

EN BANC

G.R. No. 244128 - *Mario M. Madera, Beverly C. Mananguite, Carissa D. Galing, and Jose O. Pelo, Petitioners v. Commission on Audit (COA) Proper and COA Regional Office No. VIII, Respondents.*

Promulgated:
September 8, 2020

x-----x

CONCURRING OPINION

INTING, J.:

I concur.

I expound on my views on the liability of the actors involved in a disallowed transaction, as well as the concept of “good faith” in disallowance cases.

I

The *ponente* recognizes that disallowance cases have been ruled upon on a case-to-case basis. One could even go as far as saying that each disallowance case is unique, inasmuch as the *facts* behind, *nature of the amounts* involved, and *individuals* so charged in one notice of disallowance are hardly ever the same with any other.

I share my observations on the facts behind commonly cited jurisprudence on disallowance cases.

*Blaquera v. Hon. Alcala*¹ (*Blaquera*), the pioneer case law on good faith and the obligation to reimburse in disallowance cases, was a case on the *constitutionality* (via petitions for *certiorari* and prohibition) of Administrative Order (AO) Nos. 29 and 268 on various grounds, which directed the concerned government agencies that paid out *productivity incentive bonuses* to return the same for being excessive and without prior approval of the President. The Court eventually upheld the AOs, but did not require the *recipients* nor the *officials* concerned to refund the bonuses on account of good faith, *viz.*:

Considering, however, that all the parties here acted in good faith, we cannot countenance the refund of subject incentive benefits

¹ 356 Phil. 678 (1998).

for the year 1992, which amounts the petitioners have already received. Indeed, no *indicia* of bad faith can be detected under the attendant facts and circumstances. The *officials and chiefs of offices* concerned disbursed such incentive benefits in the honest belief that the amounts given were due to the recipients and the latter accepted the same with gratitude, confident that they richly deserve such benefits.² (Underscoring and italics supplied.)

The following factual milieu sets *Blaquera* apart from other cases involving *illegal disbursements* of compensation and bonuses: *first*, it was not integrally a disallowance case inasmuch as it was primarily a constitutionality case. The petitioners therein came to the Court assailing the validity of administrative issuances, not the issuance of notices of disallowance or any Commission on Audit (COA) decision holding them, public officials, liable for the disallowed amount. Notably, the Court only mentioned in passing that the corporate auditor disallowed the subject disbursement, without referring to a specific notice of disallowance nor identifying the officials charged therein. *Second*, as already observed by Associate Justice Arturo D. Brion in his Separate Opinion in *TESDA v. COA Chairperson Tan, et al.*,³ the case involved “numerous petitioners, numbering in several hundreds, that would make a refund very cumbersome” and “small amounts (about ₱1,000.00 per plaintiff) whose aggregate sum was not commensurate with the administrative costs of enforcing the refund.” *Third*, by the time the case was brought to the Court, the government had already recovered a significant portion of the bonuses ordered to be refunded by way of salary deductions from those who received them.

Thereafter, the Court applied *Blaquera* in a number of cases involving the disallowance of illegal disbursements to exempt *passive* recipients⁴ from their obligation to refund the amounts paid or released to them.

In contrast, a number of subsequent jurisprudence citing *Blaquera*, such as *Executive Director Casal v. Commission on Audit*,⁵ *Lumayna, et al. v. Commission on Audit*,⁶ *TESDA v. COA Chairperson Tan, et al.*,⁷ *Silang, et al. v. Commission on Audit*,⁸ *Metropolitan Naga*

² *Id.* at 765-766.

³ 729 Phil. 60 (2014).

⁴ See *Silang, et al. v. Commission on Audit*, 769 Phil. 327 (2015).

⁵ 538 Phil. 634 (2006).

⁶ 616 Phil. 929 (2009).

⁷ *TESDA v. COA Chairperson Tan, et al.*, *supra* note 3.

⁸ *Silang, et al. v. Commission on Audit*, *supra* note 4.

