EN BANC

[G.R. No. 210905, November 17, 2020]

PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION (POEA), REPRESENTED BY ITS ADMINISTRATOR HANS LEO J. CACDAC, AND OVERSEAS WORKERS WELFARE ADMINISTRATION (OWWA), REPRESENTED BY ADMINISTRATOR REBECCA J. CALZADO, PETITIONERS, VS. COMMISSION ON AUDIT, REPRESENTED BY CHAIRPERSON MA. GRACE M. PULIDO-TAN, RESPONDENT.

D E C I S I O N

GAERLAN, J.:

This petition for *certiorari* under Rules 64 and 65 of the Rules of Court assails Decision No. 2011-023[1] dated January 31, 2011, and Decision No. 2013-226[2] dated December 23, 2013, both rendered by the Commission on Audit (COA), which affirmed the disallowance of the payment of P19,356,934.18 from the daily collections of the Overseas Workers Welfare Administration (OWWA) as incentive allowance to the employees and officials of the Philippine Overseas Employment Administration (POEA).

The Facts

On May 1, 1977, the Welfare Fund for Overseas Workers (hereinafter referred to as the Welfare Fund) was created pursuant to Letter of Instruction (LOI) No. 537. The administration of the Fund was reorganized twice, through Presidential Decree (P.D.) Nos. 1694 and 1809, which were promulgated on May 1, 1980 and January 16, 1981, respectively. On January 30, 1987, the administration of the Fund was reorganized into the OWWA, pursuant to Executive Order (E.O.) No. 126.[3] In 2016, Republic Act (R.A.) No. 10801, or the Overseas Workers Welfare Administration Act, was enacted, further defining the mandate and powers of the agency. Under Sections 4 and 37 of R.A. No. 1 0801, the Welfare Fund was renamed into the OWWA Fund.

The POEA was created on May 1, 1982, pursuant to E.O. No. 797. It was designated as the "lead government agency responsible for the formulation and implementation of policies and programs for the overseas employment of Filipino workers."[4] Section 4 of E.O. No. 797 provides that the POEA "shall assume the functions of the Overseas Employment Development Board, the National Seamen Board, and the overseas employment functions of the Bureau of Employment Services; which shall absorb the applicable functions, appropriations, records, equipment, property, and such personnel as may be necessary of the abolished units x x x." On July 24, 1987, the POEA was reorganized pursuant to E.O. No. 247.

On November 10, 1982, the Welfare Fund's Board of Trustees enacted Resolution No. 35, which states:

> WHEREAS, Philippine Overseas Employment Administration (POEA) assists the WelfareFund in processing and determining the WelfareFund fees due from employers hiring Filipino workers for overseas employment as part of its processing procedures;
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> WHEREAS, the POEA, in a resolution approved by its Governing Board has moved for the WelfareFund to pay POEA a service fee equivalent to 2% of total collections made by WelfareFund, for services rendered in the latter's behalf;
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> RESOLVED, that WelfareFund pay to POEA a service fee of 2% of total collections made beginning in CY 1983, payable to POEA on a six (6) month basis, the disposition of which shall be subject to the POEA Governing Board, provided, that report on the same shall be submitted to the Welfare Fund Board at the end of the calendar year.[5]

Subsequently, on November 21, 2001, the OWWA Board of Trustees approved the grant of an Incentive Allowance to POEA employees, equivalent to 1% of OWWA fees collected through the POEA.[6] The collection of OWWA fees through the POEA was further formalized in a Joint Memorandum dated November 28, 2001, issued by the Administrators of POEA and OWWA, which states in part that "[t]he payments of [Welfare Fund/OWWA C]ontribution shall be made each time a contract is submitted to POEA for processing"; and that "[t]he POEA shall issue the Overseas Employment Certificate to a departing OFW [Overseas Filipino Worker] only after the presentation of a documentary proof of membership and/or payment of Welfare Fund/OWWA contribution."[7]

On May 31, 2004, the Office of the Chairperson of COA received a letter from an anonymous OWWA employee stating that 1% of all collections made by OWWA collection officers assigned at the POEA were being paid to POEA officials and employees.[8] On the basis of said anonymous letter, POEA resident auditors investigated the alleged disbursements. On July 29, 2004, the POEA Audit Team Leader issued Audit Observation Memorandum No. 2004-018 holding that the payment of Incentive Allowance in the amount of P19,356,934.18 to the employees and officials of the POEA contravened Section 12 of R.A. No. 6758 and Article IX, Section 8 of the Constitution, and recommending that the Incentive Allowance payment be refunded or justified by the POEA. Pursuant to said Audit Observation Memorandum, the COA issued Notice of Disallowance No. 2005-015 on April 5, 2005.[9] The COA Legal and Adjudication Office-National (LAO-N) denied POEA's motion for reconsideration in a Decision[10] dated August 16, 2005, with the qualification that the disallowed payments need not be refunded. POEA filed a motion for reconsideration from the Decision of the COA LAO-N, which was denied in a Decision dated April 4, 2008.[11] POEA filed a Petition for Review before the COA proper, which the national audit body denied in the assailed Decision.

