

EN BANC

[G.R. No. 242082, June 15, 2021]

**SER JOHN PASTRANA, VIVIAN VERIDIANO DACANAY, AND
NORLYN TOMAS, PETITIONERS, VS. COMMISSION ON AUDIT,
RESPONDENT.**

[G.R. No. 242083]

**MARY JANE G. YSMAEL, PETITIONER, VS. COMMISSION ON
AUDIT, RESPONDENT.**

D E C I S I O N

DELOS SANTOS, J.:

Before the Court are Petitions for *Certiorari*^[1] under Rule 64 in relation to Rule 65 of the Rules of Court assailing the Decision^[2] No. 2015-004 dated January 28, 2015 and the Resolution^[3] No. 2018-201 dated January 30, 2018 of the Commission on Audit (COA) and the Decision^[4] No. 2012-003 of COA-National Government Sector-Cluster B (NGS-Cluster B) dated February 9, 2012. The COA affirmed Notice of Disallowance No. 2011001-151 (10)^[5] (subject ND) dated January 6, 2011 disallowing the payment of Collective Negotiation Agreement (CNA) incentives to the officials and employees of the Land Registration Authority (LRA) for calendar year (CY) 2009.

The Facts

On December 11, 2008, the LRA, represented by former Administrator Benedicto B. Ulep (Administrator Ulep), and Gabay ng LRA Inc., represented by its President Ser John C. Pastrana (petitioner Pastrana), entered into a CNA providing for, among others, the grant of incentives to all officers and employees "in recognition of the joint efforts of labor and management to achieve all planned targets, programs, and services approved in the budget of the [agency] at a lesser cost." Under the CNA, the incentive shall be sourced solely from savings from released Maintenance and Other Operating Expenses (MOOE) allotments.^[6]

On February 6, 2009, Administrator Ulep issued Administrative Order (AO) No. 2009-16^[7] directing the Employees - Management Consultative Committee to review the LRA's financial records and operations report at the end of the fiscal year and arrive at a consensus on the following matters:

- a) the guidelines/criteria to be followed in the grant of the CNA incentive;
- b) the total amount of unencumbered savings at the end of the year which were realized out of cost-cutting measures

- identified in the CNAs and its supplement and which were the results of the joint efforts of labor and management;
- c) the apportionment of such savings; and
 - d) the individual amount of the CNA incentive to be granted to the employee concerned based on the established guidelines/criteria.

Designated as employees' representatives to the consultative committee were petitioner Pastrana, Vivian Dacanay (petitioner Dacanay), Norlyn Tomas^[8] (petitioner Tomas), and Cheryl Morales. Maryjane Ysmael (petitioner Ysmael), Chief Administrative Officer, General Services Division, was also named as the employees' representative to the consultative committee.^[9]

On April 7, 2010, Administrator Ulep issued a Memorandum^[10] authorizing the payment of the CNA incentive in the amount of P15,000.00 to each employee. On the same date, he issued a Circular^[11] setting forth the guidelines in the payment of the CNA incentive to all rank-and-file employees of the LRA and the LRA-Comprehensive Agrarian Reform Program (CARP).

On January 6, 2011, Audit Team Leader Lolita A. Marquez (ATL Marquez) and Supervising Auditor Herminio B. Cueto (Supervising Auditor Cueto) issued the subject ND disapproving in audit the payment of the CNA incentive to the LRA employees for CY 2009 in the total amount of P30,180,000.00.^[12]

The subject ND was anchored on the following grounds:

1. The CNA incentive was granted out of the regular fund release intended to cover additional MOOE and capital outlay requirements for CY 2009;
2. The payment of the CNA incentive is an irregular transaction as it was paid without adhering to established guidelines, existing rules and regulations, and the provisions of the CNA; and
3. The amount of CNA incentive was predetermined and fixed in the amount of P15,000.00, contrary to subsection 5.6.1. of the Department of Budget and Management (DBM) Budget Circular No. 2006-113 dated February 1, 2006.^[14]

