Republic of the Philippines
Supreme Court
Manila

EN BANC

POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT CORPORATION (PSALM), represented by MR. EMMANUEL R. LEDESMA, JR., in his capacity as President and Chief Executive Officer (CEO), and the concerned and affected OFFICERS of PSALM,
Petitioners,

G.R. No. 213425

- *versus* -

COMMISSION ON AUDIT (COA),
Respondent.

x----------x

POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT CORPORATION (PSALM), represented by MR. EMMANUEL R. LEDESMA, JR., in his capacity as President and Chief Executive Officer (CEO), and the concerned and affected OFFICERS of PSALM,
Petitioners,

G.R. No. 216606

- *versus* -

COMMISSION ON AUDIT (COA),
Respondent.

Present:

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

Promulgated:

April 27, 2021

x----------x

DECISION

M. LOPEZ, *J.*:

Before this Court are the consolidated Petitions for *Certiorari*[1] under Rule 64, in relation to Rule 65, of the Revised Rules of Court docketed as G.R. No. 213425 and G.R. No. 216606. G.R. No. 213425 assails Decision No. 2013-228[2] dated December 23, 2013 and Resolution[3] dated April 4, 2014 of respondent Commission on Audit (COA) in COA CP Case No. 2011-144. On the other hand, G.R. No. 216606 questions the COA's Resolution[4] dated November 20, 2014 in COA CP Case No. 2010-362.

Facts

Petitioner Power Sector Assets and Liabilities Management Corporation (PSALM) is a government-owned and controlled corporation (GOCC) created under Republic Act (RA) No. 9136,[5] also known as the "Electric Power Industry Reform Act of 2001" (EPIRA). Its principal

---

1 *Rollo* (G.R. No. 213425), pp. 3-36; and *rollo* (G.R. No. 216606), pp. 3-35.
2 *Rollo* (G.R. No. 213425), pp. 41-46.
3 *Id.* at 47.
4 *Rollo* (G.R. No. 216606), p. 44.
5 AN ACT ORDAINING REFORMS IN THE ELECTRIC POWER INDUSTRY, AMENDING FOR THE PURPOSE CERTAIN LAWS AND FOR OTHER PURPOSES; approved on June 8, 2001.

purpose is to manage the orderly sale, disposition, and privatization of National Power Corporation (NPC) assets to liquidate all NPC financial obligations and stranded contract costs in an optimal manner.[6]

Since 2002, PSALM had been reimbursing Extraordinary and Miscellaneous Expenses (EME) to its officers and employees with certifications issued by the claimant as evidence of disbursement in accordance with Section 397(c)[7] of the Government Accounting and Auditing Manual (GAAM)[8] – Volume I and COA Circular No. 89-300[9] dated March 21, 1989.[10] In a Letter[11] dated August 28, 2008, however, the COA Audit Team Leader reminded PSALM that COA Circular No. 2006-001[12] dated January 3, 2006 no longer allows the use of such certification as an alternative supporting document for reimbursement claims of EME and other similar expenses. Notably, PSALM and all its departments were furnished a copy of COA Circular No. 2006-001 on March 8, 2006,[13] Paragraph III(3) of which provides:

> 3. The claim for reimbursement of such expenses shall be supported by **receipts and/or other document evidencing disbursements**; x x x (Emphasis supplied.)

Despite such advice, PSALM continued to pay out EME in 2008 and 2009, supported merely by certifications. Consequently, the disbursed 2008 EME became the subject of Notice of Suspension (NS) No. 09-0001-000-(08)[14] dated March 16, 2009 on the ground that they were not supported by documents required under COA Circular No. 2006-001. The NS required PSALM to submit receipts corresponding to the 2008 EME reimbursements.

---

6 RA NO. 9136, SEC. 50. *Purpose and Objective, Domicile and Term of Existence.* — The principal purpose of the PSALM Corp. is to manage the orderly sale, disposition, and privatization of NPC generation assets, real estate and other disposable assets, and IPP contracts with the objective of liquidating all NPC financial obligations and stranded contract costs in an optimal manner.

x x x x

7 SEC. 397. *Guidelines for payment of extraordinary and miscellaneous expenses.* — The officials concerned shall be guided by the following rules:

x x x x

c. The entitlement to the benefit shall be strictly non-commutable or reimbursement basis. The corresponding claim for reimbursement of such expenses shall be supported by receipts and/or other documents evidencing disbursement, if these are available, or, **in lieu thereof, by a certification executed by the official concerned that the expenses sought to be reimbursed have been incurred for any of the purposes contemplated under the law or regulation in relation to or by reason of his position.** In the case of miscellaneous expenses incurred for an office specified in the law, such certification shall be executed solely by the head of the office. (COA Cir. 89-300, Mar. 21, 1989) (Emphasis supplied.)

8 COA Circular No. 91-368, INSTITUTING A GOVERNMENT ACCOUNTING AND AUDITING MANUAL AND PRESCRIBING ITS USE; dated December 19, 1991.

9 AUDIT GUIDELINES ON DISBURSEMENT FOR EXTRAORDINARY AND MISCELLANEOUS EXPENSES IN NATIONAL GOVERNMENT AGENCIES PURSUANT TO SECTION 19 AND OTHER RELATED SECTIONS OF RA 6688 (GENERAL APPROPRIATIONS ACT FOR 1989); dated March 21, 1989.

10 *Rollo* (G.R. No. 213425), pp. 9-10; and *rollo* (G.R. No. 216606), pp. 8-10.

11 *Rollo* (G.R. No. 216606), p. 95.

12 GUIDELINES ON THE DISBURSEMENT OF EXTRAORDINARY AND MISCELLANEOUS EXPENSES AND OTHER SIMILAR EXPENSES IN GOVERNMENT-OWNED AND CONTROLLED CORPORATIONS/GOVERNMENT FINANCIAL INSTITUTIONS AND THEIR SUBSIDIARIES; dated January 3, 2006.

13 *Rollo* (G.R. No. 216606), p. 95.

14 *Id.* at 104.

Still unwilling to comply, PSALM filed a motion for reconsideration (MR) for the lifting of the NS. Unmoved, the Auditor issued Notice of Disallowance (ND) No. 09-004-(08)[15] (*2008 EME ND*) on December 28, 2009, disallowing the 2008 EME, amounting to an aggregate of ₱2,385,334.06. The approving and certifying officers, as well as the individual payees were all made liable to settle the disallowed amount.[16]

On June 2, 2010, a Memorandum on Appeal[17] was filed before the COA Corporate Government Sector (CGS), Cluster B, questioning the *2008 EME ND*, which was denied in Decision No. 2010-012[18] dated November 25, 2010:

> **WHEREFORE**, foregoing premises considered, the instant appeal is hereby **DENIED** for lack of merit. Accordingly, [ND] No. 09-004-(08) dated December 28, 2009 amounting to ₱2,385,334.06 is hereby **AFFIRMED**.[19] (Emphasis in the original.)

