



SUPREME COURT OF THE
REPUBLIC OF THE PHILIPPINES
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Republic of the Philippines
Supreme Court
Manila

EN BANC

TERESITA P. DE GUZMAN,
in her capacity as former
General Manager; GODIULA
T. GUINTO, in her capacity
as former Internal Auditor;
VIVECA V. VILLAFUERTE,
in her capacity as former
Administrative Manager;
WILHELMINA A. AQUINO,
in her capacity as Senior
Accountant; RENATO S.
RONDEZ, in his capacity as a
member of the Baguio Water
District (BWD) Board of
Directors (BOD); MOISES P.
CATING, RAMSAY M.
COLORADO, GINA
ROMILLO-CO,
EMMANUEL M.
MALICDEM and MARIA
ROSARIO R. LOPEZ, in
their capacities as former
members of the BWD BOD;
and the EMPLOYEES of
BWD, in their capacities as
payees,

Petitioners,

-versus-

COMMISSION ON AUDIT,

* On official leave.

** On leave.

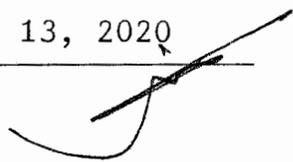
G.R. No. 245274

Present:

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

Promulgated:

October 13, 2020



X-----X

DECISION

LAZARO-JAVIER, J.:

The Case

This Petition for Certiorari¹ assails the following issuances of the Commission on Audit (COA) in “*Petition for Review of Ma. Teresita P. De Guzman, Ms. Viveca V. Villafuerte, Ms. Wilhelmina A. Aquino, and employees of Baguio Water District (BWD), Baguio City, of Commission on Audit – Cordillera Administrative Region Division No. 2015-26 dated May 21, 2015, affirming Notice of Disallowance No. 12-023-101-(09) dated May 15, 2012, on the payment of Centennial Bonus to the officers and employment of BWD for calendar year 2009, amounting to ₱1,233,860.00*”:

- 1) Decision² No. 2017-475 dated December 28, 2017, disposing, thus:

WHEREFORE, premises considered, the Petition for Review of Ms. Teresita P. De Guzman, et al., all of Baguio Water District (BWD), Baguio City, of Commission on Audit–Cordillera Administrative Region Decision No. 2015-26 dated May 21, 2015, is **DENIED** for lack of merit. Accordingly, Notice of Disallowance No. 12-023-101-(09) dated May 15, 2012, on the payment of Centennial Bonus to the officers and employees of BWD for calendar year 2009, amounting to P1,233,860.50 is **AFFIRMED with MODIFICATION**. The passive recipients of the disallowed Centennial Bonus are not required to refund the amount received in good faith, but the approving/certifying/authorizing officers for the benefit remain liable for the total disallowance.³

- 2) Resolution⁴ dated September 27, 2018, denying petitioner’s Motion for Reconsideration.

Antecedents

Under Resolution (BR) No. 046-2009 dated November 20, 2009, the Baguio Water District (BWD) authorized the grant of Centennial Bonus to its officers and employees in the amount equivalent to fifty percent (50%) of the employee’s salary. The bonus was distributed to the recipients on the occasion of the 100th anniversary of the City of Baguio.⁵

¹ Under Rule 64 of the Revised Rules of Court.

² *Rollo*, pp. 60-67.

³ *Id.* at 66-67.

⁴ *Id.* at 92.

⁵ *Id.* at 94-97.

The COA Audit Team, led by Antonieta La Madrid, issued Notice of Disallowance (ND) No. 12-023-101-(09)⁶ dated May 15, 2012 on the total amount of ₱1,233,860.50 granted as centennial bonus to the BWD officers and employees for being allegedly devoid of legal basis. The COA Audit Team cited Section 3(b) of Administrative Order (AO) No. 103 dated August 31, 2004 issued by President Gloria Macapagal-Arroyo, suspending the grant of new or additional benefits to full-time officials and employees, except: 1) Collective Negotiation Agreement Incentives (CNAI) granted under the Public Sector Labor Management Council Resolution No. 4, Series of 2002, and No. 2, Series of 2003; and 2) those expressly granted by applicable presidential issuances. As a consequence of the disallowance, the recipients were each directed to refund the centennial bonus they received.

