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[G.R. No. 213409; October 5, 2021]

LAND BANK OF THE PHILIPPINES, represented by its President and Chief Executive Officer, GILDA E. PICO; LAND BANK INSURANCE BROKERAGE, INC., represented by its General Manager, GEORGE R. FRANCISCO; LAND BANK REALTY DEVELOPMENT CORPORATION, represented by President and General Manager, SIMEONA S. GUEVARRA; LBP LEASING CORPORATION, represented by its President and General Manager, MANUEL H. LOPEZ; MASAGANANG SAKAHAN, INC., represented by its General Manager, ROY C. OSCILLADA; LBP COUNTRYSIDE DEVELOPMENT FOUNDATION, INC., represented by its Executive Director, PETER ANDREW S. GUTIERREZ, *Petitioners*, *v.* **COMMISSION ON AUDIT,** *Respondent*.

D E C I S I O N

INTING, *J.*:

Before the Court is a Petition for *Certiorari* [1] under Rule 64, in relation to Rule 65, of the Rules of Court filed by Land Bank of the Philippines (hereinafter referred to as LBP or Parent Company) assailing the Commission on Audit (COA) Commission Proper (COA Proper) Decision No. 2012-018[2] dated February 16, 2012. In the assailed Decision, the COA Proper affirmed the Notice of Disallowance No. (ND) LBP-Subs. 2008-015 (2002-2003)[3] dated August 11, 2008, relative to the payment of additional allowances

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[1] *Rollo*, pp. 3-29.

[2] *Id.* at 30-39; signed by Chairperson Ma. Gracia M. Pulido Tan and Commissioners Juanito G. Espino, Jr. and Heidi L. Mendoza; and attested by Director IV and Commission Secretariat, Fortunato M. Rubico.

[3] *Id.* at 42-69.

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and benefits to LBP, the Parent Company, officials acting as officers/members of the Board of Directors (Board) of LBP subsidiaries, amounting to ₱5,133,830.02.

The Antecedents

LBP is a government financial institution created under Republic Act No. (RA) 3844, as amended by RA 10374[4] and 10878.[5] On the other hand, Land Bank Insurance Brokerage, Inc. (LIBI), Land Bank Realty Development Corporation (LBRDC), LBP Leasing Corporation (LLC), and Masaganang Sakahan, Inc. (MSI) are wholly owned subsidiaries of LBP, while LBP Countryside Development Foundation, Inc. (LCDFI) is a non-stock, non-profit corporate foundation (collectively, Subsidiaries).[6]

In the *2003 Annual Audit Report of the LBP* submitted by the COA Supervising Auditor, the COA noted that certain individuals had been (a) officers and/or employees of the *Parent Company* and, at the same time, (b) members of the Board and/or corporate officers in the *Subsidiaries*. In exchange for their services in the latter, the Subsidiaries granted them various forms[7] of benefits and allowances (in the aggregate amount of ₱2,783,300.02),[8] in violation of the constitutional prohibition against double compensation.[9]

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[4] Entitled, "An Act Extending the Life of the Land Bank of the Philippines, Further Amending Republic Act No. 3844, Otherwise Known as the 'Agricultural Land Reform Code,' as Amended," approved on March 5, 2013.

[5] Entitled, "An Act Strengthening and Institutionalizing Direct Credit Support of the Land Bank of the Philippines to Agrarian Reform Beneficiaries, Small Farmers and Fisherfolk, Further Amending Republic Act No. 3844, Otherwise Known as the 'Agricultural Land Reform Code,' as Amended," approved on July 17, 2016.

[6] *Rollo*, p. 6.

[7] Anniversary bonus, mid-year gift package, year-end gift package, year-end Christmas gift/raffle package, productivity incentive commutable allowance.

[8] *Rollo*, p. 30.

[9] *Id.* at 30.

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Subsequently, the Subsidiaries wrote a *letter-reply dated August 24, 2004*[10] and pointed out that they had already discontinued paying some of the benefits and allowances identified in the report. Further, members of the Subsidiaries' respective Boards were paid "token rates" to compensate for their contribution to the Subsidiaries' revenues/income, as well as their time and effort in helping the Subsidiaries on top of their bank functions.[11]

Despite the explanation, in ND LBP-Subs. 2008-015 (2002-2003) dated August 11, 2008, the COA, through Janet D. Nacion, Director IV, Legal and Adjudication Office-Corporate (LAO-C), disallowed payments amounting to ₱5,133,830.02,[12] representing additional benefits and allowances granted to Board Members of LBP Subsidiaries, for *lack of legal basis*.

