

## **EN BANC**

**[ G.R. No. 218241, August 06, 2019 ]**

**ENGR. REYNALDO C. LIWANAG, IN HIS CAPACITY AS THE  
GENERAL MANAGER OF THE ANGELES CITY WATER DISTRICT  
(ACWD), PETITIONER, VS. COMMISSION ON AUDIT,  
RESPONDENT.**

### **D E C I S I O N**

#### **BERSAMIN, C.J.:**

The conduct of a special audit to reopen a previous audit allowing a disbursement should be made in accordance with the prevailing rules and guidelines defined by the Commission on Audit (COA) itself; otherwise, the special audit is irregular and should be invalidated.

#### **The Case**

The petitioner, in his capacity as the General Manager of the Angeles City Water District (ACWD), hereby assails Decision No. 2015-046 dated February 23, 2015,<sup>[1]</sup> whereby the COA affirmed Notice of Disallowance (ND) No. 2012-003-101(2008), ND No. 2012-004-101(2008), ND No. 2012-005-101(2009) and ND No. 2012-006-101(2009), all issued on November 26, 2012, relative to ACWD's grant to its employees of grocery allowance and year-end financial assistance totaling P14,556,195.00 for the years 2008 and 2009.

#### **Antecedents**

The factual and procedural antecedents, as culled from the decision of the Regional Director of COA's Regional Office 3 in San Fernando City (COA-RO3),<sup>[2]</sup> are as follows:

The Audit Team Leader (ATL) of Angeles City Water District (ACWD), Angeles City issued Notices of Disallowance (NDs) Nos. 2012-003-101 (2008), 2012-004-101 (2008), 2012-005-101 (2008) and 2012-006-101(2009), all dated 26 November 2012 to Appellant General Manager of the ACWD. Subject NDs pertained to the grocery allowance for the year 2008 and year-end financial assistance for 2008 and 2009. The basis for the disallowed grocery allowance was premised on the fact that the same had no legal basis and that, prior year's (2010-2011) expenses of the same nature had been disallowed and affirmed by the COA Region III Decision No. 2012-25 dated July 12, 2012. On the other hand, the year-end financial assistance were disallowed because it was not in accordance with the established benefits as of December 31, 1999 per DBM letter dated April 27, 2001 and PAWAD Memorandum Circular No. 2, s. of 2001 dated May 4, 2001. Both NDs were previously decided and affirmed by

the COA Regional Office No. III under COA Region III Decision No. 2012-25 dated July 12, 2012.

In his Appeal Memorandum dated May 20, 2013, Appellant invoked that the ATL can no longer audit the assailed grocery allowances and year-end financial assistance for the years 2008 and 2009 because the same were already audited by the ATL assigned at ACWD during his time and that, there were no disallowances issued pertaining to the said allowances and benefits. Moreover, the NDs issued by the succeeding ATL runs counter to the non-diminution of benefits principle considering that the allowances were allowed in principle by DBM Secretary Emilia T. Boncodin in her letter dated 27 April 2001, addressed to President Loreto G. Limcolioc of the PAWAD, stating therein that the grant of allowances shall be continued if the same were an established and existing practice.

In her Answer dated 01 July 2013, Appellee, the incumbent Supervising Auditor for water districts, reiterates the disallowances, citing Section 4.5 of DBM Budget Circular No. 16 and Section 2 of Administrative Order No. 365, s. 1997, viz:

Section 4.5 of DBM Budget Circular No. 16

*"All agencies are prohibited from granting any food, rice, gift, checks, or any other form of incentives/allowances except those authorized via Administrative Order by the Office of the President; and*

*Section 2. Administrative Order No. 365, s. of 1997 enjoins and prohibits Heads of Government Agencies, Local Government Units including Government-Owned and Controlled Corporations, Government Financing Institution as well as their respective governing boards from authorizing/granting Amelioration Allowance or any similar benefits without prior approval and authorization via Administrative Order (AO) by the President."*

