Supreme Court E-Library

EN BANC

[G.R. No. 226319. October 8, 2019]

JESSICA M. CHOZAS, MAYBELLE DELA CRUZ, LUZVIMINDA V. MONTEMAYOR, FRANCELAINE CUNANAN, AVELINA ALMAZAN, MARIA BULAONG, FRANCELAIDA BALUYOT, JULIETA DELA CRUZ, ANACLETA DE GUZMAN, VICTORIA DELA CRUZ, JESUS JIMENEZ, JOSEFINA OCHOA, EDUARDO ALCORIZA, TRINIDAD PANGAN, TARCILITA PANGAN, LAURA GONZALES, CRISANTO GALVEZ, REGINA DELA CRUZ, CHESALON DELA CRUZ and RAUL REYNALDO ARROYO, *petitioners, vs.* **COMMISSION ON AUDIT,** *respondent*.

[G.R. No. 235031. October 8, 2019]

DR. MARIANO C. DE JESUS and HERMOGENA A. BAUTISTA, for themselves and as attorneys-in-fact of other officials and employees of the Bulacan State University (BulSU), *petitioners, vs.* **COMMISSION ON AUDIT,** *respondent*.

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; COMMISSION ON AUDIT (COA); THE CONSTITUTION GRANTS THE COA THE POWER TO PROMULGATE ITS OWN RULES GOVERNING PLEADINGS AND PRACTICE BEFORE ANY OF ITS OFFICES; REMEDY OF A PARTY AGGRIEVED BY THE NOTICE OF DISALLOWANCE (ND) ISSUED BY COA; FAILURE TO COMPLY WITH THE RULES RESULTS IN THE DISMISSAL OF THE PETITION IN G.R. NO. 235031.— To ensure that the COA effectively fulfills its herculean task of stringently guarding the public funds, Article IX, Section 6 of the 1987 Constitution grants the COA the power to promulgate its own rules concerning

Supreme Court E-Library

pleadings and practice before any of its offices. x x x Under the COA Rules of Procedure, if in the course of an audit, differences shall arise from the settlement of accounts by reason of disallowances or charges, the COA Auditor shall issue an ND. This ND shall be regarded as an audit decision. Consequently, any party aggrieved by an ND, may file an appeal with the Director who has jurisdiction over the agency under audit within six months after the receipt of the ND. Unless an appeal to the Director is taken, the decision of the Auditor shall become final upon the expiration of six months from the date of receipt of the ND. Thereafter, a party who wishes to appeal the Decision of the Director may opt to file a Petition for Review before the Commission Proper. The Petition for Review shall be filed in five legible copies with the Commission Secretariat, with a copy served on the Director who rendered the assailed ruling. Proof of service thereof shall be attached to the petition together with the proof of payment of the filing fees. Equally noteworthy, the Petition for Review shall be filed within the time remaining of the six-month period from the receipt of the ND. This six-month period shall be suspended during the pendency of an appeal from the Director's decision. x x x Considering that the Decision of the COA Regional Director had attained finality, there is no other recourse but to dismiss the petition in G.R. No. 235031. It must be remembered that a party desiring to appeal an ND must do so strictly in accordance with the COA's Rules of Procedure. Lest it be forgotten, the right to appeal is neither a natural right nor a component of due process. Rather, it is a mere statutory privilege, that must be exercised only in the manner and in accordance with the provisions of the law. For sure, these rules were not crafted for mere convenience, but exist to ensure an orderly disposition of cases.

2. ID.; ID.; ID.; ID.; ID.; IN G.R. NO. 226319, THE COURT IS INCLINED TO ADOPT A MORE LIBERAL STANCE ON THE PETITIONERS-EMPLOYEES' FAILURE TO STRICTLY COMPLY WITH THE PROCEDURAL RULES; THE COURT EXCUSED THE NON-FILING OF THE MOTION FOR RECONSIDERATION BEFORE THE COA. — Anent the petition in G.R. No. 226319, the COA primarily asserts that the case should be dismissed due to the failure of the petitioners-employees to file a motion for reconsideration against COA Decision No. 2016-096. **The Court is inclined**

Supreme Court E-Library

to adopt a more liberal stance on the petitioners-employees' failure to strictly comply with the procedural rules. Indeed, a petition for *certiorari* before a higher court will not prosper unless the lower court has been given, through a motion for reconsideration, a chance to correct the errors imputed to it. However, this rule is subject to certain exceptions[.] x x x The second exception obtains in the instant case, as the issues raised in the Petition for Review before the COA are exactly the same as those raised before the Court. Thus, the non-filing of the Motion for Reconsideration before the COA may be excused. Be that as it may, the Court may likewise disregard procedural flaws when there exists a necessity to address the issues for stability in the public service and the serious implications the case may cause on the effective administration of the executive department.

3. ID.; ID.; ID.; POWERS AND AUTHORITY OF COA, EXPLAINED; COA BEARS THE MANDATE OF EXAMINING AND AUDITING THE ACCOUNTS OF STATE UNIVERSITIES AND COLLEGES.— Section 2 of Article IX-D of the 1987 Constitution vests unto the COA 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, pertaining to the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations with original charters, and on a post-audit basis, the expenditures of autonomous state colleges and universities. As the guardian of public funds, the COA has the power to ascertain whether public funds were in fact utilized for the purpose for which they had been intended. In this regard, the COA is vested with the exclusive authority to define the scope of its audit and examination, establish the techniques and methods for such review, and promulgate accounting and auditing rules and regulations. Overall, it possesses a wide latitude to determine, prevent and disallow irregular, unnecessary, excessive, extravagant, or unconscionable expenditures of government funds. This broad level of power in pursuing its general audit duties is necessary to ensure an effective and unhampered system of checks and balances inherent in our form of government. This said, the Court shall not interfere with the general audit powers of the COA except upon a clear showing that the latter acted without jurisdiction, or with grave abuse of discretion amounting

Supreme Court E-Library

to lack or excess of jurisdiction. This means that to warrant a reversal of an assailed COA ruling, the petitioner must prove that the COA exercised its power in an arbitrary or despotic manner by reason of passion or personal hostility, or that its act was so patent and gross as to amount to an evasion of a positive duty, or a virtual refusal to perform the duty enjoined by law, or to act at all in contemplation of law.