ATL Marquez and Supervising Auditor Cueto noted that the grant of the CNA incentive was not in accordance with the law, established rules and regulations, procedural guidelines, and issuances, to wit:

1. Special provisions in the appropriations of the LRA for CY 2010;
2. D8M Circular No. 2006-1;
3. Administrative Order (AO) No. 135, Series of 2005;^[15]
4. Public Sector Labor-Management Council (PSLMC) Resolution No. 04, Series of 2002;^[16]
5. 2008-2011 LRA-CNAs; and
6. Government Accounting and Auditing Manual (GAAM).^[17]

Petitioners Pastrana, Dacanay, Tomas, and Ysmael were held liable under the subject ND for recommending the approval of the guidelines in the payment of the incentive. Ysmael was also held liable for certifying in the Obligation Request^[18] that the charges to the appropriation/allotment were necessary, lawful and made under

her direct supervision and that the supporting documents were valid, proper, and legal.^[19]

On July 14, 2011, Gabay ng LRA Inc. filed an appeal^[20] from the subject ND.

The Ruling of the COA-NGS-Cluster B

On February 9, 2012, COA-NGS-Cluster 8 rendered Decision^[21] No. 2012-003 with the dispositive portion as follows:

WHEREFORE, premises considered, the instant appeal is hereby DENIED for lack of merit and the ND No. 2011-001-151(10) dated January 6, 2011 is hereby affirmed.^[22]

The COA-NGS-Cluster 8 opined that the charging of the CNA incentive against the allotment for MOOE under the Special Account in the General Fund or Fund 151 of the LRA is illegal. It underscored that Fund 151 is limited by the Special Budget submitted by the LRA to the DBM in view of Section 35, Chapter 5, Book VI of Executive Order (EO) No. 292 otherwise known as Administrative Code of 1987. However, in this case, the CNA incentive was not among the proposed expenditures requested by the LRA and released by the DBM. The COA-NGS-Cluster B stated that Fund 151 was established for specific purposes other than the payment of the CNA incentive.^[23]

The COA-NGS-Cluster B further held that the lack of computation showing the amount of the savings generated as provided under DBM Circular No. 2006-1 indicates that the CNA incentive in the amount of P15,000.00 was predetermined.^[24]

The Ruling of COA Proper

Gabay ng LRA Inc. filed a petition for review^[25] before the COA beyond the time remaining of the six-month prescriptive period for the filing of an appeal.

On January 28, 2015, the COA rendered Decision^[26] No. 2015-004, with the dispositive portion as follows:

WHEREFORE, premises considered, the instant petition for review is hereby **DISMISSED** for having been filed out of time. Accordingly, National Government Sector-Cluster B Decision No. 2012-003 dated February 9, 2012, which affirmed Notice of Disallowance No. 2011-001-151(10) dated January 6, 2011, on the payment of collective negotiation agreement incentives to officials and employees of the Land Registration Authority amounting to P30, 180,000.00, is final and executory.^[27]

Gabay ng LRA Inc. filed a Motion for Reconsideration^[28] of the Decision dated January 28, 2015 of the COA Proper which was partly granted in a Resolution^[29] dated January 30, 2018, the dispositive portion of which reads:

WHEREFORE, premises considered, the Motion for Reconsideration of Gabay ng Land Registration Authority (LRA), Inc., represented by its

President, Mr. Ser John Pastrana, in behalf of the members of the employees' union, is hereby **PARTLY GRANTED**. Accordingly, Commission on Audit Decision No. 2015-004 dated January 28, 2015 and Notice of Disallowance No. 2011-001-151(10) dated January 6, 2011, on the payment of Collective Negotiation Agreement Incentives to LRA officials and employees, in the total amount of P30,180,000.00, are **AFFIRMED with MODIFICATION**. The payees who received the disallowed incentives in good faith need not refund the same. However, the recommending, certifying, and approving officers named liable for the disallowance shall remain liable therefor.

