's Practice of Charging Auditing Fees

Petitioner claims that the auditing fees COA charges LWDs for audit services violate the prohibition in Section 18 of RA 6758,[38] which states:

> Sec. 18. *Additional Compensation of Commission on Audit Personnel and of other Agencies.* — In order to preserve the independence and integrity of the Commission on Audit (COA), its officials and employees are prohibited from receiving salaries, honoraria, bonuses, allowances or other emoluments from any government entity, local government unit, government-owned or controlled corporations, and government financial institutions, *except those compensation paid directly by COA out of its appropriations and contributions.*
>
> Government entities, including government-owned or controlled corporations including financial institutions and local government units are hereby prohibited from assessing or billing other government entities, including government-owned or controlled corporations including financial institutions or local government units for services rendered by its officials and employees as part of their regular functions for purposes of paying additional compensation to said officials and employees. (Emphasis supplied)

---

[37] Record of the Constitutional Commission, Vol. I, pp. 606-607.

[38] Compensation and Position Classification Act of 1989.

Supreme Court E-Library

Claiming that Section 18 is "absolute and leaves no doubt,"[39] petitioner asks COA to discontinue its practice of charging auditing fees to LWDs since such practice allegedly violates the law.

Petitioner's claim has no basis.

Section 18 of RA 6758 prohibits COA personnel from receiving any kind of compensation from any government entity except *"compensation paid directly by COA out of its appropriations and contributions."* Thus, RA 6758 itself recognizes an exception to the statutory ban on COA personnel receiving compensation from GOCCs. In *Tejada v. Domingo,*[40] the Court declared:

> There can be no question that Section 18 of Republic Act No. 6758 is designed to strengthen further the policy . . . to preserve the independence and integrity of the COA, by explicitly PROHIBITING: (1) COA officials and employees from receiving salaries, honoraria, bonuses, allowances or other emoluments from any government entity, local government unit, GOCCs and government financial institutions, *except such compensation paid directly by the COA out of its appropriations and contributions*, and (2) government entities, including GOCCs, government financial institutions and local government units from assessing or billing other government entities, GOCCs, government financial institutions or local government units for services rendered by the latter's officials and employees as part of their regular functions for purposes of paying additional compensation to said officials and employees.
>
> xxx xxx xxx
>
> The first aspect of the strategy is directed to the COA itself, while the second aspect is addressed directly against the GOCCs and government financial institutions. *Under the first, COA personnel assigned to auditing units of GOCCs or government financial institutions can receive only such salaries, allowances or fringe benefits paid directly by the COA out of its appropriations and contributions. The contributions referred to are the cost of audit services earlier mentioned which cannot include the extra emoluments or benefits now claimed by petitioners.* The COA is further barred from assessing or billing GOCCs and government

---

[39] *Rollo*, p. 11.

[40] G.R. No. 91860, 13 January 1992, 205 SCRA 138.

Supreme Court E-Library

financial institutions for services rendered by its personnel as part of their regular audit functions for purposes of paying additional compensation to such personnel. . . . . (Emphasis supplied)

In *Tejada*, the Court explained the meaning of the word "*contributions*" in Section 18 of RA 6758, which allows COA to charge GOCCs the cost of its audit services:

> . . . the contributions from the GOCCs are limited to the cost of audit services which are based on the actual cost of the audit function in the corporation concerned plus a reasonable rate to cover overhead expenses. The actual audit cost shall include personnel services, maintenance and other operating expenses, depreciation on capital and equipment and out-of-pocket expenses. In respect to the allowances and fringe benefits granted by the GOCCs to the COA personnel assigned to the former's auditing units, the same shall be directly defrayed by COA from its own appropriations . . . [41]

COA may charge GOCCs "actual audit cost" but GOCCs must pay the same directly to COA and not to COA auditors. Petitioner has not alleged that COA charges LWDs auditing fees in excess of COA's "actual audit cost." Neither has petitioner alleged that the auditing fees are paid by LWDs directly to individual COA auditors. Thus, petitioner's contention must fail.

WHEREFORE, the Resolution of the Commission on Audit dated 3 January 2000 and the Decision dated 30 January 2001 denying petitioner's Motion for Reconsideration are *AFFIRMED*. The second sentence of Section 20 of Presidential Decree No. 198 is declared *VOID* for being inconsistent with Sections 2 (1) and 3, Article IX-D of the Constitution. No costs.

SO ORDERED.

Davide, Jr., C.J., Puno, Vitug, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., Azcuna and *Tinga, JJ.*, concur.

---

[41] *Ibid.*