Water District, et al. v. Commission on Audit,⁹ *National Transmission Corporation v. Commission on Audit, et al.*,¹⁰ *Nayong Filipino Foundation, Inc. v. Chairperson Pulido Tan, et al.*,¹¹ and *Balayan Water District v. Commission on Audit*,¹² were all disallowance cases *per se* that reached the Court *via* petitions for *certiorari* under Rule 64 in relation to Rule 65, assailing various COA decisions which upheld the disallowance of disbursements, and the corresponding liability of officials and recipients involved therein.

Following is a tabular comparison of the above-cited disallowance cases' pertinent details:

Disallowed Disbursement	Ground for Disallowance	Persons involved	Charged in Notice of Disallowance/ Notice of Suspension?	Liabile in SC Ruling?
1) Executive Director Casal v. Commission on Audit				
Incentive award	Illegal disbursement	Recipients	Yes	Not liable <i>cf.</i> good faith
		Officers	No	-NA-
		Certifier/ Approver	Yes	Liabile <i>cf.</i> patent disregard of issuances
2) Lumayna, et al. v. Commission on Audit				
5% salary increase	Illegal disbursement	Recipients	No	-NA-
		Officers	Yes (<i>e.g.</i> , municipal mayor, Sangguniang Bayan members who approved the resolution)	Not liable <i>cf.</i> good faith
		Certifier/ Approver	Yes (<i>e.g.</i> , budget officer, municipal accountant)	Not liable <i>cf.</i> good faith
3) TESDA v. COA Chairperson Tan, et al.				
Extraordinary	Illegal	Recipients	Yes	Not liable <i>cf.</i>

⁹ 782 Phil. 281 (2016).

¹⁰ 800 Phil. 618 (2016).

¹¹ 818 Phil. 406 (2017).

¹² G.R. No. 229780, January 22, 2019.

Disallowed Disbursement	Ground for Disallowance	Persons involved	Charged in Notice of Disallowance/ Notice of Suspension?	Liable in SC Ruling?
and Miscellaneous Expenses (EME)	disbursement			good faith; honest belief that they were entitled to amount
		Officers	Yes (e.g. TESDA Director-Generals who directed the payment and were, at the same time, recipients thereof)	Liable
		Certifier/ Approver	Yes	Not liable (no discussion on good faith)
4) <i>Silang, et al. v. Commission on Audit</i>				
Collective Negotiation Agreement Incentives	Irregular disbursement	Recipients	Yes	In general, not liable <i>cf.</i> good faith
		Officers	Yes (e.g., mayor, local sanggunian members who enacted ordinances authorizing payment)	Liable
		Certifier/ Approver	No	-NA-
5) <i>Metropolitan Naga Water District, et al. v. Commission on Audit</i>				
Backpay differential of Cost of Living Allowance (COLA)	Illegal disbursement	Recipients	No	Not charged under the Notice of Disallowance but nonetheless adjudged as not liable for being mere passive recipients (<i>cf. Silang v. COA</i>)
		Officers	No	-NA-
		Certifier/	Yes	Not liable

Disallowed Disbursement	Ground for Disallowance	Persons involved	Charged in Notice of Disallowance/ Notice of Suspension?	Liable in SC Ruling?
		Approver		<i>cf.</i> good faith
6) National Transmission Corporation v. Commission on Audit, et al.				
Separation benefits	Illegal disbursement	Recipients	Yes (one payee only)	Not liable for being mere passive recipient (<i>cf. Silang v. COA</i>)
		Officers	Yes (e.g., Board of Directors)	Not liable (abandoned <i>Lopez v. MWSS</i> ¹³ but still exonerated <i>pro hac vice</i>)
		Certifier/ Approver	No	-NA-
7) Nayong Filipino Foundation, Inc. v. Chairperson Pulido Tan, et al.				
a. Anniversary bonus	Illegal disbursement	Recipients	No	Not liable <i>cf.</i> good faith
		Officers	No (e.g., Board of Trustees and corporate officers)	Not liable <i>cf.</i> good faith, relied on existing jurisprudence
		Certifier/ Approver	Yes	No mention
b. Extra cash gift and excess honoraria to Bids and Awards Committee and Technical Working Group	Illegal disbursement	Recipients	No	Not liable <i>cf.</i> good faith
		Officers	No (e.g., Board of Trustees and corporate officers)	Liable
		Certifier/ Approver	Yes	Liable
8) Balayan Water District v. Commission on Audit				
COLA	Illegal	Recipients	Details of the Notice of Disallowance not	Not liable for being mere passive recipient

¹³ 501 Phil. 115 (2005).