The Prosecution and Litigation Office, Legal Services Sector, this Commission, is hereby directed to forward the case to the Office of the Ombudsman for investigation and filing of appropriate charges, if warranted, against the persons liable for the transaction.^[30]

The COA Proper granted the request of Gabay ng LRA Inc. to relax the application of procedural rules to serve substantial justice. It reiterated its ruling that the grant of CNA incentive to LRA employees violated existing laws and regulations. It ratiocinated that although PSLMC Resolution No. 4 allows the grant of CNA incentive to government personnel, such grant should comply with the requirement on funding source under DBM Circular No. 2006-1, such that the CNA incentive must be sourced solely from savings from released MOOE allotments for the year under review.^[31]

As to the settlement of the disallowed amount, the COA Proper sustained its decision to hold the approving, certifying, and recommending officers liable for the return of the CNA incentive as stated in the subject ND. However, the COA Proper held that the employees who were mere passive recipients are not liable to refund the CNA incentive for having received the same in good faith.^[32]

On October 8, 2018, Pastrana, Dacanay, Tomas, and Ysmael filed their petitions assailing the subject ND, the Decision dated January 28, 2015 and the Resolution dated January 30, 2018 of the COA, and the Decision dated February 9, 2012 of the COA-NGS-Cluster B.

The Arguments of the Parties

In their petition, Pastrana, Dacanay, and Tomas opt not to discuss the validity of the subject ND, admitting that they lack knowledge on the formulation of budget for the CNA incentive.^[33] However, they insist that they should not be held liable for the return of the disallowed amount by reason of their good faith.^[34] They posit that as mere employees and/or representatives of employees to the CNA, they are neither in possession nor in custody of the government funds so as to authorize them to grant the release of certain allowances and benefits. They also allege that their participation in the grant of the CNA incentive is limited to ensuring that the distribution of the incentive will be just, fair, and in accordance with the CNA.^[35]

Meanwhile, Ysmael argues that as Chief of the General Services Division, she has no personal knowledge of the existence of funds for any given obligation.^[36] She asserts that her authority is limited to determining whether or not the documents

supporting the grant of the CNA incentive, *i.e.*, CNA, Memorandum dated April 7, 2010, LRA Circular No. 05-2010, and the disbursement vouchers, are complete.^[37]

The COA, through the Office of the Solicitor General, for its part, counters that as employees' representatives to the CNA, petitioners Pastrana, Dacanay, and Tomas are presumed to have adequate knowledge of existing laws, rules and regulations that they are tasked to implement. They could not have made an intelligible recommendation if they were ignorant of the pertinent laws and the COA rules on the matter. The COA advances that Pastrana, Dacanay, and Tomas participated in the illegal disbursement of fund by recommending the favorable approval of the guidelines for the payment of the illegal CNA incentive.^[38]

The COA also asseverates that petitioner Ysmael clearly participated in the illegal disbursement by the mere act of affixing her signature to the Obligation Request which is an indispensable requirement for the issuance or release of the CNA incentive. It contends that Ysmael failed to check the attached or accompanying documents as to whether no existing law or rule was violated. It maintains that Ysmael should have exercised extra caution because her signature in the Obligation Request paved the way for the disbursement of public funds.^[39]

On September 3, 2019, the Court ordered the consolidation of the instant petitions.^[40]

The Issue

The consolidated petitions present the sole issue of whether or not the COA acted with grave abuse of discretion amounting to lack or excess of jurisdiction in finding petitioners liable for the refund of the disallowed CNA incentive.

The Court's Ruling

The petitions are bereft of merit.

Both petitions do not task the Court to scrutinize the propriety of the issuance of the ND subject of the assailed COA Decision and Resolution but rather to determine petitioners' liability to refund the disallowed amounts disbursed. In fact, Pastrana, Dacanay, and Tomas expressly state in their petition that they did not tackle the "validity of the Notice of Disallowance No. 2011-001-151 (10) as they do not possess personal and technical knowledge on the process on how the budget for the CNA Incentives was created."^[41] Similarly, Ysmael centers her arguments on the nature of her functions to support the claim that she had no material participation in the alleged illegal expenditure. Nevertheless, the Court is constrained to discuss the propriety of the disallowance pursuant to Section 103 of Presidential Decree No. 1445^[42] which reads:

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