4. ID.; ADMINISTRATIVE LAW; THE HIGHER EDUCATION MODERNIZATION ACT OF 1997 (RA 8292); WHILE THE LAW GRANTS CLEARLY THE GOVERNING BOARD OF STATE UNIVERSITIES THE POWER TO USE THE SPECIAL TRUST FUND (STF), SUCH USE IS LIMITED TO THE EXPENSES FOR INSTRUCTION, RESEARCH, AND EXTENSION; THE USE OF STF FOR ACCOMPLISHMENT INCENTIVE FOR OFFICIALS AND EMPLOYEES OF PETITIONER-STATE UNIVERSITY DOES NOT IN ANY WAY RELATE TO SUCH PROGRAM OR PROJECT.— R.A. No. 8292 grants the governing boards of state universities and colleges the power to use the STF for any charges or expenses necessary for instruction, research, extension and other programs or projects of the university or college. It must be stressed, however, that the authority given to the governing boards of state universities and colleges is not plenary and absolute, but is subject to limitations. In *Benguet State University v. COA*, the Court warned against the state university's unbridled exercise of powers, and tempered its right to indiscriminately grant allowances to its employees under the guise of academic freedom. The Court stressed that academic freedom shall not serve as a warrant for any untrammeled authority to disburse funds and grant additional benefits sans statutory basis. Besides, the law clearly states that the STF may only be used for expenses necessary for instruction, research and extension. The incentive granted by the BulSU does not in any way relate to any particular academic program or project pertaining to instruction, research, or extension. In fact, all that the BulSU officers latch on to is the broad and vague excuse that the recipients aided in the university's goal of achieving excellence. An automatic grant of incentives on shallow and unsubstantiated grounds will certainly lead to the hemorrhaging of government funds, which the Court shall not countenance. Neither may the award be regarded as part of the catch-all phrase "other programs/projects" of the BulSU. Notably, the basic

statutory construction principle of *ejusdem generis* states that where a general word or phrase follows an enumeration of particular and specific words of the same class, the general word or phrase must be construed to include, or to be restricted to things akin to, resembling, or of the same kind or class as those specifically mentioned. Thus, the phrase "other programs/ projects" must be interpreted to pertain to those relating to instruction, research and extension.

5. **CIVIL LAW; CIVIL CODE; UNJUST ENRICHMENT, APPLIED; PETITIONERS-OFFICIALS AND EMPLOYEES, HAVING RECEIVED THE ACCOMPLISHMENT INCENTIVE AWARD BY MISTAKE, ARE OBLIGATED TO RETURN SAID AMOUNT TO THE GOVERNMENT COFFERS; NEITHER PLEA OF INNOCENCE NOR ABSENCE OF FRAUD EXCUSE THE RECIPIENTS.—** The natural consequence of a finding that the allowances and benefits were illegally disbursed, is the consequent obligation on the part of all the recipients to restore said amounts to the government coffers. Such directive is in accord with Article 22 of the Civil Code, which states that, "[e]very person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him." This principle of unjust enrichment applies when, "(i) a person is unjustly benefited; and (ii) such benefit is derived at the expense of or with damages to another. x x x Equally important, neither will a plea of innocence nor the absence of fraud excuse the recipients. x x x In the case at bar, the petitioners-officials and petitioners-employees received the Accomplishment Incentive Award pursuant to Board Resolution No. 39, which was an illegal and *ultra vires* act of the BulSU's BoR. Thus, having received said benefit by mistake, they are legally obliged to return said amount through salary deduction or any other mode which the COA may deem just and proper. In fine, government entities and institutions are called to temper their propensity in granting benefits and allowances indiscriminately, in order to avoid the wastage of government resources. Public funds are in no way vast and unlimited, and thus, disbursement officers are called to be more prudent and circumspect in handling public funds. Any and all amounts illegally received must be returned to the government coffers.

Supreme Court E-Library

APPEARANCES OF COUNSEL

Maria Eleanor J. Eusebio-Cruz for petitioners in G.R. No. 226319.

Panfilo D. Santiago for petitioners in G.R. No. 235031.

The Solicitor General for respondent.

D E C I S I O N

A. REYES, JR., *J.*:

The Commission on Audit (COA) as the guardian of public funds, bears the constitutional mandate of ensuring that government resources are properly spent. On this score, the Court shall not interfere with the right of the COA to disallow the unauthorized and unlawful release of allowances and benefits by government entities, save in exceptional cases where the COA acted with grave abuse of discretion amounting to lack or excess of jurisdiction. All amounts disallowed by the COA must be rightfully restored to the government coffers.

This treats of the consolidated Petitions for *Certiorari* under Rule 64, in relation to Rule 65, of the Rules of Court. In G.R. No. 235031,[1] entitled "*Dr. Mariano De Jesus and Hermogena A. Bautista, for themselves and as attorneys-in-fact of other officials and employees of the Bulacan State University (BulSU) v. COA,*" the petitioners are officials (petitioners-officials) of the BulSU, who seek the nullification of the Decision[2] dated September 27, 2017, rendered by the COA, dismissing their Petition for Review for having been filed out of time.

On the other hand, in G.R. No. 226319,[3] entitled "*Jessica M. Chozas, et al. v. COA*" the petitioners are all employees (petitioners-employees) of the BulSU, who seek the nullification

---

[1] *Rollo* (G.R. No. 235031), pp. 4-19.

[2] Rendered by Chairperson Michael G. Aguinaldo; *id.* at 25-30.

[3] *Rollo* (G.R. No. 226319), pp. 8-15.

Supreme Court E-Library

of the Decision[4] dated June 6, 2016, issued by the COA, affirming the Notice of Disallowance (ND) Nos. 13-001-164 (12) to 13-042-164 02), which in turn, disapproved the release of the Accomplishment Incentive Award given to the officials and employees of the BulSU.