The COA cited the following grounds for the disallowance: *first*, Section 30 of the Corporation Code of the Philippines provides that directors shall not receive compensation other than reasonable *per diems* unless granted by the *vote of the stockholders representing at least a majority of the outstanding capital stock*. However, aside from the payment of *per diems*, the Subsidiaries' respective by-laws do not provide for any grant of additional benefits and allowances in favor of members of the Board.[13] *Second*, the Constitution proscribes payments to any elective or appointive officer/employee amounting to double compensation, unless specifically authorized by law and approved by the President, pursuant to Memorandum Order No. 20 dated June 25, 2001 and Department of Budget and Management (DBM) Circular Letter No. 2003-10 dated October 17, 2003. On the other hand, the payments of additional benefits and allowances to Parent Company officers for services they rendered to the Subsidiaries, as Board member or corporate officer, were not justified by any statute and did not bear the requisite executive approval.[14]

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[10] *Id.* at 173.

[11] *Id.* at 43-44.

[12] *Id.* at 65.

[13] *Id.* at 44.

[14] *Id.* at 32-33.

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The approving and/or certifying officers[15] and the payees were held liable for the disallowed amount.[16]

LBP and the concerned Subsidiaries filed a Petition for Review[17] before the COA Proper to question the disallowance.

They argued as follows: *first*, they were denied due process because the COA failed to issue an Audit Observation Memorandum (AOM) prior to the issuance of the ND. *Second*, each of the Subsidiaries is wholly-owned by LBP. In turn, the LBP President/CEO sat as a member in the Subsidiaries' respective Boards. Thus, the individual Boards' approval of the subject payments "is tantamount to [the] approval by [LBP's] majority stockholders."[18] *Third*, the rule prohibiting double compensation does not apply because: (a) the Subsidiaries are private corporations—the subject benefits and allowances paid by the Subsidiaries were not sourced from government funds; (b) the payees received the benefits and allowances in their capacity as members of the Subsidiaries' Boards.[19] Their membership in these Boards was separate and distinct from their position as LBP (Parent Company) officials. *Fourth*, the subject payments were not new or additional benefits.[20] *Fifth*, the payments were made to officials whose "expertise and technical knowledge" were "desired, if not necessary" to attain the Subsidiaries' respective targets.[21]

Ruling of the COA Proper

In its assailed Decision, the COA Proper upheld the disallowance. It ruled as follows:

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[15] Subsidiaries' respective accountants, treasurers, cashiers, general managers, etc.

[16] *Rollo*, pp. 45-63.

[17] *Id.* at 70-95.

[18] *Id.* at 82.

[19] *Id.* at 84-85.

[20] *Id.* at 86-87.

[21] *Id.* at 89.

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First, the non-issuance of an AOM does not amount to a denial of due process because: (a) the Director of the COA LAO-C is authorized to issue an ND based on her evaluation of the LBP Annual Audit Report; (b) the Subsidiaries' respective representatives responded to the COA's findings and observations noted in the Annual Audit Report through a joint letter-reply and had the occasion to justify the payments; (c) LBP and the concerned Subsidiaries have availed themselves of the remedies provided under the 1997 COA Revised Rules of Procedure (COA Rules), including filing a petition for review before the COA Proper; and (d) the ND identified the legal bases (*e.g.*, the Constitution, Corporation Code, DBM Circular, COA Circular) for the disallowances, as well as the persons liable therefor.[22]

Second, the payments contravene Section 30 of the Corporation Code because: (a) the Subsidiaries' respective by-laws do not provide for any additional compensation for its directors; (b) a resolution passed by a subsidiary's Board cannot be equated to the approval of its stockholders representing at least a majority of the outstanding capital stock, even if the Board is composed of representatives from the Parent Company (LBP) that, in turn, owns the majority interest in the Subsidiaries;[23] and (c) a board's act of voting to grant additional benefits to its own members has been held to be in excess of the board's authority, and thus, void.[24]

Third, LBP and the concerned Subsidiaries failed to support their contention that the subject payments were not new or additional benefits within the contemplation of the Office of the President Memorandum Order No. 20 dated June 25, 2001[25] "suspend[ing] the grant of any salary increases [*sic*] and new or increased benefits x x x not in accordance with those granted under the [Salary

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[22] *Id.* at 34-36.