Proceedings before the COA-CAR

Petitioners Teresita de Guzman (former General Manager); Godiula Guinto, (former Internal Auditor); Viveca Villafuerte (former Administrative Manager); Wilhelmina Aquino (Senior Accountant); Renato Rondez (member of the present BWD Board of Directors); and former members of the Board of Directors, namely Moises Cating, Ramsay Colorado, Gina Romillo-Co, Memmanuel Malicdem, and Maria Rosario Lopez appealed to the COA – Cordillera Administrative Region (COA-CAR). They were joined by the BWD employees.

Petitioners and the BWD employees essentially argued that the notice of disallowance was defective because the same did not bear the supervising auditor's signature but only that of the audit team leader; the agency was not covered by the austerity measures embodied in AO 103; and, the bonus was released to the officers and employees in good faith.⁷

By Decision No. 2015-26⁸ dated May 21, 2015, the COA-CAR affirmed. It noted that there was no supervising auditor assigned to the BWD at the time the notice of disallowance was issued. By Memorandum dated May 9, 2012 though, the OIC Regional Director of COA-CAR authorized the audit team leaders concerned to issue notices of disallowance, sans the signature of a supervising auditor. Since BWD is a government-owned and controlled-corporation (GOCC) it is subject to the issuances emanating from the Office of the President. When the BWD Board granted the bonuses to its officers and employees, it disregarded AO 103, thus negating its claim of good faith.

Ruling of the COA En Banc

⁶ *Id.* at 94-98.

⁷ *Id.* at 70-71.

⁸ *Id.* at 70-75.

On petitioners' appeal, the COA En Banc rendered its assailed Decision No. 2017-475 dated December 28, 2017, affirming the COA-CAR's decision with modification that the passive recipients should not be required to refund the amounts they received in good faith. Only the approving/certifying/authorizing officers should refund the disallowed amount of ₱1,233,860.50.

Petitioners' Motion for Reconsideration⁹ was denied per assailed Resolution¹⁰ dated September 27, 2018.

The Present Petition

Petitioners now seek affirmative relief from the Court via Rule 64 of the Rules of Court. They essentially argue that the absence of the supervising auditor's signature on the notice of disallowance violated Section 10.2, Chapter III of the COA Rules and Regulations on Settlement of Accounts (COA-RRSA) which provides that a notice of disallowance "*shall be signed by both the Audit Team Leader and the Supervising Auditor*". Presidential Decree No. 198¹¹ (PD 198) granted water districts the power to conduct their business and affairs through their respective board of directors. The BWD Board validly exercised its power under the law when it granted the centennial bonus to its officers and employees. Lastly, the centennial bonus was granted in good faith, hence, the officers who authorized their release should not be required to refund the same.¹²

The Office of the Solicitor General (OSG), through Assistant Solicitor General Gilbert Medrano and State Solicitor I Philander Turqueza, submits that ND No. 12-023-101-(09) is valid despite the fact that it bears the lone signature of the audit team leader. For at the time of its issuance, there was no supervising auditor assigned to the BWD audit team. Since water districts are GOCCs, they are under the control of the Office of the President, thus, AO 103 is binding on the BWD. Petitioners cannot invoke good faith because they were grossly negligent in granting the centennial bonus despite the clear provisions of AO 103.¹³

Issues

⁹ *Id.* at 76-80.

¹⁰ *Supra* note 4.