The Antecedents

The Board of Regents (BoR) of the BulSU passed Resolution No. 39, Series of 2012[5] authorizing the grant of an Accomplishment Incentive Award in favor of the officials, faculty members and non-academic personnel of BulSU in recognition of their efforts and achievements in maintaining BulSU's program of excellence in education, sports and culture. Consequently, one hundred sixty-four (164) Disbursement Vouchers for Special Trust Fund (STF), with an aggregate amount of Thirty-Seven Million Eight Hundred Seventy-Six Thousand Two Hundred Ninety-Six Pesos and Fifty-Seven Centavos (₱37,876,296.57) were distributed to the BoR, regular employees, part-time faculty and employees by job order/contract.[6]

On post audit, the COA Team Leader and Supervising Auditor of BulSU issued ND Nos. 13-001-164(12) and 13-042-164(12)[7] dated March 12, 2013, disallowing the payment of the Accomplishment Incentive Award in the total amount of ₱37,876,296.57. The award was disallowed for being irregular, bereft of legal basis and in contravention of Article IX-B, Section 8 of the 1987 Constitution, Republic Act (R.A.) No. 6758 or the Salary Standardization Law, and other related laws, rules and regulations, reiterated under COA Circular No. 2013-003[8] dated January 30, 2013.[9]

---

[4] *Id*. at 18-25.

[5] "A Resolution Approving the Grant of 2012 Accomplishment Incentive to Officials, Faculty and Non-Academic Personnel of the Bulacan State University."

[6] *Rollo* (G.R. No. 226319), p. 35.

[7] *Id*. at 36-44.

[8] "Reiteration or Audit Disallowance of Payments without Legal Basis of Allowances, Incentives, and Other Benefits of Government Officials and Employees in the NGAs, LGUs, and GOCCs and their Subsidiaries."

[9] *Rollo* (G.R. No. 226319), p. 36.

Supreme Court E-Library

Aggrieved by the disallowance, the petitioners-officials and petitioners-employees filed separate appeals before the COA Regional Office No. III, San Fernando Pampanga. The appeals were consolidated.[10]

On February 28, 2014, the Regional Director upheld the NDs declaring that the Accomplishment Incentive Award cannot be regarded as part of the "programs/projects" referred to in Section 4(d) of R.A. No. 8292 or the Higher Education Modernization Act of 1997. Moreover, the Regional Director found that the BoR violated Sub-item 4.5 of Department of Budget and Management (DBM) Circular No. 16 dated November 26, 1998,[11] when they granted the incentive award sans any prior Administrative Order from the Office of the President. Accordingly, the Regional Director ordered the approving officers, as well as all the recipients of the incentive award, to return the disallowed benefits.[12]

On March 21, 2014, the petitioners-employees filed a Petition for Review[13] before the COA.

Meanwhile, on May 13, 2014, the petitioners-officials filed their own Petition for Review[14] before the COA.

COA Decision No. 2016-096

On June 6, 2016, the COA rendered a Decision[15] in the petition filed by the petitioners-employees. The COA upheld the NDs,

---

[10] *Id.* at 26.

[11] "All agencies are hereby prohibited from granting any food, rice, gift checks or any other form of incentives/allowances before the issuance of AO No. 37. x x x."

[12] *Rollo* (G.R. No. 226319), p. 29.

[13] *Id.* at 45-62.

[14] *Rollo* (G.R. No. 235031), pp. 321-348.

[15] *Rollo* (G.R. No. 226319), pp. 18-25.

Supreme Court E-Library

ratiocinating that Section 4(d) of R.A. No. 8292 categorically states that the STF shall only be used for expenditures pertaining to the basic and primary objectives of state universities and colleges to attain quality education. As such, the STF cannot be used for the payment of the Accomplishment Incentive Award, which is not part of BulSU's academic program. Consequently, the petitioners-employees, as well as the following officials of the BulSU, were declared liable to refund the illegal disbursement, to wit:

Name	Position/ Designation	Notice of Disallowance	Nature of Participation
Mariano C. De Jesus	President-AgencyHead	All Notices of Disallowance	Authorized/approved payment
Evangelina G. Custodio	Vice President (VP) for Admin and Finance	Notice of Disallowance Nos. 13-001-164(12) to 13-002-164(12); 13-004-164(12) to 13-015-164(12); 13-031-164(12); 13-034-164(12) and 13-038-164(12)	Certified that charges to the budget were necessary, lawful and incurred under her direct supervision and that supporting documents were valid, proper and legal
Antonio L. Del Rosario, Ed. D	Acting VP for Academic Affairs	Notice of Disallowance Nos. 13-003-164(12); 13-016-164(12) to 13-030-164(12); 13-032-164(12) to 13-033-164(12); 13-035-164(12) to 13-037-164(12); 13-039-164(12) and 13-042-164(12)	Certified that charges to the budget were necessary, lawful and incurred under her direct supervision and that supporting documents were valid, proper and legal
Isabelita C. Benedictos	Chief Administrative Officer	Notice of Disallowance Nos. 13-001-164(12) and 13-002-164(12)	Initialed certification that charges to the budget were necessary lawful and incurred under her direct supervision and that supporting

Supreme Court E-Library

			documents were valid, proper and legal
Felicitas G. Mirabuenos	Accountant IV/Head, Accounting Unit	All Notices of Disallowance	Certified cash availability and completeness of documents
Anacleta B. Santos	Administrative Officer IV/ Acting Budget Unit Head	All Notices of Disallowance	Certified that the budget was available and earmarked/ utilized for the purpose indicated
Matilda E. Paulino	Cashier IV/ Head, Cashier Office	All Notices of Disallowance	Countersigned the check
Helen P. Valentin	Head, Human Resources Management Office	All Notices of Disallowance	Certified that the services were rendered
Baltazar C. Santos	Board Secretary, Board of Regents (BOR)	Notice of Disallowance Nos. 13-004-164(12)	Certified that the services were rendered
Christopher C. Plamenco	Accountant III	All Notices of Disallowance	Verified Journal Entry Voucher (JEV)
Shiela Maria DS. Domingo	Accountant II	All Notices of Disallowance	Prepared JEV
Joanha Christine Borja	Accountant III	Notice of Disallowance Nos. 13-020-164(12) to 13-024-164(12)	Prepared JEV
BSU Personnel	Various		As payees/ recipients[16]

The dispositive portion of the COA ruling reads:

WHEREFORE, premises considered, the petition for review of Ms. Jessica M. Chozas, et al., faculty members of [BulSU] is hereby **DENIED** for lack of merit. Accordingly, [COA] Regional Office 3

[16] *Id*. at 19-20.