[23] *Id.* at 36-37.

[24] *Id.* at 37; citing *Central Cooperative Exchange, Inc. v. Enciso*, 245 Phil. 665, 672 (1988).

[25] Under Office of the President Memorandum Order No. 20 dated June 25, 2001.

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Standardization Law]" to senior government officials "including Members of the Board of Directors or Trustees."[26]

Fourth, the payments are not authorized by any law or supported by the approval of the Office of the President, as required under DBM Circular Letter No. 2003-10.[27]

The COA Proper also denied the subsequent motion for reconsideration.

Hence, LBP and the concerned Subsidiaries filed the present petition.

The Petition

Petitioners argue that the COA Proper gravely abused its discretion in the following instances:

First, when it affirmed a disallowance that was issued in violation of their right to *due process* because: (a) it was not preceded by an AOM,[28] and (b) it did not expressly state any factual basis or contain substantial evidence establishing the responsibility of the persons held liable therefor.[29]

Second, when it disregarded the *legal bases* supporting the payment of the subject allowances and benefits, *viz.*:

(a) that the payment did not violate the prohibition on double compensation because: (i) the rule does not cover allowances and benefits paid to the individual payees who sat as Board members of the Subsidiaries but were not officers of the Parent Company (LBP), inasmuch as they did not hold any other public office;[30] (ii) while other payees were LBP officials at the time they were elected as Board members in the Subsidiaries, they held

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[26] *Rollo*, p. 37.

[27] *Id.*

[28] *Id.* at 10.

[29] *Id.* at 11-12.

[30] *Id.* at 13.

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two distinct offices[31] and did not serve the Boards in a mere *ex-officio* capacity; and (iii) with all of the Subsidiaries having been incorporated under the Corporation Code, the payment of its respective Board members' compensation, in general, is governed by said statute and is not sourced from government funds;[32]

(b) that the payment complies with the majority stockholder vote requirement under Section 30 of the Corporation Code because "the approval made by the Members of the Board during the Board meeting is equivalent to the approval by the stockholder";[33]

(c) that the payment is not irregular, unnecessary, excessive, or extravagant because the payees' expertise and technical knowledge were necessary to attain the Subsidiaries' targets. It only fairly compensated them for their time and effort for assuming additional responsibilities (as Board members in the Subsidiaries) on top of their banking functions (at the Parent Company/LBP);[34] and

(d) that the payment did not violate Office of the President Memorandum Order No. 20 dated June 25, 2001 and DBM Circular Letter No. 2003-10 dated October 17, 2003 because: (a) it did not involve new or increased benefits,[35] and (b) it was made before the issuances came into effect.[36]

Petitioners also insist that the concerned LBP officers received the allowances and benefits *in good faith*. Thus, relying on *Singson, et al. v. Commission on Audit*,[37] they are excused from the liability to refund the disallowed amount.[38]

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[31] *Id.* at 17.

[32] *Id.* at 16.

[33] *Id.* at 14.

[34] *Id.* at 21.

[35] *Id.* at 22.

[36] *Id.* at 23.

[37] 641 Phil. 154 (2010).

[38] *Rollo*, pp. 18-19.

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In its Comment,[39] the COA, through the Office of the Solicitor General, countered as follows: *first*, petitioners were accorded due process in that (a) their arguments were heard and they were given the opportunity to present evidence, provide their defense and explanation, and (b) the ND was supported by substantial evidence.[40] *Second*, the argument that the Subsidiaries were incorporated under the Corporation Code is erroneous. The LBP Subsidiaries are within the COA's jurisdiction.[41] *Third*, the payments lacked proper authority in that (a) the Subsidiaries' respective by-laws did not provide for the payment of additional compensation to the Board, and (b) these were not approved by the Office of the President.[42]

Issues

Based on the above submissions, the Court restates the issues as follows:

Due Process

1) Is an AOM mandatory in all disallowance cases?