The Ruling of the Commission on Audit proper

The COA held that the grant of the Incentive Allowance to POEA employees for

assisting in the collection of OWWA dues is improper for two reasons: first, the collection of OWWA fees forms part of POEA's mandate; and second, the grant of such an allowance violates Section 12 of R.A. No. 6758.

According to the COA, collecting dues from OFWs is part of POEA's official mandate, hence POEA employees are not entitled to additional compensation therefor. As POEA and OWWA were both "created for the promotion of the welfare and protection of the rights of OFWs",[12] the statutes which created the OWWA and the POEA are *in pari materia* and should be read and construed together and harmonized as if they were the same law. According to the national audit body, while the statutory mandates of POEA and OWWA do not explicitly require the former to assist in OWWA recruitment and fee collection, such function is implicit from the POEA's power under Section 3(n) of E.O. No. 247 to enter into joint projects with other relevant government entities in the pursuit of its objectives of promoting OFW welfare; and from OWWA's power under Section 4(a) and (b) of P.D. No. 1694 to formulate and implement programs and enter into agreements and contracts to attain its objectives and purposes.[13] The joint policy on making POEA exit clearances contingent upon payment of OWWA membership fees as laid down in the November 28, 2001 memorandum issued by the administrators of the two agencies is germane to the mandates and objectives of both agencies, and further evinces the shared responsibility of both agencies in promoting the OFW welfare; hence, POEA cannot disown such functions as a justification for drawing Incentive Allowances for its employees from the Welfare Fund.

The COA also rejected POEA's argument that the incentive payments were justified under Section 64 of P.D. No. 1177, which authorizes government agencies to enter into service contracts with other public entities when the regular staff cannot provide such services. Assuming without conceding that collecting OWWA fees is not part of POEA's mandate, OWWA cannot outsource its fee collection function to POEA because there is no showing that the former's regular staff cannot do so. It was even proven by the POEA Audit Team that OWWA officers were stationed at the POEA to discharge that very function,[14] which means that the incentive payments were being made to POEA employees without rendering any service for OWWA.

The COA further held that the payment of the Incentive Allowance violated Section 12 of R.A. No. 6758, which requires that all allowances paid to regular employees of the government must be integrated into the statutory salary rate. There is no showing that the Incentive Allowance was integrated into the regular pay of POEA employees. Even assuming that such allowance came under the grandfather clause of Section 12,[15] it was nevertheless explicitly prohibited by MOB-MOF-COA Joint Circular No. 9-81, Item No. 4.5 which prohibits the use of trust receipt funds for payment of additional compensation, including incentive pay, to employees. Furthermore, the purported letter of then Budget Minister Manuel Alba cited by the POEA, which treats the Incentive Allowance payments as funds in the category of Trust Receipts, contravenes the abolition of all existing special and fiduciary funds under P.D. No. 711.

Finally, the national audit body affirmed the holding of its Legal and Adjudication Office-National that the Fund is in the nature of a private fund held in trust by OWWA for the OFWs who contribute thereto; and as such, proceeds from the Fund cannot be used to pay the questioned Incentive Allowance, following the ruling in

Social Security System v. Commission on Audit.[16] The COA *en banc* likewise rejected the applicability of the *Blaquera*[17] doctrine and ordered that the POEA employees who received the Incentive Allowance refund the total amount of P19,356.934.18, considering that the POEA officials were responsible for the approval and the authorization of the illegal disbursement, which the POEA employees willingly received despite not rendering any service for OWWA.