Supreme Court E-Library

Decision No. 2014-18 dated February 28, 2014, sustaining [ND] Nos. 13-001-164(12) to 13-042-164(12), all dated March 12, 2013, on the payment of Accomplishment Incentive Award to the personnel of [BulSU] in the amount of Php37,876,296.57, is **AFFIRMED**.[17] (Emphases in the original)

Aggrieved, the petitioners-employees filed before this Court a Petition for *Certiorari*[18] under Rule 64, in relation to Rule 65, of the Rules of Court praying for the nullification of the said COA ruling. The case was docketed as G.R. No. 226319, entitled "*Jessica M. Chozas, et al. v. COA.*"

COA Decision No. 2017-326

On September 27, 2017, the COA promulgated Decision No. 2017-326,[19] dismissing the Petition for Review of the petitioners-officials for having been filed beyond the reglementary period. The COA observed that the Petition for Review was belatedly filed on May 13, 2014, or after a lapse of 231 days from the time the petitioners-officials received the NDs. Thus, the COA declared that the Decision[20] dated February 28, 2014 of the COA Regional Director, which affirmed the NDs and declared the petitioners-officials liable for a refund had attained finality.[21]

Moreover, the COA held that the same Petition for Review fails even on the merits considering that the grant of the Accomplishment Incentive Award was done in contravention of existing rules and regulations.[22]

The decretal portion of COA Decision No. 2017-326 reads:

WHEREFORE, premises considered, the Petition for Review of Dr. Mariano C. de Jesus, et al., [BulSU] is hereby DISMISSED for

---

[17] *Id.* at 24.

[18] *Id.* at 3-15.

[19] *Rollo* (G.R. No. 235031), pp. 25-31.

[20] *Id.* at 32-35.

[21] *Id.* at 26-28.

[22] *Id.* at 29.

Supreme Court E-Library

having been filed out of time. Accordingly, [COA] Regional Office No. III Decision No. 2014-18 dated February 28, 2014, which affirmed [ND] Nos. 13-001-164(12) to 13-042-164(12) dated March 12, 2013, on the payment of Accomplishment Incentive Award (AIA) to the personnel of BulSU, in the amount of ₱37,876,296.57, is FINAL and EXECUTORY.

Moreover, the Audit Team Leader and the Supervising Auditor, BulSU, are hereby directed to issue a supplemental ND to the members of the [BoR], BulSU who signed and approved Resolution No. 39, series of 2012, the basis in paying AIA to officials, faculty members, and non-academic personnel of BulSU for calendar year 2012, in violation of paragraph 4.5 of [DBM] Budget Circular No. 16 dated November 28, 1998, and Section 12 of [R.A.] No. 6758.[23]

Dissatisfied with the ruling, on November 16, 2017, the petitioners-officials filed a Petition for *Certiorari*[24] under Rule 64, in relation to Rule 65, of the Rules of Court. The case was docketed as G.R. No. 235031, entitled "*Dr. Mariano C. De Jesus and Hermogena A. Bautista, for themselves and as attorneys-in-fact of other officials and employees of the BulSU v. COA.*"

On January 15, 2019, the Court issued a Resolution[25] ordering the consolidation of G.R. No. 226319 and G.R. No. 235031.

The Issues

The main issue raised for the Court's resolution rests on whether or not the COA committed grave abuse of discretion amounting to lack or excess of jurisdiction in affirming ND Nos. 13-001-164(12) to 13-042-164(12), and consequently, in declaring the petitioners-employees and the petitioners-officials personally liable to refund the Accomplishment Incentive Award.

Mainly, the petitioners-employees and petitioners-officials both contend that the COA erred in ordering the refund of the Accomplishment Incentive Award. They aver that the BulSU

[23] *Id.* at 29-30.

[24] *Id.* at 4-20.

[25] *Rollo* (G.R. No. 226319), pp. 213-214.

Supreme Court E-Library

BoR was empowered, under Section 4(d) of R.A. No. 8292, to use the STF for instruction, research, extension or any other program or project.[26] Likewise, they contend that COA Circular No. 2000-002 provides among others, that the STF shall be used to pay authorized allowances and fringe benefits to teachers and students who render services to the school. Concomitantly, the economic benefits accruing in favor of the BulSU personnel must be treated as part of the university's academic programs, as the university's primary functions cannot be performed in the absence of the personnel who teach, conduct research and render extension services. Accordingly, the petitioners-employees and petitioners-officials assert that they should not be ordered to refund the Accomplishment Incentive Award as they believed in good faith that the payment thereof was authorized under existing rules and regulations.[27]

In addition, the petitioners-officials, in G.R. No. 235031, decry the dismissal by the COA of their Petition for Review for allegedly having been filed out of time.[28]

The Comments

On the other hand, the COA, through the Office of the Solicitor General (OSG), urges for the dismissal of the petitions on technical and substantive grounds.[29]

Primarily, in G.R. No. 235031, the COA points out that the petition for review filed by the petitioners-officials before the COA was filed beyond the reglementary period for taking an appeal against a COA ruling.[30]

While in G.R. No. 226319, the COA prays for the outright dismissal of the Petition for *Certiorari*, due to the failure of

---

[26] *Id*. at 8.

[27] *Id*. at 8-11.

