Republic of the Philippines
Supreme Court
Manila

EN BANC

GENEROSO G. ABELLANOSA, CARMENCITA D. PINEDA, BERNADETTE R. LAIGO, MENELIO D. RUCAT, and DORIS A. SIAO,
Petitioners,

- versus -

COMMISSION ON AUDIT and NATIONAL HOUSING AUTHORITY,
Respondents.

G.R. No. 185806

Present:

PERALTA, *C.J.*,
PERLAS-BERNABE,
LEONEN,
CAGUIOA,
GESMUNDO,
HERNANDO,
CARANDANG,
LAZARO-JAVIER,*
INTING,
ZALAMEDA,
LOPEZ,
DELOS SANTOS,
GAERLAN, and
ROSARIO, *JJ.*

Promulgated:

November 17, 2020

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RESOLUTION

PERLAS-BERNABE, *J.*:

For the Court's resolution is the motion[1] filed by petitioners Generoso G. Abellanosa (Abellanosa), Carmencita D. Pineda (Pineda), Bernadette R. Laigo (Laigo), Menelio D. Rucat (Rucat), and Doris A. Siao (Siao; collectively, petitioners) seeking reconsideration of the Decision[2] dated July

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* On official leave.
1 Dated September 7, 2012; *rollo*, pp. 327-340.
2 Id. at 310-323.

24, 2012 of the Court, which affirmed the Decision No. 2008-102[3] dated October 24, 2008 of the Commission on Audit (COA) upholding the disallowance of incentive allowances in the total amount of ₱401,284.39.

The Facts

On June 23, 1982, the Board of Directors of the National Housing Authority (NHA), acting pursuant to Presidential Decree No. (PD) 757,[4] issued Resolution No. 464[5] authorizing, *inter alia*, the grant of incentive allowances equivalent to 20% of basic pay in favor of **project personnel who were assigned to regions outside their regular station**:

> RESOLVED, that to encourage personnel particularly those in technical/professional category to seek assignment with the projects and once there, to make them want to stay in the organization, the grant of additional Incentive Benefits to project personnel, to wit:
>
> A. **Personnel from one Region assigned to another Region** (e.g., Metro Manila to Visayas or Mindanao):
>
> 1. **Incentive Allowance equivalent to 20% of basic pay.**
> 2. Air fare (once a quarter).
> 3. Flight Insurance (Not more than ₱10.00 premium per flight)[.]
> 4. Staff housing.
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> x x x x[6] (emphases supplied)

The foregoing resolution was then implemented by NHA Memorandum Circular No. 331[7] dated August 17, 1984, reiterating the entitlement of project personnel to incentive allowances if they are "**[a]ssigned in a project other than [their] region of original placement.**"[8]

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3 Id. at 46-54. Signed by Chairman Reynaldo A. Villar and Commissioner Juanito G. Espino, Jr.

4 See Section 10 of Presidential Decree No. 757, entitled as "CREATING THE NATIONAL HOUSING AUTHORITY AND DISSOLVING THE EXISTING HOUSING AGENCIES, DEFINING ITS POWERS AND FUNCTIONS, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES," approved on July 31, 1975, which reads:

> Section 10. Organizational Structure of the Authority. The Board shall determine the organizational structure of the Authority in such manner as would best carry out its powers and functions and attain the objectives of this Decree.
>
> The General Manager shall, subject to the approval of the Board, determine and appoint the subordinate officers, other personnel, and consultants, if necessary, of the Authority: Provided, That the regular, professional and technical personnel of the Authority shall be exempt from the rules and regulations of the Wage and Position Classification Office and from the examination and/or eligibility requirement of the Civil Service Commission. **Subject to the approval of the Board, the General Manager shall likewise determine the rates of allowances, honoraria and such other additional compensation which the authority is hereby authorized to grant to its officers, technical staff and consultants, including the necessary detailed personnel.** (Emphasis supplied)

5 *Rollo*, p. 67.