PSALM then filed a Petition for Review[20] of COA CGS Decision No. 2010-012 before the COA Proper on December 28, 2010, which was also denied in **Decision No. 2013-229**[21] dated December 23, 2013:

> **WHEREFORE**, the Petition for Review of [PSALM] and its concerned officers is hereby **DENIED**. Accordingly, [COA CGS]-Cluster B Decision No. 2010-012 dated November 25, 2010 and [*2008 EME ND*] dated December 28, 2009, on the payment of [EME] to [PSALM] officers for the year 2008 in the total amount of [₱]2,385,334.06, are hereby **AFFIRMED**.[22] (Emphasis in the original.)

No MR or petition for *certiorari* was filed. Thus, **Decision No. 2013-229** became final and executory. A Notice of Finality of Decision[23] (NFD) dated March 6, 2014 was issued and served upon PSALM through a 1st Indorsement.[24] This prompted PSALM to file a Motion for Relief from Judgment and/or to Defer/Suspend Enforcement of Finality of Decision,[25] claiming that its failure to file an MR or a petition for *certiorari* was due to an honest mistake, inadvertence, or excusable negligence. Unconvinced, the

---

15 *Id.* at 112-113.

16 (1) Marivi V. Francisco, Senior Financial Specialist/OIC GAD Controllership Department; and (2) Yolanda D. Alfafara, OIC, Controllership Department, as certifying officers; (3) Jose C. Ibazeta, PSALM President and Chief Executive Officer; (4) Maria Luz L. Caminero Vice President (VP), General Counsel; (5) Helena C. Tolentino VP CMCSC; (6) Lourdes S. Alzona, VP, Finance; and (7) Froilan A. Tampinco, VP, AMETG as approving officers; and (8) PSALM officers and employees, who received 2008 EME reimbursements; *id.* at 113.

17 *Id.* at 120-135.

18 *Id.* at 115-118.

19 *Id.* at 118.

20 *Id.* at 155-177.

21 *Id.* at 51-56.

22 *Id.* at 55.

23 *Id.* at 47-49.

24 *Id.* at 46.

25 *Id.* at 58-69.

COA Proper *En Banc* issued Resolution[26] dated November 20, 2014, denying PSALM's motion:

> "The [COA Proper] dismissed the Urgent Manifestation and Motion for having been filed out of time. The Notice of Finality of Decision dated March 6, 2014 shall remain in force and effect."[27]

The COA Proper's Resolution dated November 20, 2014 is now the subject of the Petition for *Certiorari* in G.R. No. 216606.

Meanwhile, pending resolution of the *2008 EME ND* appeal, ND No. 10-005-(2009) (*2009 EME ND*)[28] dated August 9, 2010 was issued, similarly disallowing the 2009 EME reimbursements, amounting to an aggregate of ₱2,615,500.79, for failure to submit the documentary requirements under COA Circular No. 2006-001. All the approving/certifying officers and payees of the 2009 EME were likewise made liable for the disallowed transactions.[29]

On February 1, 2011, PSALM filed a Memorandum on Appeal[30] before the COA CGS, Cluster B, challenging the *2009 EME ND*, but was denied in COA CGS Decision No. 2011-004[31] dated April 13, 2011:

> **WHEREFORE**, foregoing premises considered, the instant appeal is hereby **DENIED** for lack of merit. Accordingly, [ND] No. 10-005-(2009) dated August 9, 2010 relative to the payment of CY 2009 [EME] to PSALM officials in the total amount of [₱]2,615,500.79 is hereby **AFFIRMED**.[32] (Emphasis in the original.)

On May 4, 2011, PSALM filed a Petition for Review[33] of COA CGS Decision No. 2011-004 before the COA Proper, which was likewise denied in **Decision No. 2013-228**[34] dated December 23, 2013:

> **WHEREFORE**, the Petition for Review of [PSALM] is hereby **DENIED**. Accordingly, [CGS]-Cluster B Decision No. 2011-004 dated April 13, 2011 and [*2009 EME ND*] dated August 9, 2010, on the payment of [EME] to its officials for the year 2009 in the total amount of [₱]2,615,500.79, are hereby **AFFIRMED**.[35] (Emphasis in the original.)

---

26 *Supra* note 4.
27 *Id.*
28 *Rollo* (G.R. No. 213425), pp. 48-62.
29 (1) Yolanda D. Alfafara, Manager, Controllership Department; (2) Maria M. Bautista, Manager, GAD; (3) Marivi V. Francisco, OIC, GAD; and (4) Ma. Erliza C. Casas, OIC, GAD as certifying officers; (5) Jose C. Ibazeta, President and CEO; (6) Maria Luz L. Caminero, VP and General Counsel; (7) Helena C. Tolentino, VP, CMCSG; (8) Lourdes S. Alzona, VP, Finance; (9) Dorothy M. Calimag, Department Manager, HRAGSD; (10) Manuel Marcos M. Villalon, OIC, Finance; (11) Conrad S. Tolentino, Acting VP, AMETG; and (12) Ferdinand A. Florendo, OIC, Finance as approving officers; and (13) PSALM officers and employees, who received 2009 EME reimbursements, *id.* at 49.
30 *Id.* at 65-78.
31 *Id.* at 87-91.
32 *Id.* at 90.
33 *Id.* at 92-117.
34 *Id.* at 41-46.
35 *Id.* at 45.

Unlike with Decision No. 2013-229, PSALM was able to timely file an MR of the COA Proper's Decision No. 2013-228, but it was denied in a Resolution[36] dated April 4, 2014:

> "The [COA Proper] denied the [MR] for lack of merit. The movants failed to raise a new matter or show sufficient ground to justify a reconsideration of COA Decision No. 2013-228 dated December 23, 2013."[37]

The COA Proper's Decision No. 2013-228 and Resolution dated April 4, 2014 are now the subjects of the Petition for *Certiorari* in G.R. No. 213425.