She likewise advanced the justification that there was no proof that the benefits met the requirements provided under paragraph 2, Section 12 of RA 6758, which showed that the recipients were incumbents as of July 1, 1989 in order that the allowances may be continued. Furthermore, Appellee is of view that the opinion by the former DBM Secretary cannot prevail over settled decisions and jurisprudence, as well as the provisions of Section 12 of RA 6758. On the issue regarding the authority of the ATL to conduct the audit which resulted in the issuance of the NDs, she cited the Memorandum dated 9 March 2012 of Atty. Leonor M. Boado, then Director IV of the Fraud Audit and Investigation Office (FAIO), which was approved by Assistant Commissioner Elizabeth S. Zosa and Chairperson Ma. Gracia M. Pulido-Tan, ordering the re-opening of the accounts of ACWD, in response to the request to audit the long time corruption at ACWD in terms of monetary benefits received by its employees and other irregularities. In her prayer, Appellee not only manifested her denial to lift the subject disallowances but likewise made a representation that the

aggregate amount of the NDs should be increased from P14,556,195.00 to P26,462,024.00.<sup>[3]</sup>

The NDs in question are summarized as follows:<sup>[4]</sup>

Benefit	Amount		
	Audited	Disallowed	Difference
Grocery Allowance			
ND No. 2012-003-101(2008)	P7,248,000.00	P7,248,000.00	-
ND No. 2012-005-101(2009)	5,049,765.50	4,955,500.00	P94,265.50
Year-End Financial Assistance			
ND No. 2012-004-101(2008)	6,418,626.00	1,069,771.00	5,348,855.00
ND No. 2012-006-101(2009)	7,745,632.50	1,282,924.00	6,462,708.50
<b>Total</b>	<b>P26,462,024.00</b>	<b>P14,556,195.00</b>	<b>P11,905,829.00</b>

On May 28, 2013, the petitioner filed his appeal memorandum with COA-RO3 seeking the lifting and setting aside of the NDs.<sup>[5]</sup> However, the Regional Director denied the appeal through Decision No. 2013-91 dated September 18, 2013, a copy of which the petitioner received on September 19, 2013. Hence, the petitioner filed with the COA Proper the petition for review dated October 7, 2013, and paid the corresponding filing fee on December 27, 2013.<sup>[6]</sup>

### **Ruling of the COA Proper**

On February 23, 2015, the COA Proper dismissed the petitioner's appeal for being filed out of time pursuant to Section 3, Rule VII of the *2009 Revised Rules of Procedure of the COA* (RRPC),<sup>[7]</sup> and declared the decision of the Regional Director final and executory pursuant to Section 22.1<sup>[8]</sup> of the RRPC and Section 51<sup>[9]</sup> of Presidential Decree No. 1445. It cited the following timeline to indicated that the period to file the appeal had already lapsed, to wit:

Date NDs were received by Engr. Liwanag	November 28, 2012
Date ND were appealed to the Regional Director	May 28, 2013
Days elapsed from receipt of ND to appeal to the Regional Director	181 days
Date of receipt of Regional Director's Decision	September 19, 2013
No. of days remaining of the six months (180 days) period to file appeal	one (1) day
Deadline to file petition for review	September 20, 2013

Hence, this recourse.

### **Issues**

The petitioner submits for consideration and resolution the following issues, namely:

- A. WHETHER COA GRAVELY ABUSED ITS DISCRETION TANTAMOUNT TO LACK OR EXCESS OF JURISDICTION WHEN IT RULED THAT ACWD's PETITION FOR REVIEW WAS FILED OUT OF TIME.**
- B. WHETHER COA GRAVELY ABUSED ITS DISCRETION TANTAMOUNT TO LACK OR EXCESS OF JURISDICTION WHEN IT AFFIRMED THE DISALLOWANCE OF GROCERY ALLOWANCE AND YEAR END FINANCIAL ASSISTANCE GRANTED TO ACWD EMPLOYEES.**
- C. WHETHER COA GRAVELY ABUSED ITS DISCRETION TANTAMOUNT TO LACK OR EXCESS OF JURISDICTION WHEN IT FAILED TO RULE THAT THE AUDIT CONDUCTED BY THE ATL IS INVALID AND ILLEGAL FOR LACK OF AUTHORITY TO AUDIT ACWD ACCOUNTS WHICH ALREADY HAD BEEN AUDITED BY PREVIOUS AUDITORS.**
- D. WHETHER COA GRAVELY ABUSED ITS DISCRETION TANTAMOUNT TO LACK OR EXCESS OF JURISDICTION WHEN IT FAILED TO APPLY EXISTING JURISPRUDENCE ON THE ENTITLEMENT AND REFUND OF THE SUBJECT ALLOWANCES OF ACWD EMPLOYEES.<sup>[10]</sup>**

