

## EN BANC

[ G.R. No. 209712 [Formerly UDK-14994],  
February 16, 2021 ]

**RIZAL M. ADVINCULA, RIZZA R. RIVADENEIRA-ARENAS, DIEGO S. BACUNAWA, GILBERT V. BALTAZAR, JOSEPH P. BUENSUCESO, DENNIS B. DAGUNTON, ALFONSO B. DAMASEN, JR., LIBERTY PRADO-DE LEON, OSIAS C. ESCOBER, VALERIANO B. FLORES, REYNALDO A. GAFFUD, RODOLFO S. GUINGAB, FELIX C. JABONETE, ROIDIMAR R. JIAO, JOART B. JIMENEZ, MATIAS C. JUAN, NELSON M. KIDMANO, RENATO R. MALABAG, JASMIN I. MASINSIN, EDUARDO P. MILLET WILLIAM V. PE, WILMER C. RAMOS, RODEL P. RENDAL, FIDEL N. VERCELES, MELCHOR M. VILLAMIL, MA. PERPETUA SOCORRO B. VILLAPANDO, WILLY C. ZABLAN AND RENATO D. ZAPARITA, PETITIONERS, VS. THE COMMISSION ON AUDIT, CHAIRPERSON MA. GRACIA M. PULIDO-TAN, COMMISSIONER HEIDI L. MENDOZA AND COMMISSIONER ROWENA V. GUANZON, RESPONDENTS.**

### D E C I S I O N

**INTING, J.:**

This resolves the Petition for *Certiorari*<sup>[1]</sup> under Rule 64 in relation to Rule 65 of the Rules of Court assailing the Commission on Audit (COA) Commission Proper (COA Proper) Decision<sup>[2]</sup> dated November 15, 2010 (Original COA Proper Decision) and the Resolution<sup>[3]</sup> dated September 27, 2013. The assailed issuances upheld Notice of Disallowance (ND) No. BMHI-04-002-(03)<sup>[4]</sup> dated November 4, 2004 and Supplemental ND No. BMHI-2008-008<sup>[5]</sup> dated March 26, 2008 which *disallowed* the Annual Gift Checks (AGCs)<sup>[6]</sup> paid by Bases Conversion and Development Authority (BCDA) Management and Holdings, Inc. (BMHI) amounting to P2,158,000.00 and P754,000.00,<sup>[7]</sup> respectively, and held the payees, certifying and approving officers, liable therefore.

#### *The Antecedents*

BCDA was created pursuant to Republic Act No. 7227<sup>[8]</sup> to act as the lead instrumentality tasked to facilitate the conversion of the Clark and Subic military reservations and extensions into alternative productive uses.<sup>[9]</sup> Herein petitioners<sup>[10]</sup> are employees of BMHI, a subsidiary of BCDA.<sup>[11]</sup>

On September 18, 2003, the BCDA Board of Directors (Board) approved Resolution No. 2003-09-186 authorizing the payment of 2003 AGCs.<sup>[12]</sup> The Guidelines on the Grant of the AGCs<sup>[13]</sup> provide as follows:

## 1. COVERAGE

1.1 Annual gift checks shall be granted to all BCDA regular plantilla personnel and contractual officers and employees including the members of the Board, office-based consultants and *those on detail from other government agencies rendering full time service to BCDA* and who are in the service as of 30 September 2003.

1.2 The gift check shall be equivalent to at least P35,000.00 net of tax.

1.3 x x x

1.4 *For this purpose, services rendered continuously by employees of BMHI, the BCDA Manpower Services provider, office-based consultants performing BCDA functions who were subsequently hired by BCDA prior to 30 September 2003 are considered actual service in BCDA.*<sup>[14]</sup> (Italics supplied.)

On the strength of their *parent company's* Board Resolution No. 2003-09-186 and guidelines, BMHI management released the AGCs to its employees and the members of the Board, through Disbursement Voucher (DV) Nos. 2003-09-130<sup>[15]</sup> and 2003-09-131<sup>[16]</sup> dated September 23, 2003, amounting to P2,569,000.00 and P343,000.00, respectively.