Issues

In G.R. No. 213425, PSALM contends that the COA Proper erred in upholding the *2009 EME ND*. It claims that its officials and employees' right to due process was violated when the *2009 EME ND* was issued without first issuing an Audit Observation Memorandum (AOM).[38] PSALM also argues that COA Circular No. 2006-001 is not applicable to it because it derives its authority to disburse EME from the General Appropriations Act (GAA).[39] As such, it disburses EME in accordance with Section 397(c)[40] of the GAAM,[41] Volume I, citing Paragraph III(4)[42] of COA Circular No. 89-300,[43] which allows national government agencies (NGA) to use certifications, in lieu of receipts, as proof of disbursement. Hence, PSALM posits that the evil sought to be prevented by the stricter requirement under COA Circular No. 2006-001 is already addressed by the ceiling amounts provided under the GAA. In any case, PSALM contends that the certifications supporting the claims should be considered sufficient as they fall under the "other document evidencing disbursements" contemplated under paragraph III(3) of COA Circular No. 2006-001.[44] Violation of the equal protection clause was also raised because of the alleged preferential treatment given to the NPC and the National Transmission Commission (TransCo) when no disallowance was issued to the EMEs that they disbursed, which were merely supported by certifications;[45] and also due to the difference in

---

36 *Supra* note 3.
37 *Id.*
38 *Rollo* (G.R. No. 213425), pp. 13-18.
39 *Id.* at 21-22.
40 *Supra* note 7.
41 *Supra* note 8.
42 4. The entitlement to the benefit provided under the General Appropriations Act shall be on a strictly non-commutable or reimbursement basis. The corresponding claim for reimbursement of such expenses shall be supported by receipts and/or other documents evidencing disbursement, if these are available, or, in lieu thereof, by a certification executed by the official concerned that the expenses sought to be reimbursed have been incurred for any of the purposes contemplated under Section 19 and other related sections of RA 6688 (or similar provision in subsequent General Appropriations Acts) in relation to or by reason of his position. In the case of miscellaneous expenses incurred for an office specified in the law, such certification shall be executed solely by the head of the office.
43 *Supra* note 9.
44 *Rollo* (G.R. No. 213425), pp. 18-21.
45 *Id.* at 22-26.

treatment between NGAs and GOCCs as NGAs are allowed to use certifications under COA Circular No. 89-300.[46] Lastly, PSALM invokes good faith on the part of its officials in approving and receiving the 2009 EME reimbursements.[47]

In G.R. No. 216606, PSALM argues that the COA gravely abused its discretion in denying its motion for relief from judgment and sustaining the finality of Decision No. 2013-229. PSALM beseeches the Court to brush aside the technical rules of procedure and to review the merits of the case.[48] On the merits, PSALM maintains that the COA Proper committed grave abuse of discretion in affirming the *2008 EME ND*, raising the same substantive issues stated above.[49]

To synthesize, the issues for our resolution are the following:

I. Whether the COA committed grave abuse of discretion in ruling that due process was not disregarded when the *2009 EME ND* was issued without first issuing an AOM;

II. Whether the COA committed grave abuse of discretion in denying PSALM's motion for relief from judgment and declaring Decision No. 2013-229 as final and executory;

III. Whether the COA committed grave abuse of discretion in affirming the *2008 EME ND* and *2009 EME ND* or specifically:

A. Did the COA err in ruling that COA Circular No. 2006-001 applies to PSALM?

B. Did the COA err in ruling that certifications cannot be considered as substantial compliance with the documentary requirement under COA Circular No. 2006-001?

C. Did the COA err in ruling that there was no violation of the equal protection clause when COA auditors allegedly failed to apply COA Circular No. 2006-001 to the NPC and TransCo? Was the principle of equal protection violated by the difference in treatment between NGAs and GOCCs?

---

46 *Supra* note 9.
47 *Rollo* (G.R. No. 213425), pp. 26-28.
48 *Rollo* (G.R. No. 216606), pp. 13-18.
49 *Id.* at 19-29.

D. Did the COA err in affirming the liability of PSALM's officers and employees to settle the disallowed amounts?

Ruling

We find no merit in both Petitions.

The COA's audit power is among the constitutional mechanisms structured to ensure the check-and-balance system inherent in our form of government. Under the 1987 Constitution,[50] the COA is vested with broad powers over all accounts pertaining to government revenues and expenditures, including the exclusive authority to promulgate accounting and auditing rules and regulations for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable uses of government funds and properties.[51] As a necessary consequence, the COA's interpretation of its own auditing rules and regulations, as enunciated in its decisions, should be accorded great weight and respect.[52] It is the general policy of the Court to sustain the decisions of the COA, unless it acted without or in excess of jurisdiction or with grave abuse of discretion. Congruent with this precept is the limited scope of the Court's review under the extraordinary remedy of *certiorari*, wherein the Court is confined solely to questions of jurisdiction whenever a tribunal, board or officer exercising judicial or quasi-judicial function acts without jurisdiction or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction.[53] Grave abuse of discretion speaks of an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law as when the judgment rendered is not

---

50 ART. IX-D, SEC. 2(1). The Commission on Audit shall have the power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations with original charters, and on a post-audit basis: (a) constitutional bodies, commissions and offices that have been granted fiscal autonomy under this Constitution; (b) autonomous state colleges and universities; (c) other government-owned or controlled corporations and their subsidiaries; and (d) such non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the Government, which are required by law or the granting institution to submit to such audit as a condition of subsidy or equity. However, where the internal control system of the audited agencies is inadequate, the Commission may adopt such measures, including temporary or special pre-audit, as are necessary and appropriate to correct the deficiencies. It shall keep the general accounts of the Government and, for such period as may be provided by law, preserve the vouchers and other supporting papers pertaining thereto.

(2). The Commission shall have exclusive authority, subject to the limitations in this Article, to define the scope of its audit and examination, establish the techniques and methods required therefor, and promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures, or uses of government funds and properties.

51 *Technical Education and Skills Development Authority (TESDA) v. Commission on Audit*, 753 Phil. 434, 441 (2015).

52 *Secretary Montejo v. Commission on Audit*, G.R. No. 232272, July 24, 2018.

53 See *Abpi v. Commission on Audit* (Resolution), G.R. No. 252367, July 14, 2020.

based on law and evidence but on caprice, whim and despotism.[54] As will be discussed, we do not find any COA action in these cases done beyond its jurisdiction or with grave abuse discretion.

I. Right to due process

In G.R. No. 213425, PSALM laments that the Auditor's failure to issue an AOM before the issuance of the *2009 EME ND* is a breach of the right to due process. This argument has no legal basis.

We agree with the COA that COA Circular No. 2009-006[55] or the COA Rules and Regulations on Settlement of Accounts (RRSA) does not require the issuance of an AOM before a disallowance may be issued. Paragraph 5.3 of the RRSA states that an AOM shall be issued only "*[i]n case an audit decision cannot as yet be reached due to incomplete documentation/information, or if the deficiencies noted refer to financial or operational matters which do not involve pecuniary loss[.]*"[56] Considering the clear violation of a COA regulation as stated in the *2009 EME ND*, and the disallowance of a previous similar transaction,[57] the COA correctly observed that the transaction subject of the *2009 EME ND* was "already ripe for auditorial determination."[58]

Correspondingly, under paragraph 10.1 of the RRSA, an ND shall issue, without the mention of an AOM, "for transactions which are irregular/unnecessary/excessive and extravagant as defined in COA Circular No. 85-55A[59] as well as other COA issuances, and those which are illegal and unconscionable." In fact, paragraph 10.3 of the RRSA requires that "[t]he ND shall be issued as often as disallowances are made by the Auditor in order to notify the agency head, the accountant, and the persons liable for the amount disallowed in audit." Upon receipt of the ND, the affected officers and employees can appeal the ND to the COA CGS,[60] then to the

---

54 *Technical Education and Skills Development Authority (TESDA) v. Commission on Audit*, supra note 51, at 72-73 (2014).

