



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PHILIPPINE NATIONAL
CONSTRUCTION
CORPORATION and ATTY.
LUIS F. SISON,

Petitioners,

- versus-

G.R. No. 248401

Members:

PERLAS-BERNABE, J., *Chairperson*
LAZARO-JAVIER,
LOPEZ, M.,
ROSARIO,
LOPEZ, J., *JJ.*

NATIONAL LABOR
RELATIONS COMMISSION,
ELIZABETH N. LOPEZ-DE
LEON, JANICE DAY E.
ALEJANDRINO, SABINO B.
BASSIG, CRISANTO D.
CALIMAG, GEMMA C.
CORDERO, JAIME C. DELA
CRUZ, ROSALYN S.
DELIVIOS, FELIX M. ERECE,
JR., DEMOSTHENES F.
FAMINIANO, LOIDA G.
HERNANDEZ, ALMA S.
HUGO, RONALD E. JAVIER,
MARK D. LAGO, ALVIN
NICOL D. LIBONGCO,
FREDERICK CHARLES Y.
LIM, VIRGINIA G.
MADRONA, ANTONIO C.
MANLAWÉ, FLERIDA A.
MEJORADA, RENATO M.
MONSATO, YOLANDA C.
MORTEL, VENJIE E.

NAMOCATCAT, DOLLY C.
 NEPOMUCENO, AMANDO M.
 ORALLO, VERNETTE U.
 PACO, MOSES M.
 PANGILINAN, MIRIAM M.
 PASETES, HENRY B.
 SALAZAR, ARNNE NOBERT
 C. SILVESTRE, ELMER M.
 SIMBULAN, JEAN P.
 TALUSAN, SUSAN R. VALES,
 AND PAUL C. VICENTE,

Respondents.

Promulgated:

JUN 23 2021

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DECISION

LAZARO-JAVIER, J.:

The Case

This petition for review on *certiorari*¹ seeks to reverse and set aside the following dispositions of the Court of Appeals in CA-G.R. SP No. 139311:

- a) Decision² dated July 12, 2018, affirming the pronouncement of the National Labor and Relations Commission (NLRC) that petitioner Philippine National Construction Corporation (PNCC) is not a government-owned and controlled corporation (GOCC) and its consequent directive for PNCC to release the 2013 mid-year bonus of its employees; and
- b) Resolution³ dated July 15, 2019, denying PNCC's motion for reconsideration.

Antecedents

In 1966, PNCC was originally incorporated pursuant to the Corporation Code of the Philippines under the name Construction Development Corporation of the Philippines (CDCP). On March 31, 1977, Presidential Decree No. 1113⁴ (PD 1113) granted CDCP a thirty (30) year

¹ *Rollo*, pp. 12-35.

² Penned by Associate Justice Maria Filomena D. Singh and concurred in by Associate Justices Sesonando E. Villon and Edwin D. Sorongon; *id.* at 41-50.

³ Penned by Associate Justice Maria Filomena D. Singh and concurred in by Associate Justices Sesonando E. Villon and Edwin D. Sorongon; *id.* at 52-57.

⁴ Entitled "GRANTING THE CONSTRUCTION AND DEVELOPMENT CORPORATION OF THE PHILIPPINES (CDCP) A FRANCHISE TO OPERATE, CONSTRUCT AND MAINTAIN TOLL FACILITIES IN THE NORTH AND SOUTH LUZON TOLL EXPRESSWAYS AND FOR OTHER PURPOSES."

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franchise to construct, operate, and maintain toll facilities in the North and South Luzon Tollways. In December 1983, Presidential Decree No. 1894⁵ (PD 1894) amended PD 1113 to include the Metro Manila Expressway into the CDCP's franchise.

