

EN BANC

[G.R. No. 237987, March 19, 2019]

**DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS, REGION IV-A
AND GENEVIEVE E. CUARESMA, AS ONE OF THE CERTIFYING
OFFICERS AT THE TIME OF THE GRANT OF THE ASSAILED CNA
INCENTIVE, * PETITIONERS, VS. COMMISSION ON AUDIT,
RESPONDENT.**

DECISION

REYES, J. JR., J.:

This is a petition for *certiorari* under Section 1, Rule 64 of the Rules of Court which seeks to set aside the Decision No. 2016-377^[1] dated November 10, 2016 and the Resolution No. 2017-458^[2] dated December 27, 2017 of the respondent Commission on Audit (COA), which affirmed Decision No. 2013-29^[3] dated October 21, 2013 of the COA Regional Office No. IV-A (COA IV-A), which in turn affirmed Notice of Disallowance (ND) No. 09-01-101-(09) dated December 14, 2009.^[4]

The Facts

On December 16, 2008, the Department of Public Works and Highways (DPWH), Central Office, through then Secretary Hermogenes E. Ebdane, Jr. (Secretary Ebdane), issued a memorandum^[5] authorizing the grant of Collective Negotiation Agreement (CNA) Incentive to rank-and-file employees in the DPWH for calendar year 2008. The memorandum provides, among others, that:

3. That the CNA Incentive shall be paid out of savings generated from the Maintenance and Other Operating Expenses (MOOE), completed projects and Engineering and Administrative Overhead (EAO) of each office (Central Office and Regional and District Offices), subject to the usual accounting and auditing rules and regulations[.]^[6]

The memorandum was issued pursuant to Administrative Order (A.O.) No. 135, Series of 2005 dated December 27, 2005, which confirmed the grant of CNA Incentive to rank-and-file employees in government agencies; and Public Sector Labor-Management Council (PSLMC) Resolution No. 04, Series of 2002, which supplied the guidelines for the grant of CNA Incentive to rank-and-file employees in national government agencies (NGAs), state universities and colleges (SUCs), and local government units (LGUs).

Later, the DPWH Regional Office No. IV-A (DPWH IV-A) released CNA Incentive for calendar year 2008 to its employees and officers amounting to P3,915,000.00.

On January 6, 2010, DPWH IV-A received a copy of ND No. 09-01-101-(09) dated

December 14, 2009, signed by the Regional Audit Team Leader and Supervising Auditor, both of the COA IV-A. The COA auditors explained that the CNA Incentive in the amount of P3,915,000.00 was disallowed because it was paid out of the Engineering and Administrative Overhead (EAO), in violation of the Department of Budget and Management (DBM) Budget Circular No. 2006-1, issued on February 1, 2006, which states that CNA Incentive shall be sourced solely from the Maintenance and Other Operating Expenses (MOOE).

The COA auditors also identified several DPWH IV-A personnel whom they found to be liable for the illegal payment of the subject CNA Incentive. Among those found to be liable is herein petitioner Genevieve E. Cuaresma (Cuaresma), who was then the Chief Accountant of DPWH IV-A and who certified the availability of funds, completeness of the supporting documents, and validity of the obligation for the payment of the subject CNA Incentive.

On May 26, 2010, DPWH IV-A Regional Director Marcelina N. Ocampo (Director Ocampo) sent a letter, by way of an appeal, to the COA IV-A.

Ruling of COA Regional Office IV-A

In its Decision No. 2013-29 dated October 21, 2013, the COA IV-A dismissed Director Ocampo's appeal. COA IV-A stressed that the MOOE shall be the sole source of the CNA Incentive as expressly provided for in Budget Circular No. 2006-1; and that only rank-and-file employees may be granted the benefit of the said incentive. Thus, it ruled that the release of the subject CNA Incentive, charged from DPWH IV-A's EAO, to the DPWH IV-A employees including officers with salary grades 24 and above, was illegal. The dispositive portion of the said decision states:

All told, the questioned Incentive may not be charged to EAO, hence, the instant Appeal is hereby **DISMISSED** for lack of merit. ND No. 2009-01-101-09 is hereby **AFFIRMED**.^[7]

Unconvinced, the DPWH IV-A Employees Association, represented by its president, Engineer Diosdado J. Villanueva (Engr. Villanueva) elevated an appeal,^[8] which was treated as a petition for review, to the COA Proper.