55 PRESCRIBING THE USE OF THE RULES AND REGULATIONS ON SETTLEMENT OF ACCOUNTS; dated September 15, 2009.

56 See also COA CIRCULAR NO. 2009-006, par. 8.1, "[t]he Auditor shall issue an AOM – Form I – for observations relating to financial/operational deficiencies such as accounting, internal control or property management which do not involve pecuniary loss. An AOM may also be issued for documentary or other information requirements to enable the auditor to make a decision in audit."

57 In Decision No. 2011-004, the COA CGS stated that "the same transaction had been previously disallowed[,] and in fact, had been affirmed by [the COA CGS] per CGS Decision No. 2010-002 dated February 23, 2010;" *rollo* (G.R. No. 213425), p. 89; Note that the *2008 EME ND* was also previously issued.

58 *Id.*

59 AMENDED RULES AND REGULATIONS ON THE PREVENTION OF IRREGULAR, UNNECESSARY, EXCESSIVE OR EXTRAVAGANT EXPENDITURES OR USES OF FUNDS AND PROPERTY; dated September 8, 1985.

60 2009 REVISED RULES OF PROCEDURE OF THE COA, RULE V, SEC. 1. *Who May Appeal.* — An aggrieved party may appeal from the decision of the Auditor to the Director who has jurisdiction over the agency under audit.

COA Proper,[61] and even question it before this Court[62] as PSALM did. Thus, despite non-issuance of an AOM, PSALM was afforded the right to be properly notified and fully heard. It cannot complain that due process requirements were disregarded. Well-settled is the rule that the essence of due process is simply an opportunity to be heard; an opportunity to explain one's side; or the opportunity to seek a reconsideration of the action or ruling complained of. It safeguards, not the lack of previous notice, but the denial of the opportunity to be heard. When the party was afforded the opportunity to defend his interests in due course, there is no denial of due process.[63]

Verily, the COA did not commit grave abuse of discretion in upholding the *2009 EME ND* despite non-issuance of an AOM.

II. Finality of COA Proper Decision No. 2013-229

It is undisputed that the COA Proper's Decision No. 2013-229 had already attained finality for PSALM's failure to file an MR or petition for *certiorari* in accordance with Sections 9 and 10, Rule X of the 2009 Revised Rules of Procedure of the COA,[64] as amended by COA Resolution No. 2011-006,[65] *viz.*:

> SEC. 9. Finality of Decisions or Resolutions. — A decision or resolution of the Commission upon any matter within its jurisdiction shall become final and executory after the lapse of thirty (30) days from notice of the decision or resolution. x x x
>
> x x x x
>
> SEC. 10. Motion for Reconsideration. — A motion for reconsideration may be filed within thirty (30) days from notice of the decision or resolution, on the grounds that the evidence is insufficient to justify the decision; or that the said decision of the Commission is contrary to law. Only one (1) motion for reconsideration of a decision of the Commission shall be entertained.

Despite such admitted lapse on PSALM's part, it faults the COA Proper for denying its motion for relief from judgment and for maintaining the validity of the NFD. PSALM insists that it is entitled to relief on the grounds of honest mistake, inadvertence, or excusable negligence on the part

---

61 2009 REVISED RULES OF PROCEDURE OF THE COA, RULE VII, SEC. 1. *Who May Appeal and Where to Appeal.* — The party aggrieved by a decision of the Director x x x may appeal to the Commission Proper.

62 2009 REVISED RULES OF PROCEDURE OF THE COA, RULE XII, SEC. 1. *Petition for Certiorari.* — Any decision, order or resolution of the Commission may be brought to the Supreme Court on certiorari by the aggrieved party within thirty (30) days from receipt of a copy thereof in the manner provided by law and the Rules of Court.

63 *Mendoza v. Commission on Audit*, 717 Phil. 491, 503 (2013), citing *Gannapao v. Civil Service Commission*, 665 Phil. 60, 70 (2011).

64 Approved on September 15, 2009.

65 RESOLUTION MODIFYING SECTIONS 9 AND 10, RULE X OF THE 2009 REVISED RULES OF PROCEDURE OF THE COMMISSION ON AUDIT; dated August 17, 2011.

of its staff, who claim to have "unknowingly"[66] received two COA Proper decisions (Decision No. 2013-228 and Decision No. 2013-229) on the same day. Thinking that they received only one decision, they were able to file an MR only of Decision No. 2013-228. This argument fails to impress.

Relief from judgment is a remedy found under Rule 38 of the Revised Rules of Court.[67] It is an equitable relief granted only under exceptional circumstances when a judgment or final order is rendered against a party, who was prevented from taking part in the proceedings or taking an appeal due to lack of available or adequate remedy, or on grounds of fraud, accident, mistake, or excusable negligence.[68] "Mistake" as a ground for relief from judgment should be of such nature as to cause substantial injustice, or so palpable that it borders on extrinsic fraud. There is extrinsic fraud when a party is prevented from fully and fairly presenting his case to the Court.[69] On the other hand, "negligence" or inadvertence to be excusable, must be one which ordinary diligence and prudence could not have guarded against.[70]

In this case, PSALM had the remedies of filing an MR and a petition for *certiorari*, but failed to do so due to its own fault. The alleged mistake and inadvertence or negligence of PSALM's staff in failing to avail of its legal remedies do not fall under the contemplation of the rules to warrant relief from a final and immutable judgment. There is no showing that PSALM was deprived of the opportunity to present its case fully and fairly as it had several occasions to justify its 2008 EME reimbursements. Notably, it repeatedly raised the same arguments, which were fully addressed by the COA Auditor, COA CGS, as well as the COA Proper. There is also no showing that the alleged mistake or negligence could not have been prevented through ordinary diligence and prudence. PSALM knew that it had pending cases with the COA, and as a litigant, it has the duty to be vigilant with the status of its pending cases.[71] Relief cannot be granted on a flimsy excuse that the failure to file the necessary pleading was due to some mistake, inadvertence, or negligence of the party's staff, who got confused upon receipt of two COA decisions when they were, in fact, awaiting two decisions from the COA. Otherwise, all that a defeated party would do to salvage his or her case is to claim such simple mistake, inadvertence, or neglect as grounds for the review of every adverse judgment, which will put no end to litigation.[72]

---

66 *Rollo* (G.R. No. 216606), p. 61.

67 2009 REVISED RULES OF PROCEDURE OF THE COA, Rule XV, SEC. 1. *Supplementary Rules.* — In the absence of any applicable provision in these rules, the pertinent provisions of the Rules of Court in the Philippines shall be applicable by analogy or in suppletory character and effect.

68 REVISED RULES OF COURT, Rule 38, Secs. 1 and 2.

69 *City of Dagupan v. Maramba*, 738 Phil. 71, 90-91 (2014).