6 Id.

7 Id. at 89-92.

8 Id. at 90.

The subject allowances were, however, discontinued in light of the enactment of Republic Act No. (RA) 6758,[9] otherwise known as the "Compensation and Position Classification Act of 1989."[10] To recount, Section 12 of RA 6758 integrated all allowances and benefits paid to government personnel as part of their standardized salaries, save for certain exceptions. Consequently, pursuant to Section 23[11] of RA 6758, the Department of Budget and Management (DBM) issued Corporate Compensation Circular (CCC) No. 10 entitled "Rules and Regulations for the Implementation of the Revised Compensation and Position Classification System Prescribed under RA 6758 for Government-Owned and/or Controlled Corporations and Financial Institutions (GFIs)."

Eventually, the NHA resumed payment of the subject allowances after the Court, in its August 12, 1998 ruling in *De Jesus v. COA*,[12] struck down DBM CCC No. 10 for lack of publication. This prompted **petitioners, who were NHA employees stationed at Cagayan de Oro City but assigned to other areas in Mindanao**, to demand full back payment of incentive allowances for the period of February 1994 to December 1999, for which they were able to receive the partial sum of ₱808,645.90.[13] To further recover the unpaid balance amounting to ₱1,003,210.96,[14] petitioners filed claims for payment with the NHA head office. Uncertain about the legality of these claims, the NHA sought clarification from the Commission on Audit (COA).[15]

Pending clarification, however, on September 19, 2001, Abellanosa, in his capacity as officer-in-charge of the NHA Iligan District Office, authorized the disbursement of the amount of **₱100,321.10**,[16] representing part of the aforementioned balance, with him and other petitioners as payees.[17]

On September 18, 2001, the COA issued an adverse opinion relative to the incentive allowances; thus, the NHA informed Abellanosa that the payment of the same should be discontinued for lack of legal basis.[18] This notwithstanding, on February 20, 2003, Abellanosa, once again, authorized

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9 Entitled "An Act Prescribing a Revised Compensation and Classification System in the Government and for Other Purposes," approved on August 21, 1989.

10 See NHA Memorandum dated January 25, 1991; *rollo*, p. 200.

11 Section 23. *Effectivity.* – This Act shall take effect July 1, 1989. **The DBM shall, within sixty (60) days after its approval, allocate all positions in their appropriate position titles and salary grades and prepare and issue the necessary guidelines to implement the same.** (Emphasis supplied)

12 355 Phil. 584 (1998).

13 Broken down as follows: (1) Abellanosa, the amount of ₱204,407.80; (2) Laigo, the amount of ₱178,494.20; (3) Pineda, the amount of ₱171,216.30; (4) Rucat, the amount of ₱93,310.60; and (5) Siao, the amount of ₱161,217.00. (See *rollo*, p. 314.)

14 See Memorandum dated August 21, 2001; id. at 216.

15 See id. at 314-315.

16 See Disbursement Voucher No. 092604 dated September 19, 2001; id. at 70.

17 See id. at 315.

18 See NHA Memorandum dated September 25, 2001; not attached to the *rollo*. See also NHA Memorandum dated November 14, 2002; id. at 355-356.

the disbursement of the amount of **₱300,963.29** as incentive allowances, with him and other petitioners as payees.[19]

On January 24, 2005, the Legal and Adjudication Office of the COA **disallowed** [20] the foregoing disbursements in the total amount of ₱401,284.39[21] for lack of legal basis and held petitioners, including a certain Jerry R. Baviera (Baviera), liable in the following capacities: (*a*) Abellanosa, as approving officer and payee; (*b*) Laigo, as certifying officer and payee; and (*c*) Pineda, Rucat, Siao, and Baviera, each as payees.[22]

Aggrieved, petitioners appealed the notice of disallowance (ND) to the Adjudication and Settlement Board of the COA (ASB-COA), essentially arguing that RA 6758 does not apply to the NHA incentive allowances as the same were authorized prior to the passage of the said law, and pointing out that its implementing issuance, *i.e.*, DBM CCC No. 10, was already struck down by the Court.[23]

The Ruling of the ASB-COA

In a Decision[24] dated April 10, 2007, the ASB-COA **affirmed** the disallowance.[25] It held that the authorization and payment of the incentive allowances were illegal since the NHA's power to grant such amounts under PD 757 had already been repealed by Section 3[26] of PD 1597[27] and Section 16[28] of RA 6758.[29]

Dissatisfied, petitioners appealed to the COA proper.

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19 See Disbursement Voucher No. 023146 dated February 20, 2003; id. at 69. See also id. at 315.