¹¹ DECLARING A NATIONAL POLICY FAVORING LOCAL OPERATION AND CONTROL OF WATER SYSTEMS; AUTHORIZING THE FORMATION OF LOCAL WATER DISTRICTS AND PROVIDING FOR THE GOVERNMENT AND ADMINISTRATION OF SUCH DISTRICTS; CHARTERING A NATIONAL ADMINISTRATION TO FACILITATE IMPROVEMENT OF LOCAL WATER UTILITIES; GRANTING SAID ADMINISTRATION SUCH POWERS AS ARE NECESSARY TO OPTIMIZE PUBLIC SERVICE FROM WATER UTILITY OPERATIONS, AND FOR OTHER PURPOSES.

¹² *Rollo*, pp. 3-11.

¹³ *Id.* at 230-246.

- 1) Is ND No. 12-023-101-(09) defective for not bearing the signature of a supervising auditor?
- 2) Is the BWD subject to the power of control of the Office of the President?
- 3) Are petitioners liable to refund the full disallowed amount?

Ruling

***ND No. 12-023-101-(09)
is not defective***

On the first issue, we hold that ND No. 12-023-101-(09) is not deemed defective, let alone, without force and effect simply because it did not bear the signature of a supervising auditor. We quote with concurrence the disquisition of the COA En Banc on this score, *viz.*:

Although the requirement that an ND should be signed by both the ATL and the SA as provided under Section 10.2, Chapter III of the RRSA, its non-compliance is not a fatal defect that could render the ND invalid and without effect. As found by the RD, the reason for the absence of the signature of an SA was due to the non-assignment of an SA by the COA Central Office for Audit Group C. Hence, issuances such as NDs by the Audit Team for 2009 transactions and onwards were signed only by the ATL. Clearly, the ATL cannot be faulted for issuing the ND without a signature of the SA under the circumstances.¹⁴

By Memorandum dated May 9, 2012, the OIC Regional Director of COA-CAR expressly authorized Audit Team Leader Antonieta La Madrid to issue notices of disallowances, albeit without the signature of a supervising auditor as none was assigned to BWD at that time. Surely, the post audit functions of the COA do not depend on the availability of a supervising auditor. In other words, these audit functions are not halted or suspended simply because an officer or a member of the COA's audit team has resigned or has not been appointed in the meantime.

***BWD is subject to the
President's power of control***

On the second issue, we rule that the disallowance of the centennial bonus under ND No. 12-023-101-(09) is in accord with law and jurisprudence. Local water districts are not private corporations but GOCCs.¹⁵ Specifically, a water district is a GOCC with a special charter since it was created pursuant to a special law, PD 198.¹⁶ Under the Revised Administrative Code, GOCCs

¹⁴ *Id.* at 62-63.

¹⁵ *Engr. Borja v. People*, 576 Phil. 245, 249 (2008).

¹⁶ *Engr. Feliciano, et al. v. Hon. Gison*, 643 Phil. 328, 339 (2010).

are part of the Executive Department for they are attached to the appropriate department with which they have allied functions.¹⁷

Being a water district, the BWD itself is a GOCC, thus, subject to the power of control of the President. In *ZCWD v. COA*,¹⁸ it was held that the amount of per diems granted to the board of directors of local water districts is subject to the presidential power of control since local water districts are GOCCs, viz.:

Although ZCWD is correct in arguing that A.O. No. 103 did not repeal R.A. No. 9286, it is, however, mistaken, that the LWUA resolution is a sufficient basis to justify the grant of per diem in the amount beyond what is allowed under A.O. No. 103. Section 3 of A.O. No. 103 instructs all GOCCs to reduce the combined total of per diems, honoraria and benefits to a maximum of P20,000.00.

The said provision did not divest LWUA of its authority to fix the per diem of BODs of LWDs. It, nonetheless, limits the same in order to implement austerity measures, as directed by A.O. No. 103, to meet the country's fiscal targets. Under R.A. No. 9275, the LWUA is an attached agency of the Department of Public Works and Highway (DPWH). The President, exercising his power of control over the executive department, including attached agencies, may limit the authority of the LWUA over the amounts of per diem it may allow.