70 *Insular Life Savings and Trust Company v. Spouses Runes*, 479 Phil. 995, 1006 (2004).

71 See *Ng Ching Ting v. Philippine Business Bank*, G.R. No. 224972, July 9, 2018, 871 SCRA 282.

72 See *Insular Life Savings and Trust Company v. Spouses Runes*, *supra* note 70, at 1008.

Time and again, we have held that a party to an original action who fails to question an adverse judgment by not filing the proper remedy within the period prescribed by law loses the right to do so, and the judgment or decision as to him or her becomes final and binding.[73] The decision becomes immutable and unalterable, and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law.[74] This doctrine of immutability is grounded upon the fundamental principles of public policy and sound practice that, at the risk of occasional error, the judgment of courts and quasi-judicial agencies must become final at some definite date fixed by law.[75]

By and large, we find that the COA did not commit grave abuse of discretion in denying the motion for relief from judgment and sustaining the finality and immutability of its Decision No. 2013-229. Significantly, it would not go amiss to emphasize that PSALM's failure to file an MR or a petition for *certiorari* was not a denial of due process as it was able to fully ventilate its case before the COA Auditor, the COA CGS, and the COA Proper. Be that as it may, in the proceeding discussions, we shall address the common substantive issues raised to challenge Decision No. 2013-229 on the propriety of the *2008 EME ND* and Decision No. 2013-228 with regard to the *2009 EME ND.*

III. Propriety of the *2008 EME ND* and *2009 EME ND*

A. COA Circular No. 2006-001 applies to PSALM.

Pertinent portions of COA Circular No. 2006-001 provide:

> I. RATIONALE
>
> Governing boards of government-owned and controlled corporations/government financial institutions (GOCCs/GFIs) are invariably empowered to appropriate through resolutions such amounts as they deem appropriate for [EME]. **Previous circulars issued by this Commission pursuant to its constitutional mandate to promulgate accounting and auditing rules and regulations governing such expenses, however, clearly and categorically pertain to [NGAs] only. There is a need, therefore, to prescribe rules and regulations specifically for government corporations to regulate the incurrence of these expenditures and ensure the prevention or disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures or uses of government funds.**

---

73 *Ocampo v. CA*, 601 Phil. 43, 49 (2009).

74 See *Philippine Health Insurance Corporation v. Commission on Audit*, G.R. No. 222710, September 10, 2019; *Orlina v. Ventura*, G.R. No. 227033, December 3, 2018; *Philippine Health Insurance Corporation v. Commission on Audit*, G.R. No. 222838, September 4, 2018; and *Republic v. Heirs of Cirilo Gotengco*, 824 Phil. 568, 578 (2018).

75 *Team Pacific Corporation v. Daza*, 690 Phil. 427, 441 (2012), citing *Zamboanga Forest Managers Corp. v. Pacific Timber and Supply Co.*

> II. SCOPE AND COVERAGE
>
> **This Circular shall be applicable to all GOCCs, GFIs and their subsidiaries.** It shall cover [EME] and other similar expenses, such as discretionary, business development expenses, representation expenses and the like, provided that the nature or purpose of said expenditures pertain to any of the following:
>
> x x x x
>
> The above enumeration is not exclusive and shall not prevent the inclusion of other similar disbursements which may be categorized as [EME] within its contemplation.
>
> III. AUDIT GUIDELINES
>
> 1. The amount of [EME], as authorized in the corporate charters of GOCCs/GFIs shall be the ceiling in the disbursement of these funds. **Where no such authority is granted in the corporate charter and the authority to grant [EME] is derived from the General Appropriations Act (GAA), the amounts fixed thereunder shall be the ceiling in the disbursements**[.]
>
> x x x x (Emphases supplied.)

PSALM harps on the first sentence of COA Circular No. 2006-001's "Rationale" in arguing that the circular specifically applies only to GOCCs, which are invariably empowered to allocate through their governing boards such amounts as they deem appropriate for EME, and not to those which disburse EME in accordance with the amounts fixed under the GAA. It theorizes that the evil sought to be prevented by COA Circular No. 2006-001, *i.e.*, the irregular, excessive, extravagant, or unconscionable expenditure of public funds through EME disbursements, was already addressed by compliance with the ceiling amounts fixed under the GAA. Since PSALM disburses EME in accordance with the GAA, it insists that Section 397(c) of the GAAM – Volume I, echoing Paragraph III(4) of COA Circular No. 89-300 dated March 21, 1989, should instead be applied, thus:

> SEC. 397. Guidelines for payment of extraordinary and miscellaneous expenses. – The officials concerned shall be guided by the following rules:
>
> x x x x
>
> c. The entitlement to the benefit shall be strictly non-commutable or reimbursement basis. The corresponding claim for reimbursement of such expenses shall be supported by receipts and/or other documents evidencing disbursement, if these are available, or, **in lieu thereof, by a certification executed by the official concerned that the expenses sought to be reimbursed have been incurred for any of the purposes contemplated under the law or regulation in relation to**

> incurred for an office specified in the law, such certification shall be executed solely by the head of the office. (COA Cir. 89-300, Mar. 21, 1989) (Emphasis supplied.)

We do not agree.

COA Circular No. 89-300, which was reproduced in Section 397(c) of the GAAM – Volume I, is a previous regulation, applicable only to NGAs, and not to GOCCs/GFIs.[76] Paragraph II of COA Circular No. 89-300, captioned as "Scope and Coverage" categorically indicates that it applies to "appropriations authorized under [the GAA of 1989] **for National Government [A]gencies** [that] may be used for incurrence of [EME] at the rates and by the offices and officials specified therein."[77] On the other hand, COA Circular No. 2006-001 is a recent regulation, issued specifically **to all GOCCs, GFIs and its subsidiaries** without distinction, as can be inferred from the express statement under its Paragraph II, captioned as "Scope and Coverage." Too, Paragraph III(1) of COA Circular No. 2006-001 particularly mentions GOCCs that derive their authority to grant EME from the GAA to be covered by the "Audit Guidelines." The explicit language of COA Circular 2006-001 is clear and needs no interpretation. It applies to PSALM and all other GOCCs without qualification. Hence, the COA correctly applied the legal maxim "*ubi lex non distinguit, nec nos distinguere debemus*" or "where the law does not distinguish, neither should we."[78]

Furthermore, that COA Circular No. 89-300 applies only to NGAs, while COA Circular No. 2006-001 governs GOCCs/GFIs is confirmed in the more recent COA Circular No. 2012-001[79] dated June 14, 2012, which provides:

> *General Guidelines*
>
> The amount fixed under the GAA for National Government offices and officials shall be the ceiling in the disbursement of [EME]. It shall cover [EME] and other similar expenses, such as discretionary, business development expenses, representation expenses and the like. **The audit guidelines on disbursement for these expenses in [NGAs] are prescribed under COA Circular No. 89-300 dated March 31, 1989.**
>
> For GOCCs/GFIs, the amount authorized in their corporate charters shall be the ceiling in the disbursement of funds. **Where no such authority is granted in the corporate charter and the authority to grant [EME] is derived from the GAA, the amounts fixed thereunder shall be the ceiling in the disbursements. The guidelines for GOCCs/GFIs are prescribed under COA Circular No. 2006-001 dated January 3, 2006.**

---

76 *Espinas v. Commission on Audit*, 731 Phil. 67, 79 (2014).