[28] *Rollo* (G.R. No. 235031), p. 11.

[29] *Id*. at 12.

[30] *Id*.

Supreme Court E-Library

the petitioners-employees to file a Motion for Reconsideration against COA Decision No. 2016-096.[31]

Anent the substantive issues, the COA avers that the grant of the Accomplishment Incentive Award contravenes Article IX-B, Section 8 of the 1987 Constitution and the Salary Standardization Law. Furthermore, the COA maintains that the STF may only be used for expenditures pertaining to instruction, research and extension, or other programs or projects related thereto. The phrase "other programs or projects" should be interpreted to mean only those related to instruction, research and extension. Finally, the COA argues that COA Circular No. 2000-002 pertains to allowances and benefits that are authorized. Considering that the Accomplishment Incentive Award was not authorized under the law, all the petitioners must be ordered to refund the same.[32]

Ruling of the Court

The instant petitions are bereft of merit.

The Court shall first resolve the procedural issues raised before delving into the merits of the case.

I. Procedural Issues

An Appeal Against an ND Must Be Filed Within the Proper Reglementary Period

To ensure that the COA effectively fulfills its herculean task of stringently guarding the public funds, Article IX, Section 6 of the 1987 Constitution grants the COA the power to promulgate its own rules concerning pleadings and practice before any of its offices.[33] Accordingly, on September 15, 2009, the COA

---

[31] *Rollo* (G.R. No. 226319), pp. 18-25.

[32] *Id*. at 89-92.

[33] 1987 CONSTITUTION, Article IX, Section 6 provides:

Section 6. Each Commission *en banc* may promulgate its own rules concerning pleadings and practice before it or before any of its offices.

Supreme Court E-Library

approved its 2009 Revised Rules of Procedure (COA Rules of Procedure), which took effect on October 28, 2009.

Under the COA Rules of Procedure, if in the course of an audit, differences shall arise from the settlement of accounts by reason of disallowances or charges, the COA Auditor shall issue an ND. This ND shall be regarded as an audit decision.[34] Consequently, any party aggrieved by an ND, may file an appeal with the Director who has jurisdiction over the agency under audit[35] within six months after the receipt of the ND.[36] Unless an appeal to the Director is taken, the decision of the Auditor shall become final upon the expiration of six months from the date of receipt of the ND.[37]

Such rules, however, shall not diminish, increase, or modify substantive rights.

[34] 2009 Revised Rules of Procedure of the COA
RULE IV. PROCEEDINGS BEFORE THE AUDITOR.
Section 4. ***Audit Disallowances/Charges/Suspensions.*** - In the course of the audit, whenever there are differences arising from the settlement of accounts by reason of disallowances or charges, the auditor shall issue Notices of Disallowance/Charge (ND/NC) which shall be considered as audit decisions. Such ND/NC shall be adequately established by evidence and the conclusions, recommendations or dispositions shall be supported by applicable laws, regulations, jurisprudence and the generally accepted accounting and auditing principles. The Auditor may issue Notices of Suspension (NS) for transactions of doubtful legality/validity/propriety to obtain further explanation or documentation.

[35] 2009 Revised Rules of Procedure of the COA
RULE V. PROCEEDINGS BEFORE THE DIRECTOR.
Section 1. ***Who May Appeal.*** - An aggrieved party may appeal from the decision of the Auditor to the Director who has jurisdiction over the agency under audit.

[36] 2009 Revised Rules of Procedure of the COA
RULE V. PROCEEDINGS BEFORE THE DIRECTOR.
Section 4. ***When Appeal Taken*** - An appeal must be filed within six (6) months after receipt of the decision appealed from.

[37] 2009 Revised Rules of Procedure of the COA
RULE IV. PROCEEDINGS BEFORE THE AUDITOR.
Section 8. ***Finality of the Auditor's Decision.*** - Unless an appeal to the Director is taken, the decision of the Auditor shall become final upon the expiration of six (6) months from the date of receipt thereof.

Supreme Court E-Library

Thereafter, a party who wishes to appeal the Decision of the Director may opt to file a Petition for Review before the Commission Proper.[38] The Petition for Review shall be filed in five legible copies with the Commission Secretariat, with a copy served on the Director who rendered the assailed ruling. Proof of service thereof shall be attached to the petition together with the proof of payment of the filing fees.[39] Equally noteworthy, the Petition for Review shall be filed within the time remaining of the six-month period from the receipt of the ND. This six-month period shall be suspended during the pendency of an appeal from the Director's decision.[40]

In the case at bar, the petitioners-officials received the NDs on March 25 and 26, 2013.[41] Having received an adverse ruling, they filed an appeal with the Regional Director on September 19, 2013.[42] At this point, 176 to 177 days have elapsed from the receipt of the NDs.

---

[38] 2009 Revised Rules of Procedure of the COA

RULE VII. PETITION FOR REVIEW TO THE COMMISSION PROPER.

Section 1. ***Who May Appeal and Where to Appeal.*** - The party aggrieved by a decision of the Director or the ASB may appeal to the Commission Proper.

[39] 2009 Revised Rules of Procedure of the COA

RULE VII. PETITION FOR REVIEW TO THE COMMISSION PROPER.

Section 2. ***How Appeal Taken.*** - Appeal shall be taken by filing a Petition For Review in five (5) legible copies, with the Commission Secretariat, a copy of which shall be served on the Director or the ASB who rendered the decision. Proof of service thereof shall be attached to the petition together with the proof of payment of the filing fee under these Rules.

[40] 2009 Revised Rules of Procedure of the COA

RULE VII. PETITION FOR REVIEW TO THE COMMISSION PROPER.

Section 3. ***Period of Appeal.*** - The appeal shall be taken within the time remaining of the six (6) months period under Section 4, Rule V, taking into account the suspension of the running thereof under Section 5 of the same Rule in case of appeals from the Director's decision, or under Sections 9 and 10 of Rule VI in case of decision of the ASB.

[41] *Rollo* (G.R. No. 235031), p. 25.