In the course of its operations, CDCP obtained loans from various Government Financing Institutions (GFIs). On February 23, 1983, President Ferdinand E. Marcos issued Letter of Instruction No. 1295 (LOI 1295), directing the GFIs to convert all CDCP's unpaid obligations to them into shares of stock.⁶ The implementation of said LOI thus made the GFIs majority stockholders of PNCC. By virtue of the debt-to-equity conversion of CDCP loans, CDCP's Articles of Incorporation and By-Laws were later amended to change its corporate name from CDCP to PNCC to reflect the extent of the Government's equity investment in the company.⁷

In 1986, pursuant to the government's privatization program, President Corazon C. Aquino issued Presidential Proclamation No. 50 (PP 50) creating the Asset Privatization Trust (APT), now known as the Privatization and Management Office (PMO), as trustee of the equity shares of the GFIs in PNCC. Subsequently, President Gloria Macapagal-Arroyo issued Executive Order No. 331 (EO 331), placing PNCC under the Department of Trade and Industry (DTI).⁸

In 1992, PNCC started giving mid-year bonuses to its employees every fifteenth (15th) of May pursuant to a Collective Bargaining Agreement (CBA) with its then employees' union. Long after the CBA expired though, the grant of mid-year bonus to the employees continued until 2012.⁹

Meantime, on April 30, 2013, petitioner Atty. Luis F. Sison, then PNCC President and Chief Executive Officer sought the opinion of PNCC's statutory counsel, the Office of the Government Corporate Counsel (OGCC) on the release of mid-year bonus for the year 2013¹⁰ pursuant to Presidential Decree No. 1597 (PD 1597).¹¹

By Letter dated May 10, 2013, the OGCC advised PNCC to secure the approval of the Governance Commission for Government Owned or

⁵ Entitled "AMENDING THE FRANCHISE OF THE PHILIPPINE NATIONAL CONSTRUCTION CORPORATION TO CONSTRUCT, MAINTAIN AND OPERATE TOLL FACILITIES IN THE NORTH LUZON AND SOUTH LUZON EXPRESSWAYS TO INCLUDE THE METRO MANILA EXPRESSWAY TO SERVE AS AN ADDITIONAL ARTERY IN THE TRANSPORTATION OF TRADE AND COMMERCE IN THE METRO MANILA AREA."

⁶ *Rollo*, pp. 42-43.

⁷ *Alejandrino v. COA*, G.R. No. 245400, November 12, 2019.

⁸ *Id.*

⁹ *Rollo*, p. 43.

¹⁰ *Id.*

¹¹ Entitled "FURTHER RATIONALIZING THE SYSTEM OF COMPENSATION AND POSITION CLASSIFICATION IN THE NATIONAL GOVERNMENT." Section 1 of which provides:

Section 1. Statement of Policy. It is hereby declared policy that the officials and employees of the national government, including the Judiciary, the Career Executive Service, the Foreign Service, the Armed Forces, subordinate officials of Constitutional Commissions, government owned or controlled corporations, and state colleges and universities, shall be compensated in accordance with a National Position Classification and Compensation Plan approved by the President.

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Controlled Corporations (GCG), citing Section 8 of Republic Act No. 10149 (RA 10149).¹²

Consequently, under Letter dated May 29, 2013, PNCC sought GCG's approval for the grant of mid-year bonus to its employees.¹³

In its Letter-Reply dated June 20, 2013, the GCG advised PNCC that it was not forwarding the request for approval to then President Benigno Aquino III because the grant was legally infirm and its abrogation does not violate the non-diminution rule.¹⁴

Pursuant thereto, Atty. Sison circulated a memorandum to all PNCC employees informing them that the 2013 Mid-year Bonus shall not be released.¹⁵

Acting thereon, the PNCC employees filed before the NLRC Arbitration Branch a complaint for non-payment of mid-year bonus and diminution of wages and benefits.¹⁶

The Ruling of the Labor Arbiter

By Decision¹⁷ dated January 29, 2014, Labor Arbiter Romelita Rioflorido ordered PNCC to give respondents their mid-year bonus for 2013, and every year thereafter in the amount equivalent to one month of their respective salaries, *viz.*:

WHEREFORE, a decision is hereby rendered finding the respondent Philippine National Construction Corporation to have violated the non-diminution clause under Article 100 of the Labor Code of the Philippines and hereby ordered to give all complainants their annual mid-year bonus for the year 2013, and every year thereafter, in the amount equivalent to one (1) month of their respective salaries.