77 Emphasis supplied.

78 *Rollo* (G.R. No. 213425), p. 45; and *rollo* (G.R. No. 216606), p. 54.

79 PRESCRIBING THE REVISED GUIDELINES AND DOCUMENTARY REQUIREMENTS FOR COMMON GOVERNMENT TRANSACTIONS; dated June 14, 2012.

x x x x

Documentary Evidence

- **Invoices/receipts for GOCCs/GFIs and LGUs**
- **Receipts and/or other documents evidencing disbursement, if there are available, or in lieu thereof, certification executed by the official concerned that the expense sought to be reimbursed have been incurred for any of the purposes contemplated under the provisions of the GAA in relation to or by reasons of his position, in case of NGAs**
- Other supporting documents as are necessary depending on the nature of expense charged[.][80] (Emphases supplied.)

Also, in *National Transmission Corporation v. Commission on Audit and Aguinaldo*,[81] *(TransCo)* we consistently ruled that:

> **[While] it is undisputed that the authority of TransCo to allow the payment of EME is derived from the GAA[,] x x x it may do so only when the conditions set forth in COA Circular No. 2006-001 have been clearly established.** In fact, the last paragraph of Section 28 of the GAA explicitly states that "these expenditures shall be subject to pertinent accounting and auditing rules and regulations." (Emphasis supplied.)

Accordingly, whether a GOCC derives the authority to disburse EME from its charter or from the GAA, the rules laid down in COA Circular No. 2006-001 shall govern.

More importantly, contrary to PSALM's stance, the evil sought to be prevented by the requirement under COA Circular No. 2006-001 is not extinguished simply by complying with the fixed amounts under the GAA in disbursing public funds for EME. Note that COA Circular No. 2006-001 was issued to "ensure the prevention or disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures or uses of government funds"[82] in GOCCs, GFIs and its subsidiaries. Certain COA issuances particularly described what those prevented transactions are. For instance, COA Circular No. 85-55A[83] and COA Circular No. 2012-003[84] both define "excessive expenditures" as those signifying unreasonable expenses incurred at an immoderate quantity and exorbitant price; and those which exceed what is usual or proper, as well as expenses which are unreasonably high and beyond just measure or amount.[85] Indeed, a disbursement for EME may be well within the threshold amount under the

---

80 7.0 Extraordinary and Miscellaneous Expenses.

81 G.R. No. 244193, November 10, 2020.

82 COA CIRCULAR NO. 2006-001, Paragraph I; dated January 3, 2006.

83 *Supra* note 59.

84 UPDATED GUIDELINES FOR THE PREVENTION AND DISALLOWANCE OF IRREGULAR, UNNECESSARY, EXCESSIVE, EXTRAVAGANT AND UNCONSCIONABLE EXPENDITURES; dated October 29, 2012.

85 COA Circular No. 85-55A, SEC. 3.3, signed on September 8, 1985; and COA Circular No. 2012-003, SEC. 5.1, signed on October 29, 2012.

GAA, but such amount may possibly correspond to an expense obtained at an immoderate quantity and exorbitant price, which makes it an excessive expenditure. These factual considerations for auditing purposes can only be ascertained through receipts and similar documents, which reflect such essential transaction details needed for the determination of an expenditure's propriety.

B. The invoked certifications cannot be considered as substantial compliance with the documentary requirement under COA Circular No. 2006-001.

It is undisputed that PSALM's EME reimbursements were not supported by any receipt or similar documents. Only the certifications executed by the claimants in accordance with Section 397(c) of the GAAM – Volume I and COA Circular No. 89-300 were presented to justify the EME disbursements.

We underscore that COA Circular No. 2006-001 did not adopt the use of a certification contemplated under the GAAM or COA Circular No. 89-300 as an alternative supporting document for EME disbursement. The plain language of Paragraph III(3) of COA Circular No. 2006-001 mandates that "[t]he claim for reimbursement of such expenses shall be supported by **receipts and/or other documents evidencing disbursements.**"[86] As we have held in *Espinas v. Commission on Audit*[87] (*Espinas*):

> [T]he Court concurs with the C[O]A's conclusion that the "certification" submitted by petitioners cannot be properly considered as a supporting document within the purview of Item III(3) of C[O]A Circular No. 2006-01 which pertinently states that a "claim for reimbursement of [EME] expenses shall be supported by receipts and/or other documents evidencing disbursements." Similar to the word "receipts," the "other documents" pertained to under the above-stated provision is qualified by the phrase "evidencing disbursements." Citing its lexicographic definition, the C[O]A stated that the term "disbursement" means "to pay out commonly from a fund" or "to make payment in settlement of debt or account payable." That said, it then logically follows that petitioners' "certification," so as to fall under the phrase "other documents" under Item III(3) of C[O]A Circular No. 2006-01, must substantiate the "paying out of an account payable," or, in simple term, a disbursement. However, an examination of the sample "certification" attached to the petition does not, by any means, fit this description. **The signatory therein merely certifies that he/she has spent, within a particular month, a certain amount for meetings, seminars, conferences, official entertainment, public relations, and the like, and that the certified amount is within the ceiling authorized under the LWUA corporate budget. Accordingly, since petitioners' reimbursement claims were solely**

---

86 Emphasis supplied.
87 731 Phil. 67 (2014).

> **supported by this "certification," the C[O]A properly disallowed said claims for failure to comply with C[O]A Circular No. 2006-01.**[88] (Emphasis supplied; citations omitted.)

We further elucidated in *Transco*, citing *Espinas*, that:

> [A] certification may or may not constitute an adequate proof of disbursement. **To be admitted as a sufficient evidence of payment, the certification presented by the GOCC must establish "the paying out of an account payable," or a disbursement. It must reflect the transaction details that are typically found in a receipt which is the best evidence of the fact of payment. It must specify the nature and description of the expenditures, amount of the expenses, and the date and place they were incurred. This interpretation holds true even with just a plain reading of [Paragraph] III of COA Circular No. 2006-001, since the phrase "other documents" is qualified by the phrase "evidencing disbursements."** A sweeping and general statement that expenditures were incurred by some officials within a certain month does not, in any way, satisfy the condition contemplated in the circular. Unfortunately, in this case, the certifications submitted by TransCo officials merely provided a simple declaration from each payee that "the expenses have been incurred for any of the purposes contemplated under the law or regulation (GAA and COA Circular No. 89-300) in relation to or by reason of my position." Hence, the Court is not inclined to accept such certification as valid evidence of disbursement.[89] (Emphasis supplied; citations omitted.)