2) Were petitioners properly notified of the charges against them?

Jurisdiction of the COA

1) May the COA disallow payments made by a government-owned and controlled corporation's subsidiaries, which were created under the Corporation Code?

2) Did the subject transaction involve public funds?

Legal Basis of the Disallowance

1) Did the subject payments pertain to "new" or "increased" benefits within the contemplation of Office of the President

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[39] *Id.* at 171-198.

[40] *Id.* at 178-179.

[41] *Id.* at 182-183.

[42] *Id.* at 192.

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Memorandum Order No. 20 dated June 25, 2001 and DBM Circular Letter No. 2003-10 dated October 17, 2003?

2) In a case where the corporation's Board is composed mostly of representatives of its sole stockholder, would a *resolution passed by the Board* substitute the majority stockholder vote requirement under Section 30 of the Corporation Code?

Liability for the Disallowance

Does good faith excuse the recipients from their liability to refund the disallowed amount?

The Court's Ruling

The petition is unmeritorious.

The Court does not find any grave abuse of discretion on the part of the COA Proper for upholding a disallowance that was validly issued and founded upon sufficient legal basis.

I
Due process

The COA's authority to disallow illegal disbursements and to proceed against individuals for their alleged participation therein comes with the concomitant duty to afford the parties so charged the opportunity to be heard. This responsibility includes giving *proper notice* to the persons held liable—one which affords them "a fair opportunity to set up an effective case for their defense"[43] or "squarely and intelligently answer"[44] the charges against them.

After a judicious review of the circumstances in the case at bar, the Court finds that the COA satisfied the due process requirements.

First, the absence of an AOM in the present case does not amount to a violation of due process.

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[43] *Id.*

[44] *Fontanilla v. The Commissioner Proper, COA*, 787 Phil. 713, 725 (2016).

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It is settled that an AOM is not mandatory in disallowance proceedings.[45] Proper communication of audit results and observations to the concerned individuals are by no means confined to the issuance of an AOM. It "*may* be in the form of a report, Certificate of Settlement and Balances, notice of disallowances and charges, audit observation, order or decision x x x."[46]

To recall, the subject ND was based on the 2003 Annual Audit Report of the LBP. Notably, the report's existence, due execution, and veracity have not been put in issue. Thus, the Court is inclined to uphold the presumption that the report was a result of the regular performance of COA's duties: that it was prepared in line with the reporting standards[47] set forth in the Government Auditing Code of the Philippines[48] (Audit Code), founded on sufficient evidence,[49] and duly communicated[50] to the concerned officials.

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[45] *Power Sector Assets and Liabilities Management Corporation v. Commission on Audit*, G.R. No. 213425, April 27, 2021.

[46] Section 4, Rule IV, 1997 Revised Rules of Procedure of the Commission on Audit (COA Rules).

[47] Section 56 of Presidential Decree No. (PD) 1445.

[48] PD 1445, approved on June 11, 1978.

[49] Section 3, Rule IV of the COA Rules provides:

SECTION 3. *Responsibility to Accumulate Sufficient Evidence*. — The Auditor shall obtain, accumulate, and safeguard sufficient evidence to provide an appropriate factual bases for his opinions, conclusions, judgments recommendations. Evidence needed to support his findings may be (1) physical evidence obtained by observation, photograph, ocular inspection, or similar means, (2) testimonial evidence obtained by interviewing and taking sworn statements from witnesses, (3) documentary evidence consisting of letters, contracts, reports, extracts from books of accounts, invoices, receipts and computer print-outs and (4) analytical evidence such as analysis sheets/working papers prepared.

The technicalities of law and the rules governing the admissibility and sufficiency of evidence obtaining in the courts of law shall not strictly apply.

[50] Section 5, Rule IV of the COA Rules requires the COA to provide a copy of the report to the head of the agency audited. In addition, Section 56 of the Audit Code requires audit reports to consider and include "recognition of the views of responsible officials of the agency audited on the auditors' findings, conclusions and recommendations."

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Second, the ND sufficiently set forth the factual and legal bases of the disallowance and finding of liability against petitioners.