Undeniably, AO 103 governs the manner by which local water districts like the BWD manage and handle their finances, thus:

SEC. 3. All NGAs, SUCs, GOCCs, GFIs and OGCEs, whether exempt from the Salary Standardization Law or not, are hereby directed to:

x x x

(b) Suspend the grant of new or additional benefits to full-time officials and employees and officials, except for (i) Collective Negotiation Agreement (CNA) Incentives which are agreed to be given in strict compliance with the provisions of the Public Sector Labor-Management Council Resolutions No. 04, s. 2002 and No. 2, s. 2003, and (ii) those expressly provided by presidential issuance;

x x x

Here, the commemorative or centennial bonus granted to the BWD officers and employees on the occasion of the agency's 100th anniversary of

¹⁷ Revised Administrative Code: SECTION 42. Government-Owned or Controlled Corporations.— Government-owned or controlled corporations shall be attached to the appropriate department with which they have allied functions, as hereinafter provided, or as may be provided by executive order, for policy and program coordination and for general supervision provided in pertinent provisions of this Code.

In order to fully protect the interests of the government in government-owned or controlled corporations, at least one-third (1/3) of the members of the Boards of such corporations should either be a Secretary, or Undersecretary, or Assistant Secretary.

¹⁸ 779 Phil. 225 (2016).

Baguio City is neither a CNA incentive nor authorized by a presidential issuance. Its grant, therefore, was devoid of any legal basis.

BWD's certifying and approving officers and recipient employees are liable to refund the disapproved amount

The following statutory provisions identify the persons liable to return the disallowed amounts, viz.:

1. Section 43, Chapter V, Book VI of the 1987 Administrative Code:

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.

x x x

x x x

x x x

2. Sections 38 and 39, Chapter 9, Book I, of the 1987 Administrative Code:

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.

(2) Any public officer who, without just cause, neglects to perform a duty within a period fixed by law or regulation, or within a reasonable period if none is fixed, shall be liable for damages to the private party concerned without prejudice to such other liability as may be prescribed by law.

(3) A head of a department or a superior officer shall not be civilly liable for the wrongful acts, omissions of duty, negligence, or misfeasance of his subordinates, unless he has actually authorized by written order the specific act or misconduct complained of.

Section 39. *Liability of Subordinate Officers.* - No subordinate officer or employee shall be civilly liable for acts done by him in good faith in the performance of his duties. However, he shall be liable for willful or negligent acts done by him which are contrary

to law, morals, public policy and good customs even if he acted under orders or instructions of his superiors.

3. Section 52, Chapter 9, Title I-B, Book V of the 1987 Administrative Code:

Section 52. General Liability for Unlawful Expenditures. — Expenditures of government funds or uses of government property in violation of law or regulations shall be a personal liability of the official or employee found to be directly responsible therefor.

4. Sections 102 and 103, Ordaining and Instituting a Government Auditing Code of the Philippines:

Section 102. Primary and secondary responsibility.

1. The head of any agency of the government is immediately and primarily responsible for all government funds and property pertaining to his agency.
2. Persons entrusted with the possession or custody of the funds or property under the agency head shall be immediately responsible to him, without prejudice to the liability of either party to the government.

Section 103. General liability for unlawful expenditures. Expenditures of government funds or uses of government property in violation of law or regulations shall be a personal liability of the official or employee found to be directly responsible therefor.

4. Section 49 of Presidential Decree 1177 (PD 1177) or the Budget Reform Decree of 1977:

Section 49. Liability for Illegal Expenditure. Every expenditure or obligation authorized or incurred in violation of the provisions of this Decree 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.

X X X

X X X

X X X

5. Section 19 of the Manual of Certificate of Settlement and Balances:

19.1 The liability of public officers and other persons for audit disallowances shall be determined on the basis of: (a) the nature of the disallowance; (b) the duties, responsibilities or obligations of the officers/persons concerned; (c) the extent of their participation or involvement in the disallowed transaction; and (d) the amount of losses or damages suffered by the government thereby. The following are illustrative examples:

19.1.1 Public officers who are custodians of government funds and/or properties shall be liable for their failure to ensure that such funds and properties are safely guarded against loss or damage; that they are expended, utilized, disposed of or transferred in accordance with law and regulations, and on the basis of prescribed documents and necessary records.