The payment was *approved* by Isaac S. Puno III (Puno), BMHI President. It was also *certified* by Rowena B. Tanagon (Tanagon), Department/Unit Head, and Glorificacion M. Nocos (Nocos), Accounting Department Head, as follows: (a) that the "expenses/advances [are] necessary, lawful and incurred under [her] direct supervision" and (b) that "supporting documents [are] complete and proper, and cash [is] available," respectively.<sup>[17]</sup>

On March 31, 2004, the COA, relative to the payment of AGCs through Corazon V. Españó, Audit Team Supervisor, issued *Audit Observation Memorandum No. (AOM) 2004-05*<sup>[18]</sup> addressed to Puno. According to the COA, the Department of Budget and Management (DBM) prescribes that year-end and other fringe benefits, such as the AGCs, are *personnel benefits* granted in addition to salaries, or paid only when basic salary is also paid. The members of the BMHI Board are not entitled to these benefits because they are not salaried government officials.<sup>[19]</sup> In this regard, the COA requested Puno/BMHI to explain why the subject payment to non-salaried personnel should not be disallowed in audit.<sup>[20]</sup>

Thereafter, the COA evaluated the matters raised in the AOM, together with relevant supporting documents. Consequently, the COA Legal and Adjudication Office-Corporate (LAO-C), through Rogelio D. Tablang, Director IV, issued *ND No. BMHI-04-002-(03)*<sup>[21]</sup> dated November 4, 2004 disallowing the P2,158,000.00 of the total P2,912,000.00 paid for AGCs, computed as follows:

DV No.	Payees	Paid	Disallowed
2003-09-130	BMHI Employees/Personnel	P2,569,000.00	<b>P1,835,000.00</b>

2003-09-131	Members of BMHI Board	343,000.00	<b>323,000.00</b>
Total		P2,912,000.00	<b>P2,158,000.00</b>

The COA disallowed the above-mentioned amounts for the following reasons: *first*, P1,835,000.00 from DV No. 2003-09-130 was paid in excess of the rate authorized under the DBM approved corporate budget; and *second*, P323,000.00 from DV No. 2003-09-131 was paid to the members of the Board, non-salaried employees, contrary to DBM Circular No. 2002-2 dated January 2, 2002.<sup>[22]</sup>

The following BMHI personnel were held liable for the disallowance: (a) Tanagon and Nocos as *certifiers*; (b) Puno as *approver*; and (c) all *payees* who received the AGCs.<sup>[23]</sup>

Aggrieved, these personnel, in their personal capacities, appealed<sup>[24]</sup> the disallowance which was treated as a motion for reconsideration.<sup>[25]</sup>

#### *Ruling of the COA Director*

In LAO-C Decision No. 2008-011<sup>[26]</sup> dated March 4, 2008, Janet D. Nacion, Director IV upheld the disallowance, *viz.*:

WHEREFORE, premises considered, the disallowance of subject [AGCs] is hereby AFFIRMED. In addition, the P10,000.00 out of the P35,000.00 [AGCs], granted to each personnel not previously disallowed in audit, is hereby disallowed for lack of legal basis. Accordingly, an ND disallowing the P10,000.00 portion of the P35,000.00 [AGCs] shall now be issued by this Office.<sup>[27]</sup>

The Director explained as follows: *first*, BMHI's employees are not automatically entitled to the benefits accruing to the personnel of the *parent corporation*. BMHI, a *subsidiary*, has a personality separate and distinct from BCDA, its *parent*. BCDA Board Resolution No. 2003-09-186 cannot justify BMHI's grant/payment of AGCs to the latter's employees. Verily, BMHI's own Board is empowered to adopt a compensation plan and prepare/approve BMHI's annual budget. However, the BMHI Board did not pass a separate resolution exercising these powers to grant the subject AGCs.<sup>[28]</sup> *Second*, the BMHI Board is not entitled to AGCs. Under the BMHI by-laws; the members of the Board shall be entitled only to a reasonable *per diem* allowance per board meeting and *compensation*, which shall not exceed 10% of the preceding year's net income before income tax.

Based on this ruling, the LAO-C issued *Supplemental ND No. BMHI-2008-008*<sup>[29]</sup> dated March 26, 2008 to *completely* disallow the payment for AGCs amounting to P2,912,000.00, not merely portions thereof.

Undaunted, the persons held liable for the disallowance appealed<sup>[30]</sup> to the COA Proper.

#### *Ruling of the COA Proper*

A.