20 See Notice of Disallowance No. NHA-2005-001 (01&03) dated January 24, 2005 issued by Director IV Rogelio D. Tablang; id at 64-65.

21 Broken down as follows: (1) Abellanosa, the amount of ₱86,854.08; (2) Jerry R. Baviera, the amount of ₱54,956.80; (3) Laigo, the amount of ₱65,299.92; (4) Pineda, the amount of ₱102,847.75; (5) Rucat, the amount of ₱33,796.64; and (6) Siao, the amount of ₱57,529.20; see id.

22 See id. at 316.

23 See id. at 58 and 60.

24 Id. 55-63. Signed by Assistant Commissioners Elizabeth S. Zosa, Emma M. Espina, Carmela S. Perez, Jaime P. Naranjo, and Amorsonia B. Escarda.

25 Id. at 62.

26 Section 3. Repeal of Special Salary Laws and Regulations. - All laws, decrees, executive orders and other issuances or parts thereof, that exempt agencies from the coverage of the National Compensation and Position Classification System as established by P.D. No. 985 and P.D. No. 1285, or which authorize and fix position classification, salaries, pay rates/ranges or allowances for specified positions, to groups of officials and employees, or to agencies, that are inconsistent with the position classification or rates in the National Compensation and Position Classification Plan, are hereby repealed.

27 Entitled, "FURTHER RATIONALIZING THE SYSTEM OF COMPENSATION AND POSITION CLASSIFICATION IN THE NATIONAL GOVERNMENT," approved on June 11, 1978.

28 Section 16. *Repeal of Special Salary Laws and Regulations.* – All laws, decrees, executive orders, corporate charters, and other issuances or parts thereof, that exempt agencies from the coverage of the System, or that authorize and fix position classification, salaries, pay rates or allowances of specified positions, or groups of officials and employees or of agencies, which are inconsistent with the System, including the proviso under Section 2, and Section 16 of Presidential Decree No. 985 are hereby repealed.

29 See *rollo,* pp. 58-62.

The Ruling of the COA Proper

In a Decision[30] dated October 24, 2008, the COA **affirmed** the ruling of the ASB-COA.[31] In the same vein, it held that the subject allowances granted by the NHA to its displaced employees lacked legal basis.[32]

Unperturbed, petitioners elevated the matter to the Court *via* a petition for *certiorari* under Rule 64, in relation to Rule 65 of the Rules of Court, arguing, among others, that: (*a*) the grant of incentive allowances was well within the NHA's authority as provided by PD 757; (*b*) such authority was not repealed by PD 1597 and RA 6758; and (*c*) the disallowance of the same was unjust.[33]

Proceedings Before this Court

In a Decision[34] dated July 24, 2012 (July 24, 2012 Decision), the Court **affirmed** the ruling of the COA.[35] Finding no grave abuse of discretion on the latter's part, the Court ruled that the issuance of NHA Resolution No. 464 had no legal basis as Section 3 of PD 1597 had already repealed all laws permitting the grant of such allowances to government employees. Furthermore, it observed that the grant of the incentives also violated the rule on integration of allowances under Section 12 of RA 6758.[36]

On September 19, 2012, petitioners filed the instant motion[37] seeking reconsideration of the Court's July 24, 2012 Decision on the main. At the onset, petitioners reiterated their previous arguments relative to the propriety of the subject allowances. Further, petitioners claimed that, even assuming that the incentives' disallowance was proper, they should not be held liable to refund the same since the amounts were received by them in good faith.

The Court's Ruling

The motion is partly meritorious.

Preliminarily, the Court observes that petitioner's contentions anent the propriety of the disallowance in this case are a mere rehash of its arguments already passed upon in the July 24, 2012 Decision. In their motion, petitioners reiterate that the payment of the incentive allowances were duly made in

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30 Id. at 46-54. Signed by Chairman Reynaldo A. Villar and Commissioner Juanito G. Espino, Jr.
31 Id. at 53.
32 See id. at 50-53.
33 See id. at 22-40.
34 Id. at 310-323.
35 Id. at 321.
36 See id. at 319-321.
37 Dated September 7, 2012. Id. at 327-341.

accordance with the NHA's authority under PD 757. However, as correctly held in the main Decision, the grant of such allowances are devoid of legal basis, considering that "Section 3 of [PD] 1597 had already expressly repealed all decrees, executive orders, and issuances that authorized the grant of allowances to groups of officials or employees [inconsistent] x x x with the x x x National Compensation and Position Classification Plan" [38] of the government.