POEA filed a motion for reconsideration, which the COA properly denied on December 23, 2013.[18] POEA thus filed a petition for *certiorari* before this Court on February 7, 2014.[19] On February 18, 2014, this Court directed POEA to implead OWWA as a necessary party to the case.[20] On August 8, 2014, POEA, now joined by OWWA, filed an Amended Petition for *Certiorari*.[21] The Court subsequently directed the parties to file their respective memoranda.[22]

The Parties' Arguments

POEA and OWWA argue that the grant of the incentive allowance to POEA employees from OWWA funds is supported by applicable laws and regulations. Essentially, they argue that the incentive allowance is sanctioned by Section 64 of P.D. No. 1177 and OWWA Board Resolution No. 35. The incentive allowance has existed since 1982 and is therefore not only allowed under E.O. No. 110, series of 1986, which authorized ce1iain national government agencies to continue paying existing allowances, but has also ripened into "a practice of tradition which can neither be abandoned nor diminished."[23] Furthermore, its lack of manpower and information system capabilities necessitated the tapping of POEA's services to increase collections. The cooperation between the two agencies was institutionalized by their Joint Memorandum and integrated into the POEA contract processing system, such that POEA employees were trained in OWWA collection procedures. The cooperation, it is averred, resulted in a tremendous increase in OWWA fee collection.

The agencies further argue that Section 12 of R.A. No. 6758 does not apply to the POEA incentive allowance because the benefit has existed long before the enactment of said law and has therefore ripened into a vested right which cannot be prejudiced by the retroactive application of a law. Likewise, the POEA incentive allowance does not violate the constitutional prohibition on double compensation because the benefit is in the nature of a gratuity, which was voluntarily granted by the OWWA Board within its statutory powers. Furthermore, the amount does not come directly from the Welfare Fund but forms part of OWWA's operating expenses.[24]

Meanwhile, the COA, through the Solicitor General, argues that the payment of the incentive allowance is not justified. While POEA and OWWA have separate functions under their charters, they nevertheless have the same essential mandate of ensuring OFW welfare; hence, POEA employees cannot receive allowances for performing services that are part of the essential mandate of their agency. Assuming *arguendo* that collection of Welfare Fund contributions is not a function of POEA, the contracting-out of such service to POEA is not justified under Section 64 of P.D. No. 1177, since it was proven in the POEA audit that OWWA employees did the actual task of collection, with POEA merely serving as a collection facility, without any service rendered by its employees. The national audit body further argues that petitioners failed to prove that the incentive allowance was integrated

into the basic pay of POEA employees. The POEA incentive allowance cannot be classified as an exempt allowance under Section 12 of R.A. No. 6758 because it is in the nature of compensation for services rendered, as opposed to allowances given to defray expenses in relation to the jobs of POEA employees.

The Court's Ruling

The petition is unmeritorious and should be dismissed.

OWWA Fund collection is part of POEA's statutory mandate.

In their Memorandum, POEA and OWWA base their case on P.D. No. 1177, or the Budget Reform Decree of 1977, which lays down a standardized procedure for the preparation, authorization, execution, expenditure, and accounting of government agency budgets. Specifically, petitioners rely on Section 64 of the law, which reads as follows:

> SECTION 64. *Contracting of Activities*. - Agencies may enter into contracts with individuals or organizations, both public and private, subject to provisions of law and applicable guidelines approved by the President: provided, that contracts shall be for specific services which cannot be provided by the regular staff of the agency, shall be for a specific period of time, and shall have a definite expected output: provided, further, that implementing, monitoring and other regular and recurring agency activities shall not be contracted for, except for personnel hired on an individual and contractual basis and working as part of the organization, or as otherwise may be approved by the President: provided, finally, that the cost of contracted services shal1 not exceed the amount that would otherwise be incurred had the work been performed by regular employees of government, except as may be authorized under this section.

Section 64 specifically regulates government spending on contracting-out of services. The provision authorizes government agencies to enter into contracts with other public or private entities, subject to the following conditions: 1) the contract shall be subject to law and applicable guidelines approved by the President; 2) the contract shall be tor a specit1c service which *cannot* be provided by the regular staff of the agency; 3) the contract must be for a specific duration of time; 4) the contract must set forth definite expected outputs; and 5) the contract cost shall not exceed the cost of the same service had it been performed by regular employees of the government. The provision also prohibits the contracting out of *implementing, monitoring, and other regular and recurring agency activities*. Therefore, to determine if a service may be properly contracted out by a government agency, the first step is to ascertain the nature of the service sought to be contracted out. If the service is an implementation, monitoring, or other regular and recurring activity of the agency, it cannot be contracted out.

In the case at bar, the OWWA Board, through Resolution No. 35, s. 1982, authorized the payment to POEA of incentive allowance equivalent to 2% (later reduced to 1%)