*Original  
COA  
Proper  
Decision.*

In the assailed *Original COA Proper Decision*, the COA Proper sustained the disallowance for lack of legal basis.<sup>[31]</sup> It reiterated that the BMHI Board did not pass a resolution granting AGCs to BMHI personnel, from BCDA Board Resolution No. 2003-09-186. "BMHI employees are not automatically entitled to whatever benefits the BCDA may grant to its personnel precisely because BCDA and BMHI have distinct and separate juridical personalities."<sup>[32]</sup>

The appellants pointed out that the BMHI Board issued Resolution No. 04-15 dated April 15, 2008 ratifying the grant of AGCs. However, the COA Proper ruled that this does not "cure the defect of the irregular disbursement x x x because BMHI did not have authority to grant something which its parent corporation, the BCDA, did not have authority to grant."

Furthermore, Administrative Order No. (AO) 37<sup>[33]</sup> dated November 21, 1998 and DBM Circular No. 16-98 dated November 26, 1998, prohibit government-owned and -controlled corporations from granting incentives and/or allowances, unless previously authorized by the Office of the President *via* administrative order.<sup>[34]</sup>

Lastly, relying on *Executive Director Casal v. Commission on Audit*,<sup>[35]</sup> the COA Proper ruled on the appellants' liabilities as follows: (a) all *payees*, except the members of the Board, are absolved from liability, having received the AGCs without participating in the approval thereof and without knowledge that the grant lacked legal basis; (b) the *members of the Board* are liable to refund the amounts they received because as non-BMHI employees, they are not authorized to receive such benefits; and (c) the BMHI officials who *approved/ratified* the payments shall be liable for the total amount.<sup>[36]</sup> Their patent disregard of the applicable issuances amounted to gross negligence. The aggrieved parties, consisting of the BMHI Board and *officials who approved/certified* the subject disbursements, moved<sup>[37]</sup> for reconsideration.

*B.  
Resolution  
dated  
September  
27, 2013*

In its assailed *Resolution*, the COA Proper upheld the disallowance for lack of the requisite executive approval, as required by AO 37.<sup>[38]</sup> However, it restored the payees' liability to return the disallowed amount and declared that the payees' obligation to refund is founded on the principles of implied trust<sup>[39]</sup> and unjust enrichment.<sup>[40]</sup> Thus, good faith is not a defense.<sup>[41]</sup>

Hence, petitioners who are the payees of the disallowed amount filed the present petition.

Petitioners assert that the COA Proper gravely abused its discretion in the following instances: *first*, when it upheld the disallowance based on grounds other than those cited by the Director;<sup>[42]</sup> *second*, when it gave due course to the motion filed by the BMHI Board and officials to reconsider the Original COA Proper Decision despite the lapse of the reglementary period for filing an appeal; and *third*, when it reversed the Original COA Proper Decision and required the payees to refund the amounts they received.

### *The Issue*

Did the COA Proper commit grave abuse of discretion amounting to lack or excess of jurisdiction in upholding the disallowance and holding the petitioners/payees, the BMHI Board, an other approving/certifying officials liable therefor?

### *The Courts Ruling*

The Court upholds the disallowance of the payment for AGCs, as well as the payees' concomitant liability for the following reasons: *first*, the ruling had already attained finality; and *second*, in any case, the ruling is in accord with the law and prevailing jurisprudence.

*The  
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The Court's review of COA decisions sought through a Rule 64 petition is limited to acts of grave abuse amounting to lack or excess of jurisdiction alleged to have been committed by the COA Proper.<sup>[43]</sup>

Petitioners insist that the COA Proper gravely abused its discretion when it gave due course to the motion for reconsideration of the *Original COA Proper Decision* despite being filed *beyond the reglementary period to appeal/intervene and by individuals not parties to the case*.<sup>[44]</sup>

Notably, only the *BMHI Board and officials-approvers/certifiers* moved for reconsideration of the *Original COA Proper Decision*. Herein petitioners no longer assailed the ruling for the obvious reason that they, the payees, were already absolved from liability. However, in resolving the motion, the COA Proper reversed itself and reinstated the payees/petitioners' liability to return the amounts they received.

Petitioners submit that an aggrieved party has six months *from receipt of the Director's Decision to appeal the same to the COA Proper*.<sup>[45]</sup> Should the party opt to further assail the COA Proper's decision, he must move for reconsideration within the remainder of the original six-month period to appeal.<sup>[46]</sup> Having been filed outside the appeal period, the COA had no jurisdiction to entertain the BMHI Board and officials' motion.