[42] *Id.* at 25.

Supreme Court E-Library

Thereafter, the Regional Director rendered a decision, which the petitioners-officials received on March 19, 2014. The petitioners-officials filed their Petition for Review on May 13, 2014 - 231 days after receiving the NDs.[43] Without a doubt, the six-month period had already lapsed when the petitioners-officials filed an appeal before the Commission Proper.

As an excuse, the petitioners-officials proffer that their Petition for Review was filed on March 21, 2014. They explain that the stamp on the last page of their Petition shows that the Bocaue Post Office received three registered mails addressed to the COA Regional Office of San Fernando, Pampanga.

This justification fails to persuade.

The records reveal that the three copies sent by the petitioners-officials on March 21, 2014 were addressed to the Regional Office and not to the Commission Secretariat. This is in violation of the COA Rules of Procedure which mandates the filing of five legible copies to the Commission Secretariat, along with proof of payment of docket fees. Moreover, aside from sending an insufficient number of petitions to the wrong addressee, the petitioners-officials likewise failed to attach proof of payment of docket fees.

The records further show that it was only on May 13, 2014, that the petitioners-officials actually filed the required number of copies with the Commission Secretariat. It was also on the same date that they paid the required filing fees, as evidenced by Official Receipt No. 1010188K. By this date, the period to appeal had lapsed, and accordingly, the Decision of the COA Regional Director had attained finality,[44] pursuant to Section 22.1 of the Rules and Regulations on Settlement of Accounts and Section 51 of Presidential Decree No. 1445, which provide:

Section 22.1. A decision of the Commission Proper, ASB Director or Auditor upon any matter within their respective jurisdiction; if not appealed as herein provided, shall become final and executory.

---

[43] *Id*. at 25-26.

[44] *Id*. at 376.

Supreme Court E-Library

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

Considering that the Decision of the COA Regional Director had attained finality, there is no other recourse but to dismiss the petition in G.R. No. 235031. It must be remembered that a party desiring to appeal an ND must do so strictly in accordance with the COA's Rules of Procedure. Lest it be forgotten, the right to appeal is neither a natural right nor a component of due process. Rather, it is a mere statutory privilege, that must be exercised only in the manner and in accordance with the provisions of the law.[45] For sure, these rules were not crafted for mere convenience, but exist to ensure an orderly disposition of cases.[46]

Besides, as will be shown, the petition in G.R. No. 235031 likewise fails on the merits.

The Non-Filing of a Motion for Reconsideration May Be Excused Under Exceptional Circumstances

Anent the petition in G.R. No. 226319, the COA primarily asserts that the case should be dismissed due to the failure of the petitioners-employees to file a motion for reconsideration against COA Decision No. 2016-096.

The Court is inclined to adopt a more liberal stance on the petitioners-employees' failure to strictly comply with the procedural rules.

Indeed, a petition for *certiorari* before a higher court will not prosper unless the lower court has been given, through a motion for reconsideration, a chance to correct the errors imputed

---

[45] *Boardwalk Business Ventures, Inc. v. Villareal (deceased), et al*., 708 Phil. 443, 445 (2013), citing *Fenequito, et al. v. Vergara, Jr.*, 691 Phil. 335, 341-342 (2012).

[46] *Boardwalk Business Ventures, Inc. v. Villareal (deceased), et al., id.*

Supreme Court E-Library

to it.[47] However, this rule is subject to certain exceptions, such as:

> (a) where the order is a patent nullity, as where the court *a quo* has no jurisdiction; (b) where the questions raised in the *certiorari* proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable; (d) where, under the circumstances, a motion for reconsideration would be useless; (e) where petitioner was deprived of due process and there is extreme urgency for relief; (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; (g) where the proceedings in the lower court are a nullity for lack of due process; (h) where the proceedings were *ex parte* or in which the petitioner had no opportunity to object; and (i) where the issue raised is one purely of law or where public interest is involved.[48]

The second exception obtains in the instant case, as the issues raised in the Petition for Review[49] before the COA are exactly the same as those raised before the Court. Thus, the non-filing of the Motion for Reconsideration before the COA may be excused.

Be that as it may, the Court may likewise disregard procedural flaws when there exists a necessity to address the issues for stability in the public service and the serious implications the case may cause on the effective administration of the executive department.[50]

---

[47] *Phil. International Trading Corp. v. COA*, 461 Phil. 737, 745 (2003).

[48] *Rep. of the Phils. v. Bayao, et al.* 710 Phil. 279, 287-288 (2013).

[49] *Rollo* (G.R. No. 226319), pp. 49-50. In their Petition for Review before the COA, the petitioners raised the following issues, namely: (i) whether or not the COA Regional Director erred in ruling that the award of incentive by the BoR of the BulSU is not in accordance with the provisions of Section 4(d) of R.A. No. 8292; (ii) whether or not the COA Regional Director erred in affirming the disallowance, and ordering the refund of the Accomplishment Incentive Award.

[50] *Id.* at 58.

Supreme Court E-Library

Having thus disposed of the procedural issues, the Court shall now proceed to determine the legality of the grant of the Accomplishment Incentive Award.

II. Substantive Issues

The COA Bears the Mandate of Examining and Auditing the Accounts of State Universities and Colleges

Section 2 of Article IX-D of the 1987 Constitution vests unto the COA 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, pertaining to the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations with original charters, and on a post-audit basis, the expenditures of autonomous state colleges and universities.[51]

As the guardian of public funds, the COA has the power to ascertain whether public funds were in fact utilized for the purpose for which they had been intended. In this regard, the COA is vested with the exclusive authority to define the scope of its audit and examination, establish the techniques and methods for such review, and promulgate accounting and auditing rules and regulations.[52] Overall, it possesses a wide latitude to determine, prevent and disallow irregular, unnecessary, excessive, extravagant, or unconscionable expenditures of government funds. This broad level of power in pursuing its general audit duties is necessary to ensure an effective and unhampered system of checks and balances inherent in our form of government.[53]

---

[51] *Dimapilis-Baldoz v. COA*, 714 Phil. 171, 182 (2013).