As a matter of due process, an ND "shall clearly and distinctly state [the] findings of fact, conclusions, recommendations and dispositions."[51] In turn, the factual findings and conclusions therein shall be based on adequate evidence and supported by applicable legal basis, respectively.

The subject ND was issued based on the *2003* Annual Audit Report of the LBP from which the COA *noted* that certain individuals had been (a) officers and/or employees of the *Parent Company* and, at the same time, (b) members of the Board and/or corporate officers in the *Subsidiaries* receiving additional allowances and benefits. As borne by the records, the Subsidiaries subsequently wrote a *letter-reply dated August 24, 2004*[52] pointing out that they had already discontinued paying some of the benefits and allowances identified in the report. Thus, COA cited the following laws and regulations as bases for the ND: (a) Section 30 of the Corporation Code; (b) Section 8, Article IX-B of the 1987 Constitution; (c) Memorandum Order No. 20 dated June 25, 2001; and (d) Department of Budget and Management (DBM) Circular Letter No. 2003-10 dated October 17, 2003.[53]

Third, petitioners were sufficiently apprised of all relevant information necessary to refute the charges against them.

Based on petitioners' own account,[54] the Subsidiaries were able to explain the findings and observations in the 2003 Annual Audit

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[51] Section 4, Rule IV of the COA Rules provides:

SECTION 4. *Report, Certificate of Settlement and Balances, Notice of Disallowances and Charges, Order or Decision of the Auditor*. — x x x The factual findings 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 on which the report, Certificate of Settlement and Balances, notice of disallowances and charges and order or decision are based.

[52] *Rollo*, p. 173.

[53] *Id.* at 44.

[54] *Id.* at 6.

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Report and appeal the ND before the COA Proper *via* a petition for review. Petitioners' response to the COA's findings altogether contradicts their claim that they were denied due process.

II
Jurisdiction of the COA

Petitioners aver that the subject allowances and benefits, having been paid by entities (Subsidiaries) incorporated under the Corporation Code, were not sourced from government funds. The Court rejects this attempt to remove the subject matter of the controversy from the COA's jurisdiction.

The Subsidiaries fall squarely within the COA's jurisdiction, in view of the 1987 Constitution's provision extending its authority to "government-owned or controlled corporations and their *subsidiaries*."[55] On the other hand, it is undisputed that the subject allowances and benefits were paid to LBP officials, who are civil servants. Thus, the amounts are cloaked with the character of *public funds*, inasmuch as "all moneys and property officially received by a public officer in any capacity or upon any occasion must be accounted for as government funds and government property."[56]

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[55] Article IX (D), Section 2(1)(c), 1987 Constitution. Also see Sections 3 (8) and 26, Audit Code.

[56] Section 63 of PD 1445 provides:

SECTION 63. *Accounting for Moneys and Property Received by Public Officials*. — Except as may otherwise be specifically provided by law or competent authority all moneys and property officially received by a public officer in any capacity or upon any occasion must be accounted for as government funds and government property. Government property shall be taken up in the books of the agency concerned at acquisition cost or an appraised value.

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III
Legal Basis of the Disallowance

Disbursement of public funds that is contrary to law, unauthorized,[57] or without statutory basis[58] shall be disallowed for being illegal or irregular,[59] as the case may be.[60]

Office of the President Memorandum Order No. 20 and DBM Circular Letter No. 2003-10

There is merit in petitioners' argument that reliance on DBM Circular Letter No. 2003-10 dated October 17, 2003 is erroneous, inasmuch as the issuance took effect only after the subject allowances and benefits, were paid in 2002/2003.

However, the allowances and benefits in question violate Office of the President Memorandum Order No. 20, Series of 2001.[61] This executive issuance suspended "the grant of any salary increases and new or increased benefits x x x not in accordance with the

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[57] Section 4(5) of PD 1445 provides:

SECTION 4. *Fundamental Principles*. — Financial transactions and operations of any government agency shall be governed by the fundamental principles set forth hereunder, to wit:

x x x

(5) Disbursements or disposition of government funds or property shall invariably bear the approval of the proper officials.

x x x

[58] Section 4(1) of PD 1445 provides:

SECTION 4. *Fundamental Principles*. — x x x

(1) No money shall be paid out of any public treasury of depository except in pursuance of an appropriation law or other specific statutory authority.