SO ORDERED.¹⁸

The labor arbiter held that the practice of granting mid-year bonus to PNCC employees since 1992 had ripened into a benefit or supplement which may not be reduced, diminished, discontinued, or eliminated in accordance with Article 100 of the Labor Code on non-diminution of benefits.¹⁹

¹² SEC. 8. *Coverage of the Compensation and Position Classification System.* — The GCG, after conducting a compensation study, shall develop a Compensation and Position Classification System which shall apply to all officers and employees of the GOCCs whether under the Salary Standardization Law or exempt therefrom and shall consist of classes of positions grouped into such categories as the GCG may determine, subject to approval of the President. *Rollo*, p. 16.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 44.

¹⁷ *Id.* at 113-119.

¹⁸ *Id.* at 119.

¹⁹ *Id.* at 118.

The Ruling of the NLRC

In its Decision²⁰ dated June 6, 2014, the NLRC affirmed. It held that PNCC is not a GOCC since it was created under the Corporation Code of the Philippines. Too, PNCC remains to be a private corporation despite the fact that the government is its majority stockholder. As such, it is covered by the provisions of the Labor Code, not by the Civil Service laws. Too, the grant need not be subject to the approval by the President as required under PD 1567 and RA 10149.²¹

PNCC moved for reconsideration²² which was denied under Resolution²³ dated December 19, 2014.

PNCC, thereafter, filed a petition for *certiorari* against the foregoing dispositions of the NLRC through CA-G.R. SP No. 139311.²⁴

Meantime, the employees moved for execution pending appeal which the labor arbiter granted²⁵ and the NLRC subsequently affirmed by Resolution²⁶ dated March 30, 2015. Thus, PNCC went back to the Court of Appeals through CA-G.R. SP No. 140997 questioning the grant of the motion for execution pending appeal.

Proceedings Before the Court of Appeals

CA-G.R. SP No. 139311 and CA-G.R. SP No. 140997 got consolidated, albeit subsequently, the cases were separately disposed of by the appellate court.

In CA-G.R. SP No. 140997, the Court of Appeals dismissed the petition on the ground that PNCC failed to file a motion for reconsideration of the assailed ruling of the NLRC.²⁷ PNCC moved for reconsideration which was denied under Resolution²⁸ dated March 31, 2016. In G.R. Nos. 223867-68, the Court affirmed the foregoing dispositions, with finality under Resolution²⁹ dated October 12, 2016.

Meantime, in CA-G.R. SP No. 139311, the Court of Appeals rendered its Decision³⁰ dated July 12, 2018, affirming the status of PNCC as a private corporation. It further pronounced that even assuming PNCC to be a GOCC,

²⁰ Penned by Commissioner Dolores M. Peralta-Beley; *id.* at 98-112.

²¹ *Id.* at 103-104.

²² *Id.* at 144-152.

²³ *Id.* at 107-112.

²⁴ *Id.* at 78-96.

²⁵ *Id.* at 166-183.

²⁶ *Id.* at 186-193.

²⁷ *Id.* at 18.

²⁸ *Id.*

²⁹ *Id.* at 19.

³⁰ Penned by Associate Justice Maria Filomena D. Singh and concurred in by Associate Justices Sesinando L. Villon and Edwin D. Sorongon; *id.* at 41-50.

PD 1597 and RA 10149 are inapplicable to GOCCs without original charter, like PNCC.³¹

Citing *PNCC v. Pabion*³² and *Cuenca v. Hon. Altas*,³³ the Court of Appeals held that PNCC is an acquired asset corporation and not a GOCC. Notwithstanding the fact that the government is the majority stockholder of PNCC, the latter remains to be a private corporation within the coverage of the Labor Code, not the Civil Service Law.³⁴

Further, the Court of Appeals ruled that the failure of PNCC to release the employees' 2013 mid-year bonus violated the non-diminution clause under Article 100 of the Labor Code.³⁵

By Resolution³⁶ dated July 15, 2019, PNCC's motion for reconsideration³⁷ was denied.