Disallowed Disbursement	Ground for Disallowance	Persons involved	Charged in Notice of Disallowance/ Notice of Suspension?	Liable in SC Ruling?
			expressly mentioned	(<i>cf. Silang v. COA</i>)
		Officers	Yes	Liable
		Certifier/ Approver	No	-NA-

Some may interpret the variations in the Court's rulings as "inconsistencies" or "flip-flopping." However, the disparity in the Court's *ratio decidendi* is only a logical result of the different circumstances present in and most of the time unique to each disallowance case.

One notable factor that may have caused divergent outcomes in these cases is the manner by which the COA charges persons under notices of disallowance. Under the COA Rules,¹⁴ custodians of public funds,¹⁵ certifying officers,¹⁶ approving/authorizing officials,¹⁷ co-conspirators in the illegal disbursement,¹⁸ and the recipients¹⁹ of illegal payments may be held liable for a disallowance. Verily, there may be disbursements that may not have involved the participation of a custodian or a so-called co-conspirator. In contrast, the involvement of approving/certifying officers and recipients is indispensable inasmuch as these transactions would have necessarily been approved first prior to its release and the payment thereof received by a certain individual/entity. Thus, it is reasonable to expect that all notices of disallowance will be initially issued against these indispensable parties. Yet, as evident from the table above, there had been cases where the COA omitted the certifying/approving or the recipients from charges for no specified reason.

It becomes apparent that there are rarely two disallowance cases that will fall squarely on each others' factual foundation. The present

¹⁴ Section 16.1, Prescribing the Use of the Rules and Regulations on Settlement of Accounts, COA Circular No. 006-09, [September 15, 2009].

¹⁵ Section 16.1.1, *id.*

¹⁶ Section 16.1.2, *id.*

¹⁷ Section 16.1.3, *id.*

¹⁸ Section 16.1.4, *id.*

¹⁹ Section 16.1.5, *id.*

case, for example, involves the payment of economic crisis assistance, monetary augmentation of municipal agency, agricultural crisis assistance, and mitigation allowance to municipal employees, as well as approving/certifying officers and payees alike. In other words, its factual background is distinct and separable.

That the guidelines as laid out by the *ponente* have now become more fluid is the most reasonable manner by which the Court could settle the present controversy, without unduly restricting the Court's exercise of judicial review in future disallowance cases. These rules appropriately serve as guideposts for subsequent rulings and at the same time allow the Court sufficient leeway to decide on these issues on a case-to-case basis.

II

The *ponencia* makes an excellent distinction between/among the different aspects of one's personal liability for a disallowance: the *civil* aspect, which is "based on the loss incurred by the government because of the transaction," and the *administrative/criminal* aspects, which are founded on "irregular or unlawful acts attending the transaction."

At this juncture, I find it important to clearly differentiate between *payees* and *approving/certifying officers*, to particularize their respective roles in the transactions. These roles must always be delineated because appreciating good faith in favor of the parties and determining their respective liabilities are founded on the extent of their participation in the transaction.

The statutory basis of liability over illegal expenditures is found in the Administrative Code of 1987,²⁰ viz.:

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. (Emphasis supplied.)

²⁰ Section 43, Chapter 5, Book VI, Executive Order No. 292.

In her separate opinion, Senior Associate Justice Estela M. Perlas-Bernabe aptly identified the *three categories* of persons *solidarily liable* for disallowed amounts under the above-cited provision, to wit: (i) every official or employee authorizing or making such payment, (ii) those taking part therein, and (iii) recipients.