Likewise, the Court had aptly ruled that the NHA's power to grant such allowances had already been superseded by Section 12 of RA 6758, which integrated all allowances not specifically exempted into the standardized salary rates of government officials and employees. In this case, the incentive allowances granted under Resolution No. 464 do not fall under the following items provided under Section 12:

1. Representation and transportation allowances (RATA);
2. Clothing and laundry allowances;
3. Subsistence allowances of marine officers and crew on board government vessels;
4. Subsistence allowance of hospital personnel;
5. Hazard pay;
6. Allowance of foreign service personnel stationed abroad; and
7. **Such other additional compensation not otherwise specified herein as may be determined by the DBM.** (Emphasis supplied)

Hence, notwithstanding petitioners' claim that the incentive allowances were incidental to and necessary for the enforcement of the NHA's powers and duties, the same can no longer be granted in light of the express provisions of RA 6758 which, upon its effectivity, rationalized government salary rates in pursuit of similarly noteworthy objectives. As such, the propriety of their disallowance is upheld.

Nevertheless, in view of the recent landmark ruling in *Madera v. COA*[39] (*Madera*), the Court deems it proper to partially reconsider the July 24, 2012 Decision insofar as petitioners' civil liability to return the disallowed amounts is concerned.

In *Madera*, the Court laid down the Rules on Return to be applied in cases involving disallowed personnel incentives and benefits:

E. The Rules on Return

In view of the foregoing discussion, the Court pronounces:

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38 Id. at 319.

39 See G.R. No. 244128, September 8, 2020.

1. If a Notice of Disallowance is set aside by the Court, no return shall be required from any of the persons held liable therein.
2. If a Notice of Disallowance is upheld, the rules on return are as follows:
   a. Approving and certifying officers who acted in good faith, in regular performance of official functions, and with the diligence of a good father of the family are not civilly liable to return consistent with Section 38 of the Administrative Code of 1987.
   b. Approving and certifying officers who are clearly shown to have acted in bad faith, malice, or gross negligence are, pursuant to Section 43 of the Administrative Code of 1987, solidarily liable to return **only the net disallowed amount, which, as discussed herein, excludes amounts excused under the following sections 2c and 2d.**
   c. **Recipients — whether approving or certifying officers or mere passive recipients — are liable to return the disallowed amounts respectively received by them, unless they are able to show that the amounts they received were genuinely given in consideration of services rendered.**
   d. The Court may likewise excuse the return of recipients based on undue prejudice, social justice considerations, and other *bona fide* exceptions as it may determine on a case to case basis.[40] (Emphases supplied)

Based on the *Madera* Rules on Return, the public officers ordinarily held liable under disallowance cases involving personnel incentives and benefits are classified as either (1) an approving/authorizing officer or (2) a payee-recipient. As will be herein explained, their civil liabilities to return are correspondingly governed by distinct legal nuances under two basic frameworks of law.

Civil liability to return of an approving/authorizing officer.

When a public officer is to be held civilly liable in his or her capacity as an approving/authorizing officer, the liability is to be viewed from the public accountability framework of the Administrative Code. This is because *the civil liability is rooted on the errant performance of the public officer's official functions, particularly in terms of approving/authorizing the unlawful expenditure.* As a general rule, a public officer has in his or her favor the presumption that he or she has regularly performed his or her official duties and functions. For this reason, **Section 38 (1), Chapter 9, Book I of the Administrative Code of 1987** requires a clear showing of bad faith, malice, or gross negligence attending the performance of such duties and functions to hold approving/authorizing officer civilly liable:

> Section 38. *Liability of Superior Officers.* – (1) A public officer shall **not be civilly liable** for acts done in the performance of his official duties, unless there is a **clear showing of bad faith, malice or gross negligence**. (Emphases and underscoring supplied)

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[40] See id.