The Present Petition

PNCC now asks the Court to reverse and set aside the questioned rulings of the Court of Appeals. PNCC posits that the 1999 case of *PNCC v. Pabion* is no longer relevant in determining the real status of PNCC.

For while PNCC was organized under the Corporation Code, it is a GOCC, as ordained by Section 3 (o) and (p) of RA 10149.³⁸ As such, it is not governed by the Labor Code, hence, it may validly refuse to grant the mid-year bonus without violating the non-diminution clause under the Labor Code.

In their Comment³⁹ dated January 29, 2021, respondents riposte that as enunciated in *Pabion*, PNCC remains to be a private corporation notwithstanding that majority of its shares of stock is owned by the government. As a private entity, its expenditures and disbursements are not

³¹ *Id.* at. 45-46.

³² 377 Phil. 1019 (1999).

³³ 561 Phil. 186 (2007).

³⁴ *Id.* at 47.

³⁵ *Id.* at 48.

³⁶ Penned by Associate Justice Maria Filomena D. Singh and concurred in by Associate Justices Sesonando L. Villon and Edwin D. Sorongon; *id.* at 52-57.

³⁷ *Id.* at 58-71.

³⁸ Section 3. x x x

x x x x

(o) *Government-Owned or -Controlled Corporation (GOCC)* refers to any agency organized as a stock or nonstock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government of the Republic of the Philippines directly or through its instrumentalities either wholly or, where applicable as in the case of stock corporations, to the extent of at least a majority of its outstanding capital stock: *Provided, however*, That for purposes of this Act, the term "GOCC"- shall include GICP/GCE and GFI as defined herein.

(p) *Nonchartered GOCC* refers to a GOCC organized and operating under Batas Pambansa Bilang 68, or "The Corporation Code of the Philippines"; *rollo*, pp. 26-27.

³⁹ *Id.* at 274-298.

subject to the guidelines and requirements under PD 1597 and RA 10149; and PNCC employees are covered by the provisions of the Labor Code.⁴⁰

Granting for the sake of argument that PNCC is not contractually bound to give the bonus in question, the fact that for no less than twenty (20) uninterrupted years, it was granted to the employees as part of an established company practice; the same has become part of the employees' salary or wage. To cease this grant amounts to diminution of benefits in violation of Article 100 of the Labor Code.⁴¹

Issues

1. Is PNCC a private corporation or a government owned and controlled corporation (GOCC)?
2. Are PNCC employees covered by the provisions of the Labor Code or by the Civil Service Law?
3. Is PNCC governed by RA 10149?

Ruling

PNCC is a non-chartered government owned and controlled corporation

In *Strategic Alliance v. Radstock Securities*,⁴² the Court pronounced with finality that PNCC is a GOCC, *viz.*:

The PNCC is not 'just like any other private corporation precisely because it is not a private corporation' but indisputably a government owned corporation. Neither is PNCC "an autonomous entity" considering that PNCC is under the Department of Trade and Industry, over which the President exercises control. To claim that PNCC is an "autonomous entity" is to say that it is a lost command in the Executive branch, a concept that violates the President's constitutional power or control over the entire Executive branch of government. (Emphasis supplied)

The Court emphasized that PNCC is 90.3% owned by the government and may not be considered an autonomous entity just because it got incorporated under the Corporation Code.

⁴⁰ *Id.* at 296.

⁴¹ *Id.* at 291.

⁴² 622 Phil. 431, 507 (2009).