In the case at bar, the notice of disallowance charged persons under the first and third categories: approvers/certifiers *who were at the same time payees* of the disallowed amounts and payees *whose participation was limited to their receipt of the amounts*.

A. Approving/Certifying Officers

Verily, the first category encompasses all public officers who authorized/approved an illegal disbursement. However, not all seals of approval and authority, albeit in relation to the same transaction, bear the same weight.

Inasmuch as each officer's liability is grounded on the extent of his participation,²¹ there must be a distinction among the different classes of "approving/certifying" officers involved in the disbursement according to the specific bounds of their authority, viz.: (i) the authority to direct or instruct the payment of a disbursement *per se*; (ii) the authority to act on these instructions/directives and approve documents to effect payment thereof (*i.e.*, vouchers, checks, etc.); and (iii) the authority to certify that funds are available for the disbursement and that the allotment therefor may be charged accordingly.

- (i) Authority to direct or instruct the payment of a disbursement *per se*.

Depending on the government agency or instrumentality, the power to disburse public funds is vested exclusively in the person/body named in their respective original charters, *e.g.*, the department secretary, commission chairperson, local chief executive/sanggunian, or board of directors/trustees. Stated differently, only these officials are

²¹ Section 29(1), Article VI, 1987 Constitution. See also Section 16.1, Prescribing the Use of the Rules and Regulations on Settlement of Accounts, COA Circular No. 006-09, [September 15, 2009].

authorized to instruct/direct the payment of a disbursement through the issuance of a memorandum, letter of instruction, ordinance, or board resolution, as the case may be.

Certainly, this power is not unfettered. Their exercise therefor must yield to the fundamental rule that public funds shall only be used to pay expenditures pursuant to an appropriation law or other specific statutory authority.²² Otherwise, their directive/instruction shall be *ultra vires*, rendering the disbursement illegal. Thus, these typically *high-ranking officials* shall answer for the resulting disallowance for acting beyond the authority entrusted to them.

- (ii) Authority to act on instructions/directives and approve documents to effect payment thereof.

In the ordinary course of fiscal administration, the higher authority's directive (*i.e.*, memorandum, resolution, etc.) shall trigger the *disbursement process*. In turn, another group of "approving officers" shall prepare, review, and sign the relevant documents (*i.e.*, purchase orders, forms, disbursement/check vouchers, checks, etc.) to release the funds. Each one shall perform his duty in accordance with the applicable internal control procedures and rules mandated by the COA and/or the government instrumentality itself.

Expenses paid in violation of "established rules, regulations, procedural guidelines, policies, principles or practices that have gained recognition in law" (*e.g.*, without the approval of the authorized signatory of checks, without the required supporting documents, etc.) are illegal or irregular²³ expenditures, as the case may be. The erring official shall be liable for the subsequent disallowance for failure to perform his specific duty in the disbursement process.

- (iii) Authority to certify that funds are available for the disbursement and that the allotment therefor may be charged accordingly.

The Administrative Code of 1987²⁴ requires every disbursement to be accompanied by a *certification* issued by the Chief Accountant or head of accounting of the government instrumentality concerned,

²² Section 45, Chapter 8, Subtitle B, Title I, Book V, Administrative Code of 1987.

²³ Paragraph 3.1, COA Circular No. 85-55-A, [September 8, 1985].

²⁴ Section 40, Chapter 5, Book VI, Administrative Code of 1987.

attesting to the following: a) that funds are available for the disbursement, b) that the corresponding allotment may be charged, and c) that the expense/disbursement is *valid, authorized, and supported by sufficient evidence*.²⁵

A disbursement not validly certified according to this rule shall be disallowed for being illegal.²⁶ In turn, under the COA rules, a certifying officer shall be liable for the disallowed amount according to the extent of his certification.²⁷ Further, he shall be dismissed from service and susceptible to criminal prosecution.²⁸

It is clear from the foregoing that the source of an approving officer's obligation to refund the disallowed amount is a *quasi-delict*,²⁹ since his liability hinges on the manner by which he exercised his functions. In this case, the defense of good faith is available to him. Further, he shall be presumed to have regularly performed his duties, provided there is no clear *indicia* of bad faith, showing patent disregard of his responsibility.