### **Ruling of the Court**

We find merit in the petition for certiorari.

#### **I**

#### **The petitioner's appeal to the COA Proper was timely filed**

The respondent insists that the petitioner did not file the petition for review with the COA Proper within the 6-month reglementary period provided under Section 3 Rule VII of the 2009 RRPC. On the other hand, the petitioner counters that his appeal was timely because the disallowances were the proper subject of an automatic review in view of the increase of the disallowed amounts from P14,556,195.00 to P26,462,024.00.

We sustain the petitioner.

The assailed NDs originally totaled P14,556,195.00. However, the Regional Director, in dismissing the appeal, concluded that the decision was not yet final but still subject to the "automatic review by the Commission Proper pursuant to Section 7,

Rule V of the 2009 Revised Rules of Procedure of the Commission on Audit."<sup>[11]</sup>

The conclusion of the Regional Director was correct. Indeed, Section 7, Rule V of the RRPC reads:

SECTION 7. Power of Director on Appeal - The Director may affirm, reverse, modify or alter the decision of the Auditor. **If the Director reverses, modifies or alters the decision of the Auditor, the case shall be elevated directly to the Commission Proper for automatic review of the Director's decision. The dispositive portion of the Director's decision shall categorically state that the decision is not final and is subject to automatic review by the CP.**

If it was subject to the automatic review by the COA Proper, the decision approving the disallowances did not attain finality. On that basis, the motion for reconsideration filed by the petitioner was superfluous and unnecessary.

## II

### **The petitioner was fully authorized to bring the present recourse**

The respondent argues that the petitioner lacked the authority to bring the present recourse because the ACWD's Board of Directors limited his authority to the filing of the motion for reconsideration vis-a-vis the assailed COA Decision.

The argument of the respondent is mistaken.

The sixth *Whereas* clause of ACWD's Board Resolution No. 19, Series of 2015,<sup>[12]</sup> stated thus:

**WHEREAS**, the Board of Directors thoroughly and carefully deliberated on the issues at hand and thereafter collectively decided to file a Motion for Reconsideration with the Supreme Court of the Philippines on the COA Decision 2013-91.

Although such wording of the sixth *Whereas* clause gave the impression that only the motion for reconsideration had been thereby authorized to be filed, it was plain error on the part of the COA Proper to argue that the intent of ACWD's Board of Directors in issuing Board Resolution No. 19 was only to authorize the petitioner to file the motion for reconsideration if it was clear that the Board of Directors adopted the resolution to enable the petitioner to take the necessary remedies in this Court that would reverse the assailed COA Decision 2013-91. The proper recourse for that purpose was the original special civil action under Rule 64, in relation to Rule 65, of the *Rules of Court*. Such recourse is the remedy that the petitioner has precisely resorted to herein. Accordingly, it was unreasonable and illogical to insist that the aforequoted text of Board Resolution No. 19 restricted the petitioner's authority to the filing of the motion for reconsideration.

In reality, the question about the petitioner's was too much fuss over thing, the petitioner, as the General Manager, inherently possessed the authority to initiate the proper recourse in behalf of ACWD and in the process to sign even without the board resolution the verification and certification of non-forum shopping vis-a-vis the petition for *certiorari* brought under Rule 64. Following our ruling in *Cagayan*