19.1.2 Public officers who certify to the necessity, legality and availability of funds/budgetary allotments, adequacy of documents, etc. involving the expenditure of funds or uses of government property shall be liable according to their respective certifications.

19.1.3 Public officers who approve or authorize transactions involving the expenditure of government funds and uses of government properties shall be liable for all losses arising out of their negligence or failure to exercise the diligence of a good father of a family.

In the very recent case of *Madera, et. al. v. COA*,¹⁹ the Court *En Banc*, discussed in detail the respective liabilities of certifying and approving officers and the recipient employees in case of expenditure disallowance, *viz.*:

x x x x the civil liability under Sections 38 and 39 of the Administrative Code of 1987, including the treatment of their liability as solidary under Section 43, arises only upon a showing that the approving or certifying officers performed their official duties with bad faith, malice or gross negligence. For errant approving and certifying officers, the law justifies holding them solidarily liable for amounts they may or may not have received considering that the payees would not have received the disallowed amounts if it were not for the officers' irregular discharge of their duties, x x x x This treatment contrasts with that of individual payees who x x x x can only be liable to return the full amount they were paid, or they received pursuant to the principles of *solutio indebiti* and unjust enrichment.

x x x

x x x

x x x

x x x x the Court adopts Associate Justice Marvic M.V.F. Leonen's (Justice Leonen) proposed circumstances or badges for the determination of whether an authorizing officer exercised the diligence of a good father of a family:

x x x For one to be absolved of liability the following requisites [may be considered]: (1) Certificates of Availability of Funds pursuant to Section 40 of the Administrative Code, (2) In-house or Department of Justice legal opinion, (3) that there is no precedent allowing a similar case in jurisprudence, (4) that it is traditionally practiced within the agency and no prior disallowance has been issued, [or] (5) with regard the question of law, that there is a reasonable textual interpretation on its legality.

Thus, to the extent that these badges of good faith and diligence are applicable to both approving and certifying officers, these should be considered before holding these officers, whose participation in the

¹⁹ G.R. No. 244128, September 15, 2020.

disallowed transaction was in the performance of their official duties, liable. The presence of any of these factors in a case may tend to uphold the presumption of good faith in the performance of official functions accorded to the officers involved, which must always be examined relative to the circumstances attending therein.

x x x

x x x

x x x

x x x x the evolution of the “good faith rule” that excused the passive recipients in good faith from return began in *Blaquera* (1998) and *NEA* (2002), where the good faith of both officers and payees were determinative of their liability to return the disallowed benefits – the good faith of all parties resulted in excusing the return altogether in *Blaquera*, and the bad faith of officers resulted in the return by all recipients in *NEA*. The rule morphed in *Casal* (2006) to distinguish the liability of the payees and the approving and/or certifying officers for the return of the disallowed amounts. In *MIAA* (2012) and *TESDA* (2014), the rule was further nuanced to determine the extent of what must be returned by the approving and/or certifying officers as the government absorbs what has been paid to payees in good faith. This was the state of jurisprudence then which led to the ruling in *Silang* (2015) which followed the rule in *Casal* that payees, as passive recipients, should not be held liable to refund what they had unwittingly received in good faith, while relying on the cases of *Lumayna* and *Querubin*.