We note that the certifications supporting the reimbursements of PSALM's officials were not attached to these Petitions. Hence, we are constrained to sustain the COA's factual findings with regard to the insufficiency of the transaction details stated in each certification. In any case, the averments in the Petitions would show that the invoked certifications stated similar sweeping and general allegations that the expenses sought to be reimbursed have been incurred by the claimant for any of the purposes contemplated under the law or regulation in relation to or by reason of his position.[90] We stress that these allegations are insufficient evidence of disbursement under the COA auditing rules and regulations. Hence, PSALM's unjustified insistence to use such certifications as sufficient evidence of disbursements cannot be permitted.

C. The principle of equal protection was not violated when some GOCCs were allegedly allowed to use certifications as supporting documents for EME reimbursements. Neither does the difference in

---

88 *Id.* at 78-79.
89 *Supra* note 81.
90 *Rollo* (G.R. No. 213425), p. 20; and *rollo* (G.R. No. 216606), p. 23.

treatment between NGAs and GOCCs violate such principle.

The equal protection clause under the Constitution[91] basically requires that all persons be treated alike under like circumstances and conditions both as to privileges conferred and liabilities enforced.[92] "The purpose of the equal protection clause is to secure every person within a [S]tate's jurisdiction **against intentional and arbitrary discrimination**, whether occasioned by the express terms of a statute or by its improper execution through the state's duly constituted authorities."[93]

PSALM claims that there was a violation of the equal protection clause when GOCCs, such as the NPC and Transco, were allegedly still permitted to use certifications as proof of EME disbursements to claim reimbursements. We are not persuaded.

For one, PSALM did not adduce evidence to support the truth and veracity of this allegation. On the contrary, in *National Power Corporation v. Commission on Audit*,[94] NPC's EME disbursements, supported merely by certifications, were disallowed by the COA. In the case of *Transco* cited above, the 2010 EME reimbursed to its officials was similarly disallowed for being supported only by certifications. In both cases, the COA sustained the necessity of receipts in the reimbursements of EME. At any rate, unless there is a showing of an intentional or arbitrary discrimination, the Auditor's alleged failure to enforce COA Circular No. 2006-001 upon certain GOCCs would not prove a violation of the equal protection clause.[95] As aptly held by the COA, such omission on the part of the State's agent, if at all, is of no controlling significance to the valid implementation of the circular to all GOCCs because the State cannot be estopped by the omission, mistake or error of its officials or agents;[96] it cannot be barred from correcting a public officer's mistake or erroneous application of a law. Besides, an unlawful and irregular act cannot be legitimized by mere continuous practice, nor can it give rise to a vested right.[97]

PSALM also argues that the difference in the auditing rules applied to NGAs on one hand, and to GOCCs on the other, is a violation of the principle of equal protection. This argument was not raised before the

---

91 CONSTITUTION, ART. III, SEC. 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

92 *The Provincial Bus Operators Association of the Philippines (PBOAP) v. Department of Labor and Employment*, 836 Phil. 205, 277 (2018).

93 *Bureau of Customs Employees Association (BOCEA) v. Secretary Teves*, 677 Phil. 636, 660 (2011). Emphasis supplied.

94 G.R. No. 240519, February 19, 2019.

95 See *Department of Public Works and Highways v. Commission on Audit*, G.R. No. 237987, March 19, 2019, 897 SCRA 425, 442, citing *People v. Dela Piedra*, 403 Phil. 31 (2001).

96 See *Republic v. Manimtim*, 661 Phil. 158, 174-175 (2011).

97 *Bases Conversion and Development Authority v. Commission on Audit*, 599 Phil. 455, 469 (2009).

COA,[98] but is nonetheless not a novel one. We defer to the iteration of this issue in *Espinas*, wherein we held that:

> [T]here exists a **substantial distinction** between officials of NGAs and the officials of GOCCs, GFIs and their subsidiaries which justify the peculiarity in regulation. Since the **EME of GOCCs, GFIs and their subsidiaries, are, pursuant to law, allocated by their own internal governing boards, as opposed to the EME of NGAs which are appropriated in the annual GAA duly enacted by Congress, there is a perceivable rational impetus for the C[O]A to impose nuanced control measures to check if the EME disbursements of GOCCs, GFIs and their subsidiaries constitute irregular, unnecessary, excessive, extravagant, or unconscionable government expenditures.** x x x Indeed, the Court recognizes that denying GOCCs, GFIs and their subsidiaries the benefit of submitting a secondary-alternate document in support of an EME reimbursement, such as the "certification" discussed herein, is a C[O]A policy intended to address the disparity in EME disbursement autonomy.[99] x x x (Emphasis supplied; citations omitted.)

Indeed, the guaranty of equal protection of the laws is not a guaranty of similarity in the application of the laws upon all persons. The Constitution does not require that things which are different in fact be treated in law as though they were the same.[100] The principle recognizes a valid classification,[101] that is, a classification that has a reasonable foundation or rational basis and not arbitrary.[102] Here, the COA rules and regulations with regard to EME disbursements appear to be more lenient with NGAs as it allows the use of certifications in accordance with COA Circular No. 89-300, while COA Circular No. 2006-001 strictly requires receipts and similar documents for GOCCs. The difference in treatment lies in the statutory limitations against NGAs in disbursing EME. Aside from the ceiling amounts, the EME appropriations of NGAs are limited to those approved by the Congress in the enactment of the annual GAA. Such appropriations, being fixed in a statute, enjoy the presumption of validity. The presumption

---

98 It would be absurd to hold the COA guilty of grave abuse of discretion on a matter not raised before it. As a rule, "[p]oints of law, theories, issues and arguments not brought to the attention of the lower court, administrative agency or quasi-judicial body need not be considered by a reviewing court, as they cannot be raised for the first time at that late stage." *Arnado v. Commission on Elections and Capitan*, 767 Phil. 51, 82 (2015), citing *Jacot v. Dal*, 592 Phil. 661, 675-676 (2008); Also, the issue on the difference in auditing rules pertains to the COA's quasi-legislative or rule-making power, *not* to its quasi-judicial power. Hence, such matter is generally not reviewable by *certiorari* in accordance with Rule 64, in relation to Rule 65, of the Revised Rules of Court.; See *Dela Llana v. Commission on Audit*, 681 Phil. 186 (2012).

99 *Supra* note 87, at 80-81.

100 *Biraogo v. The Philippine Truth Commission of 2010*, 651 Phil. 374, 460-461 (2010), citing *Victoriano v. Elizalde Rope Workers' Union*, 158 Phil. 60, 86-87 (1974).

101 "Substantial distinction" is a requirement for valid classification. As held in the landmark case on the subject of equal protection, *People v. Cayat* (68 Phil. 12, 18 [1939]):

> It is an established principle of constitutional law that the guaranty of the equal protection of the laws is not violated by a legislation based on reasonable classification. And the classification, to be reasonable, (1) must rest on substantial distinctions; (2) must be germane to the purposes of the law; (3) must not be limited to existing conditions only; and (4) must apply equally to all members of the same class. (Citations omitted.)