B. Payees

On the other hand, simple *payees* have no role in the transaction, much less the disbursement approval process, other than receiving and economically benefiting from the payment. Their liability is not based on an administrative duty to perform a task.

"Participation" does not only comprehend one's performance of an official function (public officer). One is seen to have participated in an unlawful expenditure if he had a role therein, even as a person who did not sign or approve any of the disbursements but merely received

²⁵ Section 40, Chapter 5, Book VI, Administrative Code of 1987 provides, "x x x No obligation shall be certified to accounts payable unless the obligation is founded on a valid claim that is properly supported by sufficient evidence and unless there is proper authority for its incurrence."

²⁶ Section 40, Chapter 5, Book VI, Administrative Code of 1987 provides, "x x x Any payment made under such certification shall be illegal and every official authorizing or making such payment, or taking part therein or receiving such payment, shall be jointly and severally liable to the government for the full amount so paid or received."

²⁷ Section 16.1.2, Prescribing the Use of the Rules and Regulations on Settlement of Accounts, COA Circular No. 006-09, [September 15, 2009].

²⁸ Section 40, Chapter 5, Book VI, Administrative Code of 1987 provides, "x x x The certifying official shall be dismissed from the service, without prejudice to criminal prosecution under the provisions of the Revised Penal Code."

²⁹ Article 2176, Civil Code.

payment thereof. Their erroneous receipt is what gives rise to the liability to return.

Thus, payees are liable to return the amount simply because it was paid by mistake. No one should ever be unjustly enriched, especially if public funds are involved. Since their liability is a quasi-contract (*solutio indebiti*), good faith can never be an excuse. In other words, *payees* cannot be absolved from liability using the same reasoning to exempt *approvers/certifiers*, simply because the nature of their liability for the transaction is not the same.

III

The general rule remains to be holding a payee liable for a disallowed amount he has received because it violates the principle against unjust enrichment. It is only in *truly exceptional circumstances*, as shown and established by the antecedent facts, that the Court may exonerate him from the obligation. The unique exempting circumstance present in the case at bar is the onslaught of the typhoon Yolanda, which justifies the Court's appreciation of social justice considerations.

Also, the *ponencia* now enunciates to henceforth consider certain employee benefits as *bona fide* exceptions to the application of *solutio indebiti*, inasmuch as these were paid in exchange of services rendered.

Parenthetically, that a disallowed payment happened to be in the nature of employee benefits to compensate service rendered should not diminish or extinguish altogether the recipients' obligation to return. In theory, these benefits were given to compensate services rendered. However, is the payment itself supported by law? This virtual exchange of value (disbursement *vis-a-vis* service rendered by civil servant) should not be the sole consideration in upholding the payment's validity.

For example, merit increases are given for exemplary performance in public office. However, there are cases where the increases are excessive and totally lacking of legal basis because they were computed using a rate or factor in excess of what was provided under the law. In the computation of separation pay, there may be instances where the law clearly provides for a 1.5 multiplier and, yet, an employee nonetheless receives separation pay computed with a different one (e.g., 2.0 or 2.5,

etc.), simply because the board of directors or the president took the initiative to reward their employees. Furthermore, there are also instances where employees are given allowances, which were intended to be consumed as part of the performance of their official functions, but clearly in violation of the Salary Standardization Law.

To stress, the uniqueness of each disallowance case simply demands the Court to individually evaluate the attending facts. While the Court recognizes certain rare exceptions, We will remain discriminating in exonerating payees from liability in the future.

Accordingly, I submit my concurrence to the *ponencia*.


HENRI JEAN PAUL B. INTING
Associate Justice

CERTIFIED TRUE COPY


EDGAR O. ARICHETA
Clerk of Court for the
Supreme Court