The history of the rule as shown evinces that the original formulation of the “good faith rule” excusing the return by payees based on good faith was not intended to be at the expense of approving and/or certifying officers. The application of this judge made rule of excusing the payees and then placing upon the officers the responsibility to refund amounts they did not personally receive, commits an inadvertent injustice.

x x x

x x x

x x x

The COA similarly applies the principle of *solutio indebiti* to require the return from payees regardless of good faith. x x x x

x x x

x x x

x x x

x x x x Notably, in situations where officers are covered by Section 38 of the Administrative Code either by presumption or by proof of having acted in good faith, in the regular performance of their official duties, and with the diligence of a good father of a family, payees remain liable for the disallowed amount unless the Court excuses the return. For the same reason, any amounts allowed to be retained by payees shall reduce the solidary liability of officers found to have acted in bad faith, malice, and gross negligence. In this regard, Justice Bernabe coins the term “net disallowed amount” to refer to the total disallowed amount minus the amounts excused to be returned by the payees. Likewise, Justice Leonen is of the same view that the officers held liable have a solidary obligation only to the extent of what should be refunded and this does not include the amounts received by those absolved of liability. In short, the net disallowed amount shall be solidarily shared by the approving/authorizing officers who were clearly shown to have acted in bad faith, with malice, or were grossly negligent.

Consistent with the foregoing, the Court shares the keen observation of Associate Justice Henri Jean Paul B. Inting that payees generally have no participation in the grant and disbursement of employee benefits, but their

liability to return is based on *solutio indebiti* as a result of the mistake in payment. Save for collective negotiation agreement incentives carved out in the sense that employees are not considered passive recipients on account of their participation in the negotiated incentives x x x x payees are generally held in good faith for lack of participation, with participation limited to "accep[ting] the same with gratitude, confident that they richly deserve such benefits".

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To recount, x x x x, retention by passive payees of disallowed amounts received in good faith has been justified on payee's "lack of participation in the disbursement." However, this justification is unwarranted because a payee's mere receipt of funds not being part of the performance of his official functions still equates to him unduly benefiting from the disallowed transaction; this gives rise to his liability to return.

x x x x x x x x x

x x x x To a certain extent, therefore, payees always do have an indirect "involvement" and "participation" in the transaction where the benefits they received are disallowed because the accounting recognition of the release of funds and their mere receipt thereof results in the debit against government funds in the agency's account and a credit in the payee's favor. Notably, when the COA includes payees as persons liable in an ND, the nature of their participation is stated as "received payment."

x x x x x x x x x

In the ultimate analysis, the Court, through these new precedents, has returned to the basic premise that the responsibility to return is a civil obligation to which fundamental civil law principles, such as unjust enrichment and *solutio indebiti* apply regardless of the good faith of passive recipients. This, as well, is the foundation of the rules of return that the Court now promulgates.

In the same case, the Court summarized the rules regarding the liability of the certifying and approving officers and recipient employees, thus:

E. The Rules on Return

In view of the foregoing discussion, the Court pronounces:

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.

(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.

Applying the law and *Madera* here, we hold that the BWD certifying and approving officers who authorized the payment of the disallowed centennial bonus, and the BWD employees, who received the same, are liable to return the same.

A. Liability of the BWD's certifying and approving officers

COA identified the BWD's certifying and approving officers and their respective roles in the release of the centennial bonus, *viz.*:

Name	Position/Designation	Nature of Participation
Teresita P. De Guzman	General Manager	Approved and received payment
Godiula T. Guinto	Internal Auditor	Pre-audited the disbursement voucher and received payment
Wilhelmina A. Aquino	Senior Accountant	Certified the supporting documents are complete and proper, and received payment
Viveca A. Villafuerte	Administrative Division Manager	Certified that the expense was necessary, lawful, and incurred under her supervision; received payment
Moises P. Cating Renato S. Rondez Gina Romillo-Co Ramsey M. Colorado Maria Rosario R. Lopez Emmanuel B. Malicdem	Members of the BOD	Approved Board Resolution No. 049-2009 ²⁰

Section 38, Chapter 9, Book I, of the Administrative Code expressly states that the civil liability of a public officer for acts done in the performance

²⁰ *Rollo*, p. 61.

of his or her official duty arises only upon a clear showing that he or she performed such duty with bad faith, malice, or gross negligence. This is because of the presumption that official duty is regularly performed.