[52] *Metropolitan Waterworks and Sewerage System v. COA*, G.R. No. 195105, November 21, 2017, 845 SCRA 551, 575, citing *Yap v. COA*, 633 Phil. 174, 189 (2010).

[53] *Dimapilis-Baldoz v. COA*, *supra* note 51, at 183.

Supreme Court E-Library

This said, the Court shall not interfere with the general audit powers of the COA except upon a clear showing that the latter acted without jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction. This means that to warrant a reversal of an assailed COA ruling, the petitioner must prove that the COA exercised its power in an arbitrary or despotic manner by reason of passion or personal hostility, or that its act was so patent and gross as to amount to an evasion of a positive duty, or a virtual refusal to perform the duty enjoined by law, or to act at all in contemplation of law.

Viewed in the foregoing light, the Court finds that the COA did not commit any grave abuse of discretion in affirming the assailed NDs. Indeed, the release of the Accomplishment Incentive Award by the officers of the BulSU had no legal basis, as will be further discussed.

The Accomplishment Incentive Award May Not Be Regarded as an STF that May Be Disbursed by the BulSU BoR for its Academic Programs

The petitioners would like the Court to believe that the Accomplishment Incentive Award was validly disbursed from the STF of the BulSU pursuant to Section 4(d) of R.A. No. 8292, as an incentive to the employees for their efforts in aiding the university's goal of achieving excellence in education, sports and culture.[54]

This contention deserves scant consideration.

Section 4(d) of R.A. No. 8292 specifies the powers of the governing boards of state universities and colleges, *viz*.:

Section 4. *Powers and Duties of Governing Boards.* - The governing board shall have the following specific powers and duties in addition to its general powers of administration and the exercise of all the powers granted to the board of directors of a corporation under Section

[54] *Rollo* (G.R. No. 226319), p. 9.

Supreme Court E-Library

36 of Batas Pambansa Blg. 68, otherwise known as the Corporation Code of the Philippines;

x x x x x x x x x

(d) to fix the tuition fees and other necessary school charges, such as but not limited to matriculation fees, graduation fees and laboratory fees, as their respective boards may deem proper to impose after due consultations with the involved sectors.

Such fees and charges, including government subsidies and other income generated by the university or college, shall constitute special trust funds and shall be deposited in any authorized government depository bank, and all interests shall accrue therefrom shall form part of the same fund for the use of the university or college: *Provided*, That income derived from university hospitals shall be exclusively earmarked for the operating expenses of the hospitals.

Any provision of existing laws, rules and regulations to the contrary notwithstanding, any income generated by the university or college from tuition fees and other charges, as well as from the operation of auxiliary services and land grants, shall be retained by the university or college, and may be disbursed by the Board of Regents/Trustees for instruction, research, extension, or other programs/projects of the university or college: Provided, That all fiduciary fees shall be disbursed for the specific purposes for which they are collected.

If, for reasons beyond its control, the university or college, shall not be able to pursue any project for which funds have been appropriated and, allocated under its approved program of expenditures, **the Board of Regents/Trustees may authorize the use of said funds for any reasonable purpose which, in its discretion, may be necessary and urgent for the attainment of the objectives and goals of the universities or college.** (Emphases Ours)

Concededly, R.A. No. 8292 grants the governing boards of state universities and colleges the power to use the STF for any charges or expenses necessary for instruction, research, extension and other programs or projects of the university or college.

It must be stressed, however, that the authority given to the governing boards of state universities and colleges is not plenary

and absolute, but is subject to limitations.[55] In *Benguet State University v. COA*,[56] the Court warned against the state university's unbridled exercise of powers, and tempered its right to indiscriminately grant allowances to its employees under the guise of academic freedom. The Court stressed that academic freedom shall not serve as a warrant for any untrammeled authority to disburse funds and grant additional benefits sans statutory basis.[57]

Besides, the law clearly states that the STF may only be used for expenses necessary for instruction, research and extension. The incentive granted by the BulSU does not in any way relate to any particular academic program or project pertaining to instruction, research, or extension. In fact, all that the BulSU officers latch on to is the broad and vague excuse that the recipients aided in the university's goal of achieving excellence. An automatic grant of incentives on shallow and unsubstantiated grounds will certainly lead to the hemorrhaging of government funds, which the Court shall not countenance.

Neither may the award be regarded as part of the catch-all phrase "other programs/projects" of the BulSU. Notably, the basic statutory construction principle of *ejusdem generis* states that where a general word or phrase follows an enumeration of particular and specific words of the same class, the general word or phrase must be construed to include, or to be restricted to things akin to, resembling, or of the same kind or class as those specifically mentioned.[58] Thus, the phrase "other programs/projects" must be interpreted to pertain to those relating to instruction, research and extension.

---

[55] *Benguet State University v. Commission on Audit*, 551 Phil. 878, 886-887 (2007).

[56] 551 Phil. 878 (2007).

[57] *Id*. at 887.

[58] *Liwag v. Happy Glen Loop Homeowners Association, Inc.*, 690 Phil. 321, 333 (2012).

Supreme Court E-Library

In fact, in the seminal cases of *Benguet State University*,[59] and *Ricardo E. Rotoras, President, Philippine Association of State Universities and Colleges v. Commission on Audit*,[60] the Court clarified that the rice subsidy and health care allowance,[61] as well as the honoraria of the members of the Board,[62] respectively, do not form part of the state universities' STF.

Finally, the petitioners cannot seek refuge in COA Circular No. 2000-002,[63] which, as petitioners claim allows the use of the STF for "pay[ing] authorized allowances and fringe benefits to teachers and students who render services to the school."[64] Even a simple perusal of the afore-quoted phrase from COA Circular No. 2000-002 clearly shows that the STF shall only be used for "authorized" allowances.

Given the foregoing, it is all too clear that the petitioners-officials had no authority to grant the Accomplishment Incentive Award. Thus, such move is undoubtedly an *ultra vires* act that renders the distribution of said Award unlawful.