Additionally, Executive Order No. 331, series of 2014 has placed the PNCC under the Department of Trade and Industry (DTI), thus, confirming its character as a GOCC, *viz.*:

WHEREAS, the Department of Trade and Industry (DTI) is the primary coordinative, promotive, facilitative and regulatory arm of the Executive Branch of government in the area of trade, industry and investment;

WHEREAS, the Philippine National Construction Corporation (PNCC) holds the franchise to operate the North Luzon and South Luzon Expressways;

WHEREAS, the development of expressways requires huge investments, and it is necessary to place the PNCC under the DTI;

WHEREAS, the Government of the Republic of the Philippines and/or government financial institutions have majority ownership of the PNCC, which pursuant to PNCC vs. Pabion (320 SCRA 188), may be considered as a government owned and/or controlled corporation;

x x x x

Further, Section 6 of PD 1597 ordains that GOCCs are subject to such guidelines and policies as may be issued by the President governing position classifications, salary rates, levels of allowances, project and other honoraria, overtime rates, and other forms of compensation and fringe benefits. GOCCs organized under the Corporation Code like PNCC are not excluded from the coverage of PD 1597, thus:

SECTION 6. Exemptions from OCPC Rules and Regulations. — Agencies positions, or groups of officials and employees of the national government, including government owned or controlled corporations, who are hereafter exempted by law from OCPC coverage, shall observe such guidelines and policies as may be issued by the President governing position classification, salary rates, levels of allowances, project and other honoraria, overtime rates, and other forms of compensation and fringe benefits. Exemptions notwithstanding, agencies shall report to the President, through the Budget Commission, on their position classification and compensation plans, policies, rates and other related details following such specifications as may be prescribed by the President.

Verily, therefore, the status of PNCC as a GOCC should now be put to rest.

Being a GOCC without original charter, PNCC is covered by the Labor Code

The next question: As a GOCC without original charter, is PNCC governed by the Labor Code or the Civil Service Law?

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Under Article IX-B, Section 2, paragraph 1 of the 1987 Constitution, only GOCCs with original charters are covered by civil service laws, *viz.*:

SECTION 2. (1) The civil service embraces all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations **with original charters.** (emphasis supplied)

Where a statute, by its terms, is expressly limited to certain matters, it may not, by interpretation or construction, be extended to others.⁴³ Since PNCC is a non-chartered GOCC, incorporated under the Corporation Code, it is governed by the Labor Code, not by the Civil Service Law.

In *Paloma v. Philippine Airlines Inc.*,⁴⁴ the Court pronounced that prior to the privatization of the Philippine Airlines Inc. (PAL), it was a non-chartered GOCC in the sense that the GSIS owned majority of its stockholdings. Consequently, PAL personnel were covered by the Labor Code, not by the Civil Service Law. The same rule applies to PNCC employees.

But PNCC is not exempt from the National Position Classification and Compensation Plan approved by the President, as well as the Compensation and Position Classification System

Although governed by the Labor Code, as a GOCC, PNCC is not exempt from the coverage of the National Position Classification and Compensation Plan approved by the President. Sections 1 and 4 of RA 10149 state:

Section 1. Statement of Policy. It is hereby declared policy that the officials and employees of the national government, including the Judiciary, the Career Executive Service, the Foreign Service, the Armed Forces, subordinate officials of Constitutional Commissions, **government owned or controlled corporations**, and state colleges and universities, shall be compensated in accordance with a National Position Classification and Compensation Plan approved by the President. (emphasis supplied.)

x x x x

Section 4. Coverage. — This Act shall be applicable to **all GOCCs, GICPs/GCEs, and government financial institutions, including**

⁴³ *Romualdez v. Hon. Marcelo*, 529 Phil. 90, 109 (2006).

⁴⁴ 580 Phil. 88 (2008).

their subsidiaries; but excluding the Bangko Sentral ng Pilipinas, state universities and colleges, cooperatives, local water districts, economic zone authorities and research institutions: *Provided*, That in economic zone authorities and *research* institutions, the President shall appoint one-third (1/3) of the board members from the list submitted by the GCG. (emphasis supplied)

Further, Section 9 of the same law ordains that no GOCC shall be exempt from the coverage of the Compensation and Position Classification System, thus:

SEC. 9. Position Titles and Salary Grades. — All positions in the Positions Classification System, as determine by the GCG and as approved by the President, shall be allocated to their proper position titles and salary grades in accordance with n Index of Occupational Services, Position Titles and Salary Grades of the Compensation and Position Classification System, which shall be prepared by the GCG and approved by the President.

x x x x

Any law to the contrary notwithstanding, no GOCC shall be exempt from the coverage of the Compensation and Position Classification System developed by the GCG under this Act.