The need to first prove bad faith, malice, or gross negligence before holding a public officer civilly liable traces its roots to the State agency doctrine – a core concept in the law on public officers. From the perspective of administrative law, public officers are considered as agents of the State; and as such, acts done in the performance of their official functions are considered as acts of the State. In contrast, when a public officer acts negligently, or worse, in bad faith, the protective mantle of State immunity is lost as the officer is deemed to have acted outside the scope of his official functions; hence, he is treated to have acted in his personal capacity and necessarily, subject to liability on his own.[41]

Once the existence of bad faith, malice, or gross negligence as contemplated under Section 38, Chapter 9, Book I of the Administrative Code of 1987 is clearly established, the liability of approving/authorizing officers to return disallowed amounts based on an unlawful expenditure is solidary together with all other persons taking part therein, as well as every person receiving such payment. This solidary liability is found in Section 43, Chapter 5, Book VI of the Administrative Code of 1987, which states:

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

With respect to "**every official or employee authorizing or making such payment**" in bad faith, with malice, or gross negligence, the law justifies holding them solidarily liable for amounts they may or may not have received, considering that the payee-recipients would not have received the disallowed amounts if it were not for the officers' errant discharge of their official duties and functions.[42]

Civil liability to return of payee-recipient of personnel incentives/benefits.

On the other hand, when a public officer is to be held civilly liable not in his or her capacity as an approving/authorizing officer but merely as a payee-recipient innocently receiving a portion of the disallowed amount, the liability is to be viewed not from the public accountability framework of the Administrative Code but instead, from the lens of unjust enrichment and the principle of *solutio indebiti* under a purely civil law framework. The reason

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41 See Separate Concurring Opinion of Senior Associate Justice Estela M. Perlas-Bernabe in *Madera*.
42 See id.

for this is because *the civil liability of such payee-recipient – in contrast to an approving/authorizing officer – has no direct substantive relation to the performance of one's official duties or functions, particularly in terms of approving/authorizing the unlawful expenditure.* As such, the payee-recipient is treated as a debtor of the government whose civil liability is based on *solutio indebiti*, which is a distinct source of obligation.

When the civil obligation is sourced from *solutio indebiti*, good faith is inconsequential.[43] Accordingly, previous rulings absolving passive recipients solely and automatically based on their good faith contravene the true legal import of a *solutio indebiti* obligation and, hence, as per *Madera*, have now been abandoned. Thus, as it stands, **the general rule is that recipients, notwithstanding their good faith, are civilly liable to return the disallowed amounts they had individually received on the basis of *solutio indebiti.***

This notwithstanding, the Court in *Madera* also recognized certain exceptions to the general rule on return. Bearing in mind its underlying premise, which is "the ancient principle that no one shall enrich himself unjustly at the expense of another,"[44] *solutio indebiti* finds no application where recipients were not unjustly enriched[45] at the expense of the government. Particularly, these pertain to disallowed personnel incentives and benefits which are either: (1) **genuinely given in consideration of services rendered** (*see* **Rule 2c** of the *Madera* Rules on Return); or (2) **excused by the Court to be returned on the basis of undue prejudice, social justice considerations, and other *bona fide* exceptions as may be determined on a case-to-case basis** (*see* **Rule 2d** of the Madera Rules on Return).

As a supplement to the *Madera* Rules on Return, the Court now finds it fitting to clarify that in order to fall under Rule 2c, *i.e.*, amounts genuinely given in consideration of services rendered, the following requisites must concur:

> **(*a*) the personnel incentive or benefit has proper basis in law but is only disallowed due to irregularities that are merely procedural in nature; and**
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> **(*b*) the personnel incentive or benefit must have a clear, direct, and reasonable connection to the actual performance of the payee-recipient's official work and functions for which the benefit or incentive was intended as further compensation.**

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43 Good faith cannot be appreciated as a defense against an obligation under *solutio indebiti* as it is "'forced' by operation of law upon the parties, not because of any intention on their part but in order to prevent unjust enrichment." (See *Philippine National Bank v. Court of Appeals*, 291 Phil. 356, 367 [1993].)

44 *Ramie Textiles, Inc. v. Mathay, Sr.*, 178 Phil. 482, 487 (1979).