Ruling of the COA

In its assailed Decision^[9] No. 2016-377 dated November 10, 2016, the COA denied DPWH IV-A Employees Association's petition. The COA concurred with COA IV-A's conclusion that DPWH IV-A violated DBM Budget Circular No. 2006-1 when it paid the CNA Incentive out of the savings from the EAO, instead of the MOOE. Further, the COA observed that DPWH IV-A and its Employees Association failed to show any proof of the cost-cutting measures it undertook to generate savings as required under DBM Budget Circular No. 2006-1, PSLMC Resolution No. 4, Series of 2002, and Section 3 of A.O. No. 135, Series of 2005. The dispositive portion of the assailed decision provides:

WHEREFORE, premises considered, the Petition for Review of Engr. Diosdado J. Villanueva, President, Department of Public Works and Highways (DPWH) Region IV-A Employees Association, of Commission on Audit Regional Office (RO) No. IV-A Decision No. 2013-29 dated October

21, 2013 is hereby **DENIED**. Accordingly, Notice of Disallowance No. 2009-01-101-(09) dated December 14, 2009 on the payment of 2008 Collective Negotiation Agreement incentive to officials and employees of DPWH RO No. IV-A in the total amount of P3,915,000.00 is **AFFIRMED**.

[10]

DPWH IV-A Employees Association, through Engr. Villanueva, moved for reconsideration, but the same was denied by the COA in its Resolution^[11] No. 2017-458 dated December 27, 2017. In denying the motion for reconsideration, the COA maintained that the CNA Incentive could not be validly sourced from the EAO. It stressed that DBM Budget Circular No. 2006-1 is clear on this point. Further, it reiterated the liability of the officers who approved the invalid release of the CNA Incentive as well as the officers who certified the availability of funds and sufficiency of documents necessary for such release. It, however, clarified that the officers and employees who were mere passive recipients of the said benefit need not refund the amounts they received in good faith. The dispositive portion of the resolution states:

WHEREFORE, premises considered, the Motion for Reconsideration of Engr. Diosdado J. Villanueva, President, Department of Public Works and Highways (DPWH) Regional Office (RO) No. IV-A Employees Association, is hereby **DENIED with FINALITY**. Accordingly, Commission on Audit (COA) Decision No. 2016-377 dated November 10, 2016, denying the Petition for Review of COA RO No. IV-A Decision No. 2013-29 dated October 21, 2013 and affirming Notice of Disallowance No. 09-01-101-(09) dated December 14, 2009, on the payment of Collective Negotiation Agreement Incentive for calendar year 2008 to officials and employees of DPWH RO No. IV-A in the total amount of P3,915,000.00, is **AFFIRMED**. However, passive recipients need not refund the benefits they received in good faith, while the approving/certifying officers remain solidarity liable for the entire amount of disallowance based on the *Silang* case.^[12]

On February 28, 2018, Cuaresma received a copy of the COA Resolution No. 2017-458. Considering that she was among those found to be liable for the disallowed incentive, Cuaresma was prompted to file this petition.

The Issues

I.

WHETHER OR NOT THE GRANT OF THE CNA INCENTIVE IS VALID AND SUPPORTED BY LAW AND OTHER PERTINENT RULES AND REGULATIONS.

II.

WHETHER OR NOT RESPONDENT COA ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DENYING WITH FINALITY THE MOTION FOR RECONSIDERATION OF ENGR. DIOSDADO J. VILLANUEVA AND FURTHER AFFIRMED THE DECISION NO. 2016-377 DATED NOVEMBER 10, 2016, DENYING THE PETITION FOR REVIEW OF COA RO NO. IV-A DECISION NO. 2013-29 DATED OCTOBER 21, 2013 AND AFFIRMING THE NOTICE OF DISALLOWANCE NO. 09-01-101-(09) DATED DECEMBER 14, 2009, ON THE PAYMENT OF COLLECTIVE NEGOTIATION AGREEMENT INCENTIVE

FOR CALENDAR YEAR 2008 TO OFFICIALS AND EMPLOYEES OF DPWH RO NO. IV-A IN THE TOTAL AMOUNT OF PHP3,915,000.00.

III.

WHETHER OR NOT RESPONDENT COA ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN MODIFYING THE SAID DECISION AND DECLARING THAT PASSIVE RECIPIENTS NEED NOT REFUND THE BENEFITS THEY RECEIVED IN GOOD FAITH, WHILE THE APPROVING/CERTIFYING OFFICERS REMAIN SOLIDARILY LIABLE FOR THE ENTIRE AMOUNT OF DISALLOWANCE BASED ON *SILANG* CASE.^[13]

Cuaresma insists that the subject CNA Incentive was validly paid out of the EAO. She argues that payment of the CNA Incentive out of the savings from the EAO in lieu of the MOOE is allowed under the General Appropriations Act (GAA) because MOOE and EAO serve substantially the same purpose. According to her, this intent could be gleaned from the budget deliberations of the DPWH in Congress, where the reason for the reduction of DPWH's MOOE was discussed.