Notably, Section 32 of RA 10149 expressly repeals all decrees and issuances inconsistent with its provisions, thus:

SEC. 32. Repealing Clause. — The charters of the GOCCs under existing laws and all other laws, executive orders including Executive Order No. 323, Series of 2000, administrative orders, rules, regulations, decrees and other issuances or parts thereof which are inconsistent with the provisions of this Act are hereby revoked, repealed or modified accordingly.

In *GSIS Family Bank Employees Union v. Villanueva*,⁴⁵ the Court had the occasion to illustrate the interplay between the provisions of the Labor Code and the provisions of RA 10149 on the life of a non-chartered GOCC.

In that case, employees of GSIS Family Bank demanded for the payment of their Christmas bonus which had been annually given them pursuant to their CBA with GSIS Family Bank, a non-chartered GOCC. GSIS Family Bank was advised by the Governance Commission that in view of the enactment of RA 10149, GSIS Family Bank should no longer grant any additional benefits to its employees without the requisite authority from the President. Thenceforth, GSIS Family Bank stopped granting Christmas bonus to its employees. The Court ruled that while GOCCs without original charters are covered by the Labor Code, employees of GOCCs are bereft of any right to negotiate the economic terms of their employment, *i.e.* salaries,

⁴⁵ G.R. No. 210773, January 23, 2019.



emoluments, incentives and other benefits, with their employers since these matters are covered by compensation and position standards issued by the Department of Budget and Management and applicable laws. **GSIS** clarified that RA 10149 applies to both chartered and non-chartered GOCCs.

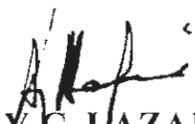
More, citing *PCSO vs. Pulido-Tan*,⁴⁶ **GSIS** reiterated that the power of a government-owned or controlled corporation to fix salaries or allowances of its employees is subject to and must conform to the compensation and classification standards laid down by applicable laws. For RA 10149 does not differentiate between chartered and non-chartered government-owned or controlled corporations; hence, the provisions of this law equally apply to **all GOCCs**.

Consequently, therefore, PNCC did not violate the non-diminution rule when it desisted from granting mid-year bonus to its employees starting 2013. True, between 1992 and 2011, PNCC invariably granted this benefit to its employees and never before revoked this grant in strict adherence to the non-diminution rule under Article 100 of the Labor Code. Nonetheless, with the subsequent enactment of RA 10149 in 2011, PNCC may no longer grant this benefit without first securing the requisite authority from the President. As borne by the records, PNCC failed to obtain this authority in view of the position taken by the GCG not to forward the request to the President. GCG cited as reasons the infirmity of the grant and the extraneous application of the non-diminution rule thereto.

All told, the labor arbiter, the NLRC, and the Court of Appeals each gravely erred when they peremptorily compelled PNCC to release the questioned mid-year bonus to the employees.

ACCORDINGLY, the petition for review is **GRANTED**. The Decision dated July 12, 2018 and Resolution dated July 15, 2019 of the Court of Appeals in CA-G.R. SP No. 139311 are **REVERSED and SET ASIDE**. The complaint in NLRC NCR Case No. 07-10180-13 is **DISMISSED** for lack of merit.

SO ORDERED.


AMY C. LAZARO-JAVIER
Associate Justice

⁴⁶ 785 Phil. 266, 277-278 (2016).

WE CONCUR:


ESTELA M. PERLAS-BERNABE
Chairperson

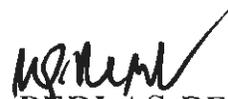

MARIO V. LOPEZ
Associate Justice


RICARDO R. ROSARIO
Associate Justice


JHOSEP V. LOPEZ
Associate Justice

ATTESTATION

I attest that the conclusion in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, 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's Division.


ALEXANDER G. GESMUNDO
Chief Justice