102 *Bureau of Customs Employees Association (BOCEA) v. Secretary Teves*, *supra* note 93, at 660, citing *ABAKADA Guro Party List v. Purisima*, 584 Phil. 246, 270 (2008).

is that the legislature intended to enact a valid, sensible, and just law, and one which operates no further than may be necessary to effectuate the specific purpose of the law.[103] On the other hand, the EME of GOCCs, even of those whose authority to disburse EME is derived from the GAA, are appropriated by their own governing boards as they see fit, subject to the ceiling amount provided under the GAA. They have more latitude of discretion in such expenditure compared to NGAs, whose EME appropriations are fixed in the GAA. Thus, as explained in *Espinas*, the difference in treatment is a "**C[O]A policy intended to address the disparity in EME disbursement autonomy**"[104] of the NGAs and GOCCs. "Hence, in due deference to the C[O]A's constitutional prerogatives, the Court, absent any semblance of grave abuse of discretion in this case, respects the regulation x x x."[105]

D. All approving and/or certifying officers of the disallowed 2008 and 2009 EME are solidarily liable to settle the disallowed amounts; and all recipients are liable to refund the amounts that they individually received.

PSALM invokes good faith on the part of its officers and employees, who approved/certified and received the 2008 and 2009 EMEs. We reiterate that the COA Proper's ruling on the 2008 EME in Decision No. 2013-229 had already attained finality. Hence, any discussion on the alleged good faith of those affected by that immutable decision is immaterial. We stress, in both Decision No. 2013-229 and Decision No. 2013-228, that the COA did not commit grave abuse of discretion in holding all the approving and certifying officers, as well as the individual recipients, liable to settle the disallowed amounts.

In the recent case of *Madera v. Commission on Audit*[106] (*Madera*), we explained that, upon a showing of bad faith, malice, or gross negligence in the performance of their official duties, the approving and certifying officers of the disallowed transactions are solidarily liable.[107] Good faith has been defined in disallowance cases as:

---

103 *Fariñas v. The Executive Secretary*, 463 Phil. 179, 197 (2003).

104 *Supra* note 87, at 81. Emphasis supplied.

105 *Id.*

106 G.R. No. 244128, September 8, 2020.

107 EO NO. 292, INSTITUTING THE "ADMINISTRATIVE CODE OF 1987;" signed on July 25, 1987, Book VI, Chapter 5, Section 43 states that "**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.); EO NO. 292, Book I, Chapter 9, Section 38 states that "[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**. (Emphasis supplied.)

> "that state of mind denoting honesty of intention, and **freedom from knowledge of circumstances which ought to put the holder upon inquiry**; an honest intention to abstain from taking any unconscientious advantage of another, even though technicalities of law, together with **absence of all information, notice, or benefit or belief of facts which render transactions unconscientious.**"[108] (Emphasis supplied.)

The determination of good faith or bad faith is, however, not dependent upon cast-iron rules. Rather, the unique facts obtaining in every case should be judiciously evaluated. In this case, recall that PSALM was served with a copy of COA Circular No. 2006-001 back in 2006.[109] In 2008, PSALM was again specifically reminded of the rules on EME disbursements under COA Circular No. 2006-001.[110] Still, PSALM conveniently opted to reimburse EME claims in accordance with the lenient requirement under COA Circular No. 89-300, instead of simply complying with the categorical provisions of COA Circular No. 2006-001 and the straightforward reminder of the COA Auditor that certifications are no longer allowed under the prevailing rules. In other words, PSALM cannot feign ignorance of the applicable rules nor can it raise obscurity in its provisions. This case does not involve a mere honest lapse of judgment in relying upon COA Circular No. 89-300 or a mistaken interpretation of the provisions of COA Circular No. 2006-001, but a wanton defiance of the applicable rules and the categorical directives of the COA. Certainly, such defiance betrays the genuineness of PSALM's invocation of good faith.[111] Hence, the COA did not err in holding the approving and certifying officers liable to refund, whether they were recipients of the disallowed amounts or not.[112]

As for the recipients, we clarified in *Madera* that the existence of good faith on their part is immaterial in the determination of their liability in a disallowed transaction because their liability is based on the principles of *solutio indebiti*[113] and unjust enrichment.[114] Recipients may only be absolved from the liability to settle the disallowed transaction: (1) upon a showing that the disallowed amounts were genuinely given in consideration of services rendered; or (2) excused by the Court on the basis of undue prejudice, social justice considerations, and other *bona fide* exceptions depending on the purpose, nature, and amount of the disallowed transaction relative to the attending circumstances.[115] Here, the absence of the required receipts or similar documents to substantiate the claims of reimbursement

---

108 *Philippine Health Insurance Corporation v. Commission on Audit*, G.R. No. 222838, September 4, 2018.

109 *Supra* note 13.

110 *Supra* note 12.

111 See *National Power Corporation v. Commission on Audit, supra* note 94.

112 *Madera v. Commission on Audit, supra* note 106.

113 CIVIL CODE, ART. 2154. 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.

114 CIVIL CODE, ART. 22. Every person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him.

115 See *Abellanosa v. Commission on Audit and National Housing Authority*, G.R. No. 185806, November 17, 2020.

precisely denies us the basis to conclude that the disallowed amounts were genuinely used in consideration of or in connection with the recipients' services. Neither is there any *bona fide* equitable consideration relevant to the nature, purpose, and amount of the grant that would warrant the recipients' absolution from their civil obligation to the government. Consequently, all the recipients are liable to return the amounts that they individually received.

FOR THESE REASONS, both Petitions in G.R. No. 213425 and G.R. No. 216606 are **DISMISSED**. The Commission on Audit's Decision No. 2013-228 dated December 23, 2013 and Resolution dated April 4, 2014 in COA CP Case No. 2011-144, as well as Resolution dated November 20, 2014 in COA CP Case No. 2010-362, are **AFFIRMED**. The officers of Power Sector Assets and Liabilities Management Corporation, who approved and certified the disbursement of the 2008 and 2009 Extraordinary and Miscellaneous Expenses are solidarily liable to refund the disallowed amounts, while all the recipients are liable to refund the amounts that they individually received.

SO ORDERED.

MARIO V. LOPEZ
Associate Justice

WE CONCUR:

ALEXANDER G. GESMUNDO
Chief Justice

ESTELA M. PERLAS-BERNABE
Senior Associate Justice

MARVIC M.V. F. LEONEN
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

RAMON PAUL L. HERNANDO
Associate Justice

ROSMARI D. CARANDANG
Associate Justice

AMY C. LAZARO-JAVIER
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

EDGARDO L. DELOS SANTOS
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

RICARDO R. ROSARIO
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify 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.

ALEXANDER G. GESMUNDO
Chief Justice