Cuaresma further argues that she should not be held liable for the amount of the disallowance. She explains that she merely relied on the authority given by then DPWH Secretary Ebdane, when the latter issued a memorandum stating that the CNA Incentive may be paid out of the savings from the EAO.

Lastly, Cuaresma avers that the COA committed grave abuse of discretion amounting to lack or in excess of jurisdiction when it disallowed the subject CNA Incentive. She asserts that DPWH IV-A was among the offices singled out by the COA concerning the disallowance of the CNA Incentive. She claims that there were other offices which granted the CNA Incentive sourced from the savings from EAO but these releases were allowed. Cuaresma further points out that the DPWH IV-A's CNA Incentive for calendar year 2007, or for the previous year, was also paid out of the savings from the EAO. Surprisingly, however, the COA did not disallow the release of this incentive.

In its Comment^[14] dated August 23, 2018, the COA, through the Office of the Solicitor General, maintains that the subject CNA Incentive was invalidly released and paid out of the savings from the EAO. It counters that DBM Budget Circular No. 2006-1 unequivocally states that the CNA Incentive shall be sourced solely from the savings from the MOOE and to no other fund.

As to Cuaresma's defense that she merely relied on the authority given by Secretary Ebdane, the COA stresses that the December 16, 2008 memorandum itself cited A.O. No. 135, Series of 2005 as its basis and even specified that the CNA Incentive shall be subject to the usual accounting and auditing rules and regulations. As such, the authority under the aforesaid memorandum must be consistently implemented with the procedural guidelines and be subjected to the conditions imposed under DBM Budget Circular No. 2006-1.

From the submissions of the parties, the issues to be resolved by the Court could be summarized as follows: (1) whether the COA committed grave abuse of discretion amounting to lack or in excess of jurisdiction when it disallowed the subject CNA

Incentive; and (2) whether the COA committed grave abuse of discretion amounting to lack or in excess of jurisdiction when it adjudged certain DPWH IV-A officers, including Cuaresma, liable for the amount of the disallowance, while passive recipients were not ordered to share in the liability.

The Court's Ruling

The petition is partly meritorious.

The COA did not commit any grave abuse of discretion when it disallowed the subject CNA incentive.

In the discharge of its constitutional mandate, the COA is endowed with enough latitude to determine, prevent and disallow irregular, unnecessary, excessive, extravagant, or unconscionable expenditures of government funds. It has the power to ascertain whether public funds were utilized for the purpose for which they had been intended.^[15] The 1987 Constitution has expressly made the COA the guardian of public funds, vesting it with broad powers over all accounts pertaining to government revenue and expenditures and the exclusive authority to define the scope of its audit and examination, establishing the techniques and methods for such review, and to promulgate accounting and auditing rules.^[16]

The grant of CNA Incentive in favor of the employees in the NGAs, such as the DPWH, is governed by PSLMC Resolution No. 4, Series of 2002, A.O. No. 135, Series of 2005, and DBM Budget Circular No. 2006-1.

PSLMC Resolution No. 4, Series of 2002, authorized the grant of CNA Incentive for employees in the NGAs, SUCs, and LGUs. It states that CNA Incentive may be provided in the CNAs between the government agency and the employees association therein 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.^[17] The resolution also provided guidelines which must be followed in the grant of of CNA Incentive to employees in NGAs, SUCs, and LGUs. Among these is Section 1 which mandated that only the savings generated after the signing of the CNA may be used for the CNA Incentive;^[18] and Section 2 which required the inclusion of provisions on cost-cutting measures and systems improvement that will be undertaken by both the management and the labor organization to ensure that savings will be generated after the signing of each CNA.^[19]

A.O. No. 135, Series of 2005, confirmed the grant of CNA Incentive under PSLMC Resolution No. 4, Series of 2002. It reiterated that CNA Incentive shall be sourced solely from the savings generated during the life of the CNA,^[20] and that there must be provisions on cost-cutting measures in the CNA.^[21] It further clarified that CNA Incentive may be extended to rank-and-file employees only.^[22]

Finally, DBM Budget Circular No. 2006-1 provided limitations and conditions for the grant of CNA Incentive. Among these is Item No. 7, which specified the fund from which the CNA Incentive may be sourced.

7.0 Funding Source