Malice or bad faith implies a conscious and intentional design to do a wrongful act for a dishonest purpose or moral obliquity.²¹ Gross neglect of duty or gross negligence, on the other hand, refers to negligence characterized by the want of even slight care, or by acting or omitting to act in a situation where there is a duty to act, not inadvertently but wilfully and intentionally, with a conscious indifference to the consequences, insofar as other persons may be affected. It is the omission of that care that even inattentive and thoughtless men never fail to give to their own property. It denotes a flagrant and culpable refusal or unwillingness of a person to perform a duty. In cases involving public officials, gross negligence occurs when a breach of duty is flagrant and palpable.²²

Here, there is no showing, as none was shown that the BWD approving officers acted with malice and bad faith in approving the release of the centennial bonus to commemorate the City of Baguio's Centennial anniversary. Nevertheless, we hold that the certifying and approving officers are guilty of gross negligence. AO 103 clearly ordains that the grant of new or additional benefits to full-time officials and employees has been suspended except for CNA Incentives and those expressly provided by presidential issuances. Evidently, the grant of centennial bonus does not fall within the exception, hence, it belongs to the category of suspended benefits. Consequently, pursuant to Section 43, Chapter V, Book VI of the 1987 Administrative Code and *Madera*, the liability of the certifying and approving officers is joint and several for the disallowed amounts received by the individual employees.

ii. Liability of the BWD recipient employees

As clarified in *Madera*, the general rule is that recipient employees must be held liable to return disallowed payments on ground of *solutio indebiti* or unjust enrichment as a result of the mistake in payment. Under the principle of *solutio indebiti*, if something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises.

Madera, however, decrees as well that restitution may be excused in the following instances:

x x x the jurisprudential standard for the exception to apply is that the amounts received by the payees constitute disallowed benefits that were genuinely **given in consideration of services rendered** (or to be rendered)”

²¹ *California Clothing Inc., et. al. v. Quiñones*, 720 Phil. 373, 381 (2013).

²² *Office of the Ombudsman v. De Leon*, 705 Phil. 26, 37 (2013); also see *GSIS v. Manalo*, 795 Phil. 832, 858 (2016).

negating the application of unjust enrichment and the *solutio indebiti* principle. As examples, Justice Bernabe explains that these disallowed benefits may be in the nature of **performance incentives, productivity pay, or merit increases** that have not been authorized by the Department of Budget and Management as an exception to the rule on standardized salaries. In addition to this proposed exception standard, Justice Bernabe states that the Court may also determine in the proper case *bona fide* exceptions, depending on the purpose and nature of the amount disallowed. These proposals are well-taken.

Moreover, the Court may also determine in a proper case other circumstances that warrant excusing the return despite the application of *solutio indebiti*, such as when **undue prejudice** will result from requiring payees to return or where **social justice or humanitarian considerations** are attendant. (Emphasis supplied)

None of these exceptions are present here. First, the centennial bonus cannot be considered to have been given in consideration of services rendered or in the nature of performance incentives, productivity pay, or merit increases. Second, a monetary grant that contravenes the unambiguous letter of the law cannot be forgone on social justice considerations. Liability arises and should be enforced when there is disregard for the basic principle of statutory construction that when the law was clear, there should be no room for interpretation but only application.²³

Verily, therefore, the employees must be held liable to return the amounts that they had received. As earlier discussed, the approving officers of BWD, herein petitioners, are jointly and severally liable for the disallowed amounts received by the individual employees.

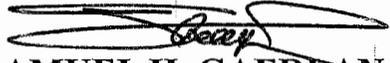
ACCORDINGLY, the assailed Decision No. 2017-475 dated December 28, 2017, and Resolution dated September 27, 2018 of the Commission on Audit – Commission Proper are **AFFIRMED** with **MODIFICATION**, *viz.*:

1. The Baguio Water District employees are individually liable to return the amounts they received as centennial bonus; and
2. Petitioners, as certifying and approving officers of the Baguio Water District who took part in the approval of Resolution (BR) No. 046-2009 dated November 20, 2009, are jointly and solidarily liable for the return of the disallowed centennial bonus.