45 See *Power Commercial and Industrial Corp. v. Court of Appeals*, 340 Phil. 705 (1997).

Verily, these refined parameters are meant to prevent the indiscriminate and loose invocation of Rule 2c of the *Madera* Rules on Return which may virtually result in the practical inability of the government to recover. To stress, Rule 2c as well as Rule 2d should remain true to their nature as exceptional scenarios; they should not be haphazardly applied as an excuse for non-return, else they effectively override the general rule which, again, is to return disallowed public expenditures.

With respect to the first requisite above mentioned, Associate Justice Alfredo Benjamin S. Caguioa (Justice Caguioa) – the *ponente* of *Madera* – aptly points out that the exception under Rule 2c was not intended to cover compensation not authorized by law or those granted against salary standardization laws. Thus, amounts excused under the said rule should be understood **to be limited to disbursements adequately supported by factual and legal basis,**[46] **but were nonetheless validly disallowed by the COA on account of procedural infirmities.** As the esteemed magistrate observes, these may include amounts, such as basic pay, fringe benefits, and other fixed or variable forms of compensation permitted under existing laws, which were granted without the due observance of procedural rules and regulations (*e.g.*, matters of form, or inadequate documentation supplied/rectified later on). As Justice Caguioa explains:[47]

> Under this rubric, **the benefits that the Court may allow payees to retain as an exception to Rule 2c's rule of return on the basis of *solutio indebiti* are limited to compensation authorized by law including: (i) basic pay in the form of salaries and wages; (ii) other fixed compensation in the form of fringe benefits authorized by law; (iii) variable compensation (*e.g.*, honoraria or overtime pay) within the amounts authorized by law despite the procedural mistakes that might have been committed by approving and certifying officers.**[48] These, to my mind, are the only forms of compensation that can truly be considered "genuinely given in consideration of services rendered," such that their recovery (by the government) which results from a disallowance (again, only because of procedural mistakes that might have been committed by approving and certifying officers) means the government is unjustly enriched (*i.e.*, it benefitted from services received from its employees without making payment for it).
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> The exception to Rule 2c was **not** intended to cover all allowances that can be considered "genuinely given in consideration of services rendered" so as to defeat the general rule that payees are liable to return disallowed personnel benefits that they respectively received. (Emphases and underscoring supplied)

Aside from having proper basis in law, the disallowed incentive or

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[46] See Reflections of Justice Caguioa, pp. 2-7.

[47] Id. at 3-4.

[48] Citing Total Compensation Chart, Manual on Position Classification and Compensation, Chapter 3, p. 3-3.

benefit must have a clear, direct, and reasonable connection to the actual performance of the payee-recipient's official work and functions. Rule 2c after all, excuses only those benefits "genuinely given in consideration of services rendered"; in order to be considered as "genuinely given," not only does the benefit or incentive need to have an ostensible statutory/legal cover, **there must be actual work performed and that the benefit or incentive bears a clear, direct, and reasonable relation to the performance of such official work or functions**. To hold otherwise would allow incentives or benefits to be excused based on a broad and sweeping association to work that can easily be feigned by unscrupulous public officers and in the process, would severely limit the ability of the government to recover.

The same considerations ought to underlie the application of Rule 2d as a ground to excuse return. In *Madera*, the Court also recognized that the existence of undue prejudice, social justice considerations, and other *bona fide* exceptions, as determined on a case-to-case basis, may also negate the strict application of *solutio indebiti*. This exception was borne from the recognition that in certain instances, the attending facts of a given case may furnish an equitable basis for the payees to retain the amounts they had received. While Rule 2d is couched in broader language as compared to Rule 2c, the application of Rule 2d should always remain true to its purpose: **it must constitute a *bona fide* instance which strongly impels the Court to prevent a clear inequity arising from a directive to return.** Ultimately, it is only in **highly exceptional circumstances, after taking into account all factors** (such as the nature and purpose of the disbursement, and its underlying conditions) that the civil liability to return may be excused. For indeed, it was never the Court's intention for Rules 2c and 2d of *Madera* to be a jurisprudential loophole that would cause the government fiscal leakage and debilitating loss.