All The Recipients Must Return the Amounts They Unjustly Received

The natural consequence of a finding that the allowances and benefits were illegally disbursed, is the consequent obligation on the part of all the recipients to restore said amounts to the government coffers. Such directive is in accord with Article 22 of the Civil Code, which states that, "[e]very person who through

---

[59] *Supra* note 56.

[60] G.R. No. 211999, August 20, 2019.

[61] *Benguet State University v. COA, supra* note 56.

[62] *Ricardo E. Rotoras, President, Philippine Association of State Universities and Colleges v. Commission on Audit*, *supra* note 60.

[63] "Accounting Guidelines and Procedures on the Use of Income of State Universities and Colleges Pursuant to Republic Act No. 8292."

[64] *Rollo* (G.R. No. 226319), p. 10, citing COA Circular No. 2000-002, April 4, 2000.

Supreme Court E-Library

an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him."[65] This principle of unjust enrichment applies when, "(i) a person is unjustly benefited; and (ii) such benefit is derived at the expense of or with damages to another.[66]

This strict stance is evident from the Court's recent pronouncements in Rotoras,[67] *James Arthur T. Dubongco, Provincial Agrarian Reform Program Officer II of Department of Agrarian Reform Provincial Office-Cavite in Representation of Darpo-Cavite and All Its Officials and Employees v. Commission on Audit*,[68] and *Department of Public Works and Highways v. COA*,[69] where the Court ordered the full restitution of all benefits unlawfully received by government employees. Furthermore, the Court in *Rotoras* stressed that the defense of good faith shall no longer work to exempt them the payees from such obligation, *viz*.:

> The defense of good faith, heretofore, is no longer available for members of governing boards and officials who have approved the disallowed allowance or benefit. Neither would the defense be available to the rank-and-file should the allowance or benefit have been the subject of collective negotiation agreement negotiations. Furthermore, the obligation to return for the rank-and-file shall be limited only to what they have actually received. They may, subject to [COA] approval, agree to the terms of payment for the return of the funds which have been disallowed. For the approving board members or officers, however, the nature of the obligation to return — whether it be solidary or not — depends on the circumstances.[70]

---

[65] CIVIL CODE OF THE PHILIPPINES, Article 22.

[66] *GSIS, et al. v. COA, et al.*, 694 Phil. 518, 526 (2012), citing *Amio v. Ticson*, 485 Phil. 434, 443 (2004).

[67] *Supra* note 60.

[68] G.R. No. 237813, March 5, 2019.

[69] G.R. No. 237987, March 19, 2019.

[70] *Ricardo E. Rotoras, President, Philippine Association of State Universities and Colleges v. Commission on Audit*, *supra* note 60.

Supreme Court E-Library

Equally important, neither will a plea of innocence nor the absence of fraud excuse the recipients. Likewise, the benefits conferred by mistake, fraud, coercion, or request shall be held by the payees in trust for the government, to wit:

> Finally, the payees received the disallowed benefits with the mistaken belief that they were entitled to the same. If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes. A constructive trust is substantially an appropriate remedy against unjust enrichment, it is raised by equity in respect of property, which has been acquired by fraud, or where although acquired originally without fraud, it is against equity that it should be retained by the person holding it. In fine, the payees are considered as trustees of the disallowed amounts, as although they committed no fraud in obtaining these benefits, it is against equity and good conscience for them to continue holding on to them.[71]

In the case at bar, the petitioners-officials and petitioners-employees received the Accomplishment Incentive Award pursuant to Board Resolution No. 39, which was an illegal and *ultra vires* act of the BulSU's BoR. Thus, having received said benefit by mistake, they are legally obliged to return said amount through salary deduction or any other mode which the COA may deem just and proper.[72]

In fine, government entities and institutions are called to temper their propensity in granting benefits and allowances indiscriminately, in order to avoid the wastage of government resources. Public funds are in no way vast and unlimited, and thus, disbursement officers are called to be more prudent and circumspect in handling public funds. Any and all amounts illegally received must be returned to the government coffers.

WHEREFORE, premises considered, the petitions for *certiorari* in G.R. No. 226319 and G.R. No. 235031 are

---

[71] *James Arthur T. Dubongco, Provincial Agrarian Reform Program Officer II of Department of Agrarian Reform Provincial Office-Cavite in Representation of Darpo-Cavite and All Its Officials and Employees v. Commission on Audit, supra* note 68.

[72] *Id*.

Supreme Court E-Library

DENIED for lack of merit. Commission on Audit's Decision No. 2016-096 dated June 6, 2016, and Decision No. 2017-326 dated September 27, 2017, are **AFFIRMED *in toto***. All the officers and employees of the Bulacan State University who received the Accomplishment Incentive Award must return the amount they received, through any means that the Commission on Audit may deem just and proper.

SO ORDERED.

Bersamin, C.J., Carpio, Peralta, Perlas-Bernabe, Leonen, Caguioa, Gesmundo, Reyes, J. Jr., Hernando, Carandang, Lazaro-Javier, and *Zalameda, JJ.*, concur.

Inting, J., on official business.

EN BANC

[G.R. No. 226443. October 8, 2019]

NATIONAL ASSOCIATION OF ELECTRICITY CONSUMERS FOR REFORMS, INC., *petitioner, vs.* **ENERGY REGULATORY COMMISSION, MANILA ELECTRIC COMPANY, and COMMISSION ON AUDIT,** *respondents.*

CLARK ELECTRIC DISTRIBUTION CORPORATION, DAGUPAN ELECTRIC CORPORATION, ANGELES ELECTRIC CORPORATION, CAGAYAN ELECTRIC POWER & LIGHT COMPANY, INC., SAN FERNANDO ELECTRIC LIGHT & POWER COMPANY, INC., CABANATUAN ELECTRIC CORPORATION, TARLAC ELECTRIC, INC., and OLONGAPO ELECTRICITY DISTRIBUTION COMPANY, INC., *movant-intervenors.*