[59] Paragraph 3.1, COA Circular No. 85-55-A, September 8, 1985.

[60] See *Advincula v. Commission on Audit*, G.R. No. 209712, February 16, 2021.

[61] Entitled, "Directing Heads of Government-Owned and -Controlled Corporations (GOCCs), Government Financial Institutions (GFIs) and Subsidiaries Exempted From or Not Following the Salary Standardization Law (SSL) to Implement Pay Rationalization in All Senior Officer Positions," signed on June 25, 2001.

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[Salary Standardization Law]"[62] to all GOCC personnel occupying senior officer level positions, including Board members. Should the GOCC nonetheless grant any such increase or new benefit, it is required to obtain executive approval therefor.

While petitioners do not dispute the disbursements' lack of presidential approval, they insist that Memorandum Order No. 20 does not apply to the subject allowances and benefits because these were not "new" or "increased" benefits. However, apart from this bare assertion, petitioners do not offer any evidence to support this claim.

Authority to Grant Additional Allowances and Benefits to Board Members

The payment of additional allowances and benefits to petitioners as members of the Subsidiaries' Boards lacks legal basis because these are founded upon *ultra vires* resolutions.

The compensation of Board members of corporations established under the Corporation Code is governed by Section 30 thereof, *viz.*:

> SECTION 30. *Compensation of Directors*. — In the absence of any provision in the by-laws fixing their compensation, the directors shall not receive any compensation, as such directors, except for reasonable per diems: Provided, however, That any such compensation (other than per diems) may be granted to directors by the vote of the stockholders representing at least a majority of the directors, exceed ten (10%) percent of the net income before income tax of the corporation during the preceding year.

As a general rule, Board members shall receive no compensation other than reasonable *per diems*. By exception, they may receive additional compensation when the corporate by-laws so provide or "when the stockholders representing a majority of the outstanding capital stock at a regular or special stockholders' meeting agree to give it to them."[63]

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[62] Section 1, *id.*

[63] *Western Institute of Technology, Inc. v. Salas*, 343 Phil. 742, 751 (1997).

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Verily, the following circumstances are attendant in the present case:

(a) The Subsidiaries are wholly-*owned* subsidiaries of the LBP/ Parent Company.

(b) Necessarily, the Parent Company is the *largest and only stockholder* in each of the Subsidiaries.

(c) The Subsidiaries' respective Boards were composed of individuals (majority of the petitioners) who were also key officials employed by the largest stockholder.

However, these cannot be taken to mean that the Boards' approval *via* a resolution will take the place of the stockholder vote requirement under Section 30.

There is a dichotomy between the Board and stockholders: the former is a body tasked with the management of general corporate affairs and the latter are the owners of the corporation in which they have invested capital.

To be sure, these officials from the parent company acted in their capacity as Board members of the LBP subsidiaries and *not* as proxies of the Parent Company to vote in stockholders' meetings. This is consistent with the basic principle that a corporation, managed by the Board, has a *separate legal personality* from its stockholders.

While the general corporate powers are lodged in the Board,[64] certain corporate acts require the stockholders' exclusive approval or their concurrence/assent. In particular, the stockholders have the sole power to elect members to the Board[65] and determine their additional compensation.[66] Also, the corporation's by-laws may provide additional compensation to Board members. However, even the *adoption* of the by-laws[67] and any *amendment* thereto[68]

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[64] See *Lim v. Moldex Land, Inc.*, 804 Phil. 341, 362 (2017).

[65] Section 24, Batas Pambansa Blg. 68.

[66] Section 30, *id.*

[67] Section 46, *id.*

[68] Section 48, *id.*

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require the stockholders' approval. Stockholders' approval is indispensable, inasmuch as there will be a conflict of interest if the Board is left to decide these matters for themselves.[69]

In these lights, the Subsidiaries' Board resolutions granting additional allowances and benefits to its own members are *ultra vires* acts. These amount to an arrogation of a power reserved to the stockholders.[70]

IV
Liability for the Disallowance

The payees and approving and/or certifying officers are liable for the disallowed amount. Their respective liabilities are discussed below.

Members of the Subsidiaries' Boards

The payees or the LBP officials who received the disallowed allowances and benefits from the Subsidiaries are liable to refund these amounts. Petitioners' proposition that the payees received the amounts in good faith is not an effective defense against their liability for the disallowance.