SO ORDERED.


AMY C. LAZARO-JAVIER
Associate Justice

²³ See *MWSS v. COA*, 821 Phil. 117, 141 (2017).


SAMUEL H. GAERLAN
Associate Justice

(on leave)
PRISCILLA J. BALTAZAR-PADILLA
Associate Justice

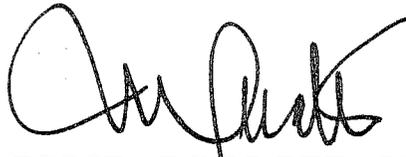
CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.


DIOSDADO M. PERALTA
Chief Justice



WE CONCUR:

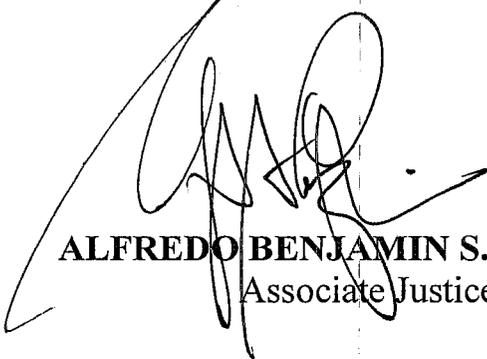


DIOSDADO M. PERALTA
Chief Justice

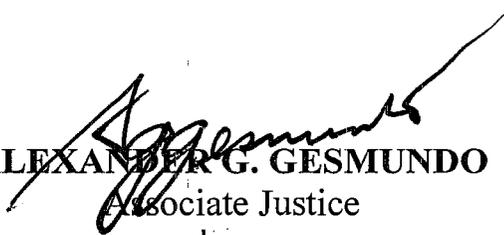


ESTELA M. PERLAS-BERNABE
Associate Justice

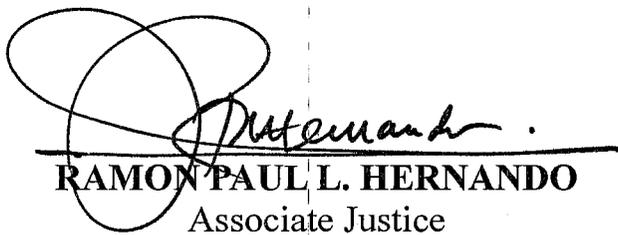
(on official leave)
MARVIC MARIO VICTOR F. LEONEN
Associate Justice



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



ALEXANDER G. GESMUNDO
Associate Justice



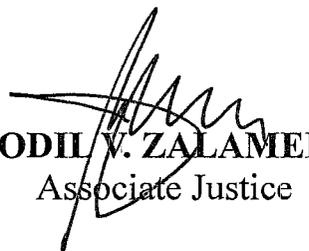
RAMON PAUL L. HERNANDO
Associate Justice



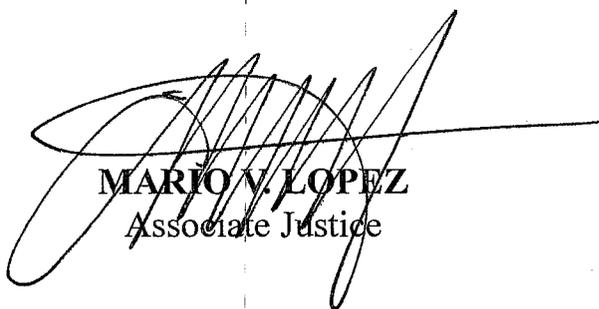
ROSMARIE D. CARANDANG
Associate Justice



HENRI JEAN PAUL B. INTING
Associate Justice



RODIL V. ZALAMEDA
Associate Justice

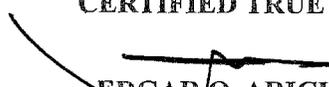


MARIO V. LOPEZ
Associate Justice



EDGARDO L. DELOS SANTOS
Associate Justice

CERTIFIED TRUE COPY



EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court