It is important to rein in Rules 2c and 2d of the *Madera* Rules on Return because their application has a direct bearing on the resulting amount to be returned by erring approving/authorizing officers civilly held liable under Section 38, in relation to Section 43, of the Administrative Code. In *Madera*, the Court explained that when recipients are excused to return disallowed amounts for the reason that they were genuinely made in consideration of services rendered, or for some other *bona fide* exception determined by the Court on a case to case basis, the erring approving/authorizing officers' solidary obligation for the disallowed amount is **net of the amounts excused to be returned by the recipients (net disallowed amount)**. The justifiable exclusion of these amounts signals that no proper loss should be recognized in favor of the government, and thus, reduces the total amount to be returned to the extent corresponding to such exclusions. Accordingly, since there is a justified reason excusing return, the State should not be allowed a **double recovery** of these amounts from the erring public officials and individuals notwithstanding their bad faith, malice or gross negligence. Needless to say, even if the civil liability becomes limited in this sense, these erring public

officers and those who have confederated and conspired with them[49] remain subject to the appropriate administrative and criminal actions which may be separately and distinctly pursued against them.[50]

Application to the case at bar.

After a careful study of this case, the Court discerns that the incentive allowances disallowed herein are in the nature of **dislocation allowances**. Generally speaking, these allowances are meant as a recompense for the displacement of an employee who is assigned to work in remote or distant areas, the fact of which may entail personal and financial costs. As explicitly stated in NHA Resolution No. 464 and NHA Memorandum Circular No. 331, the subject allowances were given to select NHA personnel "from one [r]egion assigned to another [r]egion,"[51] particularly, those "**[a]ssigned in a project other than [their] region of original placement.**"[52]

As the records further show, the incentive allowances equivalent to 20% of the basic pay were paid to petitioners for their deployment to other areas in Mindanao from their original station in Cagayan de Oro City (CDO).[53] In particular, petitioner Abellanosa was transferred from CDO to Zamboanga and Iligan, Laigo from CDO to Iligan, Pineda from CDO to Zamboanga and Iligan, Rucat from CDO to Iligan, and Siao from CDO to Iligan.[54] Aside from the NHA shouldering the direct costs appurtenant to their relocation (such as air fare, flight insurance and staff housing), **an incentive pay was given in order to convince and encourage these displaced employees, particularly those in the technical/professional category – as petitioners in this case[55] – to not only seek assignment but also to stay in these distant and perhaps, even hazardous areas wherein the NHA's mandate, *i.e.*, its housing programs, also needs to be implemented**:

> RESOLVED, **that to encourage personnel particularly those in the technical/professional category to seek assignment with the projects and once there, to make them want to stay in the organization**, the grant of additional Incentive Benefits to project personnel, to wit:
>
> A. Personnel from one Region assigned to another Region (e.g., Metro Manila to Visayas or Mindanao):
>
> 1. Incentive Allowance equivalent to 20% of basic pay.

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49 As Section 16.1.4 of COA Circular No. 2009-006 provides:

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

50 See *Madera v. COA*, supra note 39. See also Separate Concurring Opinion of Justice Perlas-Bernabe in *Madera*.

51 *Rollo*, p. 67.

52 Id. at 91.

53 See id. at 330-335. See also id. at 126.

54 See id. at 131-136.

55 See id. at 128, 359, 363, 365, 367, 369, and 371.

2. Air Fare (once a quarter).
3. Flight Insurance (Not more than P10.00 premium per flight)
4. Staff Housing.[56]

At this juncture, it is apt to mention that petitioners were actually relocated to different areas outside the region of their original station and that they had implemented the NHA's housing projects in the places they were reassigned to. In fact, in the July 24, 2012 Decision on the main, the Court even recognized "petitioners' professed dedication to their duties despite being sent to allegedly hazardous areas in order to implement the housing programs of the NHA."[57] Thus, by all accounts, there is no gainsaying that the disallowed incentives subject of this case have a clear, direct, and reasonable connection to the actual performance of the petitioners' official work and functions for which said incentives were intended as further compensation.

While the foregoing characterizations satisfy the second requisite of Rule 2c of the *Madera* Rules on Return as above-mentioned, the Court cannot excuse the return of these benefits on this ground since these benefits had no proper basis in law (first requisite). As keenly observed by Justice Caguioa during the deliberations, "[the] incentive [allowance in this case] is not among the benefits recognized or authorized by law, and was thus properly disallowed."[58] The records are equally bereft of any indication that there is a similar "provision for dislocation or displacement allowance in domestic salary laws and regulations, x x x."[59] In fact, as held in the July 24, 2012 Decision, these displacement incentives were predicated on the NHA officials' mistaken notion that they are justified expenses incidental to and necessary for the enforcement of the NHA's powers and duties.[60] However, the Court held that "Section 3 of [PD] 1597 had already expressly repealed all decrees, executive orders, and issuances that authorized the grant of allowances to groups of officials or employees [inconsistent] x x x with the x x x National Compensation and Position Classification Plan"[61] of the government. Consequently, the benefits were devoid of any legal basis and hence, cannot be considered as "genuinely given in consideration of services rendered."