Allowances and benefits paid in contravention of the law are payments through error or mistake.[71] Thus, the prevailing rule prevents the recipients of these illegal disbursements from unjustly enriching themselves and requires them to return to the government the amounts mistakenly received. By exception, they may be excused from the liability to refund if: (a) they establish that the amounts they received were "genuinely given in consideration of services rendered" or (b) the Court decides to do so "based on undue prejudice, social justice considerations, and other *bona fide* exceptions" as the factual circumstances in the case may warrant.

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[69] See *Agdao Landless Residents Association, Inc., et al. v. Maramion, et al.*, 797 Phil. 281 (2016).

[70] See *Central Cooperative Exchange, Inc. v. Enciso*, 245 Phil. 665, 672 (1988) as relied upon by the COA Proper in the assailed decision.

[71] See *National Transmission Corp. v. Commission on Audit*, G.R. No. 232199, December 1, 2020.

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None of the exceptions are present in the case. *First*, as discussed above, the payment lacks legal basis. Thus, it cannot be regarded as a consideration genuinely given as compensation for services rendered.[72] *Second*, the subject payment was borne out of the Subsidiaries' Board's self-determination of the entitlement to additional compensation of its *own members*.

Again, We underscore that "the Court's decision to excuse a civil servant from his liability to refund the salaries clearly received by virtue of a patently illegal directive to disburse and, thus, by mistake must rest on 'truly exceptional circumstances.'"[73]

Significantly, these officials were *payees* (they received the additional benefits) and, at the same time, *approving officers* (they approved the Board resolutions granting the benefits) in the transactions in question. They passed resolutions to *grant themselves additional compensation*. It is clear that these are *ultra vires* and executed in disregard of patent conflict of interest. The Court cannot ignore their *direct participation* in the illegal disbursements.

Thus, these officials must answer for the disallowance in both capacities: *first*, as *payees* who are liable for the *individual* amounts they received by mistake, and *second, erring approving officers* who are *solidarily liable* for the total disallowance.

Other Approving and/or Certifying officers

The other approving and/or certifying officers—consisting of the Subsidiaries' respective accountants, treasurers, cashiers, general managers, etc., who approved or certified the disbursement, but did not receive any amount therefrom—are relieved from liability.

As public officers, these individuals are presumed to have performed their duties regularly and in good faith." Without clear

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[72] See *Abellanosa v. COA*, G.R. No. 185806, November 17, 2020.

[73] *National Transmission Corp. v. Commission on Audit, supra* note 71, citing the Concurring Opinion of Associate Justice Henri Jean Paul B. Inting in *Madera v. Commission on Audit*.

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proof of bad faith, malice, or gross negligence, they shall not be personally liable for damages resulting from the performance of official duties."[74] In the present case, the COA focused on the participation of the Subsidiaries' Boards, who were *payees* and *approving officers* simultaneously in the transaction in question. However, there is no evidence showing that the implicated accountants, treasurers, cashiers, general managers, etc. performed their duties in bad faith or negligently.

Notwithstanding exoneration, this ruling is without prejudice to any appropriate *administrative and criminal action* that may be instituted against these *approving and/or certifying* officers.[75]

WHEREFORE, the petition is **DISMISSED**. The Decision No. 2012-018 dated February 16, 2012 of the Commission on Audit, Commission Proper, is **AFFIRMED WITH MODIFICATION**. The members of the Land Bank of the Philippines' subsidiaries' boards of directors, as erring approving officers, are held solidarily liable for the return of the disallowed amount under Notice of Disallowance No. LBP-Subs. 2008-015 (2002-2003), while the payees are individually liable for the return of the disallowed amounts they respectively received.

SO ORDERED.

Gesmundo, C.J., Perlas-Bernabe, Caguioa, Hernando, Carandang, Lazaro-Javier, Zalameda, M. Lopez, Gaerlan, Rosario, J. Lopez, and *Dimaampao, JJ.*, concur.

Leonen, J., on official leave.

APPEARANCES OF COUNSEL

LBP Legal Services Group for petitioners.
The Solicitor General for respondent.

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[74] *Id.*

[75] *Id.*