This notwithstanding, the Court is strongly impelled to excuse the return based on Rule 2d of the *Madera* rules. Indeed, were it not for the lack of proper legal basis, the benefits would have been excused under Rule 2c since it is established that the benefits have a clear, direct, and reasonable connection to the actual performance of the petitioners' official work and functions. As above explained, the incentive allowance was meant to convince and encourage personnel belonging in the technical/professional category[62] to seek assignment in NHA projects implemented in other regions, and once there, to make them

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56 Id. at 67.
57 Id. at 321.
58 See Concurring Opinion of Justice Caguioa, p. 10.
59 Id.
60 See *rollo*, p. 320.
61 Id. at 319.
62 See id. at 128, 359, 363, 365, 367, 369, and 371.

want to stay. The Court even recognized petitioners' professed dedication to their duties despite being sent to some hazardous areas in order to implement the housing programs of the NHA. Surely, it would be clearly iniquitous to direct petitioners to return the incentives they had received way back in 2003[63] when these benefits were the material consideration for them to accede to their displacement and in so doing, risk their personal safety just so they could implement the NHA's mandate. Accordingly, this highly exceptional scenario justifies the application of Rule 2d and hence, completely excuses petitioners' civil liability to return what they had received.

It may not be amiss to point out that among the petitioners, two of them are approving/certifying officers. These are Laigo as certifying officer, and Abellanosa, as authorizing officer assigned as officer-in-charge of the NHA Iligan District Office. According to *Madera*, approving/authorizing officers are solidarily liable to return **only the net disallowed amount**, upon a showing that they had performed their official duties and functions in bad faith, with malice or gross negligence. To recount, the net disallowed amount is the total disallowed amount minus the amounts excused to be returned by the recipients either under Rules 2c or 2d of the *Madera* Rules on Return.

Here, since the civil liability for the disallowed amounts had already been **completely** excused under Rule 2d of the *Madera* rules, there is nothing more to return. Nonetheless, the foregoing pronouncement on petitioners' civil liability notwithstanding, the State may, if so warranted, pursue any other appropriate administrative or criminal actions against any of them (including Abellanosa and Laigo) pursuant to existing laws and jurisprudence.

WHEREFORE, the motion for reconsideration is **PARTLY GRANTED**. The Decision dated July 24, 2012 of the Court is hereby **AFFIRMED** with **MODIFICATION** in that petitioners Generoso P. Abellanosa, Carmencita D. Pineda, Bernadette R. Laigo, Menelio D. Rucat, and Doris A. Siao are **EXCUSED** from the civil liability to return the disallowed amount of ₱401,284.39 under Notice of Disallowance No. NHA-2005-001 (01 and 03) dated 24 January 2005, without prejudice to the finding of any administrative or criminal liability that any of them may have incurred under existing laws and jurisprudence.

SO ORDERED.

ESTELA M. PERLAS-BERNABE
Senior Associate Justice

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[63] See Disbursement Voucher No. 023146 dated February 20, 2003; id. at 69.

WE CONCUR:

DIOSDADO M. PERALTA
Chief Justice

Please See Concurring Opinion

MARVIC M.V.F. LEONEN
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

ALEXANDER G. GESMUNDO
Associate Justice

RAMON PAUL L. HERNANDO
Associate Justice

On official leave

ROSMARI D. CARANDANG
Associate Justice

AMY C. LAZARO-JAVIER
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

MARIO V. LOPEZ
Associate Justice

EDGARDO L. DELOS SANTOS
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

RICARDO R. ROSARIO
Associate Justice

CERTIFICATION

I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

DIOSDADO M. PERALTA
Chief Justice

CERTIFIED TRUE COPY

[illegible] R O. ARICHETA
[illegible] Court En Banc
Supreme Court