

## EN BANC

[ G.R. No. 232272, July 24, 2018 ]

**SECRETARY MARIO G. MONTEJO, IN HIS CAPACITY AS  
SECRETARY OF THE DEPARTMENT OF SCIENCE AND  
TECHNOLOGY (DOST), PETITIONER, VS. COMMISSION ON AUDIT  
(COA), AND THE DIRECTOR, NATIONAL GOVERNMENT SECTOR,  
CLUSTER B - GENERAL PUBLIC SERVICES II AND DEFENSE,  
COMMISSION ON AUDIT, RESPONDENTS.**

### DECISION

**PERALTA, J.:**

For this Court's resolution is the Petition for Review<sup>[1]</sup> on *Certiorari* under Rule 64 of the Revised Rules of Civil Procedure assailing the Decision<sup>[2]</sup> dated September 26, 2016 and the Resolution<sup>[3]</sup> dated February 27, 2017 of the Commission on Audit (COA), which affirmed Notice of Disallowance No. 2011-021-101-(11) dated November 17, 2011 and Notice of Disallowance No. 2011-022-101-(11) dated November 18, 2011 issued by the Office of the Auditor, COA, Taguig City disallowing the grant/release of Collective Negotiation Agreement Incentives (CNA Incentives) to the officials and employees of the Department of Science and Technology (*DOST*).

The facts follow.

During the Calendar Year 2010, petitioner released CNA Incentives in the total amount of Five Million Eight Hundred Seventy Thousand Eight Hundred Eighty-Three Pesos and Seventy-Nine Centavos (P5,870,883.79) to the DOST employees, covered by the following reference documents and particulars:

Date	Payee	Check No.	Amount
May 25, 2010	Mario P. Bravo	530803	P25,000.00
May 25, 2010	DOST Officers and Employees	307423	P2,575,000.00
May 28, 2010	Lilibeth O. Furoc	530888	P25,000.00
December 16, 2010	Mario G. Montejo	534033	P25,000.00
December 16, 2010	Marilyn M. Yap	534034	P25,000.00
December 16, 2010	Mario P. Bravo	534035	P25,000.00
December 22, 2010	DOST Officers and Employees	307547	P3,166,667.12
December 29, 2010	Maxima M. Tapanan	534285	P4,166.67
		TOTAL	P5,870,883.79

Thereafter, on July 5, 2011, petitioner received an Audit Observation Memorandum (AOM) dated June 27, 2011 from the Audit Team Leader of the Office of Auditor, COA, noting various alleged deficiencies in the grant of CNA Incentives by petitioner to its employees, such as:

1. The payment of the CNA Incentive was not supported with written resolution by the DOST Management and SIKAT; DBM approved level of operating expenses; Certificate issued by the Head of the Agency; Detailed computation of unencumbered savings; Proof of the planned program; List of *bonafide* SIKAT members and application for registration;
2. The cost-cutting measures and specific systems improvement to be jointly undertaken by DOST Management and the employees' organization to achieve effective service delivery and agency targets a lesser cost were not identified in the CNA contrary to Section 3 of Administrative Order No. 135;
3. The amount of CNA Incentive was predetermined in the Collective Negotiation Agreement signed by SIKAT and DOST Management contrary to paragraph 5.6.1 of Budget Circular No. 2006-1;
4. Mid-year CNA Incentive amounting to P25,000.00 each was paid to DOST officers and employees contrary to Section 5.7 of Budget Circular No. 2006-1;
5. Officers or DOST Managerial employees were granted the CNA Incentive contrary to Section 2 of Administrative Order No. 135, DBM Budget Circular No. 2006-1, PSLM Resolution No. 4, s. 2002 and Section 5.7 of the Collective Negotiation Agreement.<sup>[4]</sup>

On July 14, 2011, petitioner filed his Letter-Reply<sup>[5]</sup> dated July 11, 2011 and submitted the required documents, certifications, detailed computations and justifications as required by the Office of the Auditor.

State Auditor IV Flordeliza A. Ares and State Auditor V Myrna K. Sebial issued Notice of Disallowance No. 2011-021-101-(11)<sup>[6]</sup> dated November 17, 2011 disallowing petitioner's grant of CNA Incentives to DOST employees in the total amount of P5,870,883.79 on the alleged ground that it is violative of the provisions of Public Sector Labor Management Council (PSLMC) Resolution No. 4 dated November 14, 2002, Budget Circular No. 2006-1 dated February 1, 2006 and Administrative Order No. 135 dated December 27, 2005.

Then in CY 2011, petitioner also released to DOST employees CNA Incentives in the total amount of Four Million Seven Hundred Seventy-Three Thousand Eight Hundred Twenty-One Pesos and Forty-Nine Centavos (P4,773,821.49).

Thereafter, State Auditor IV Ares and State Auditor V Sebial issued Notice of Disallowance No. 2011-022-101-(11) dated November 18, 2011<sup>[7]</sup> disallowing petitioner's grant of CNA Incentives to its employees, covered by the following

reference documents and particulars:

Date	Payee	Check No.	Amount
May 31, 2011	DOST Officers and Employees	360753	P4,557,800.00
May 31, 2011	Mario G. Montejo	582737	P40,000.00
May 31, 2011	Rodel A. Lara	582740	P40,000.00
December 31, 2011	Wilhelmina R. Mercado	582742	P40,000.00
December 31, 2011	Marilyn M. Yap	582739	P40,000.00
December 31, 2011	Mario P. Bravo	582738	P40,000.00
December 31, 2011	Floramel E. Gaerlan	382741	P9,354.83
December 31, 2011	Corazon M. Garcia	582743	P6,666.66
		TOTAL	P4,773,821.49

Petitioner appealed to the National Government Sector (NGS), Cluster B-General Services II and Defense, COA, the two Notices of Disallowance issued by the Office of Auditor.

The NGS rendered its Decision dated October 4, 2012, affirming the two Notices of Disallowance, the dispositive portion of which states:

WHEREFORE, premises considered, the instant appeal is hereby DENIED and the Notices of Disallowance Nos. 2011-021-101-(11) dated November 17, 2011 and 2011-022-101-(11) dated November 18, 2011 in the amount of P5,870,883.79 and P4,773,821.49, respectively, are AFFIRMED. This decision is without prejudice to a further appeal that the parties may deem proper.<sup>[8]</sup>

Petitioner filed a Petition for Review with respondent COA, assailing the NGS Decision dated October 4, 2012 which affirmed the Notices of Disallowances. On October 18, 2016, the COA *En Banc* rendered its Decision, the dispositive portion of which states:

WHEREFORE, premises considered, the petition for review of secretary Mario G. Montejo, Department of Science and Technology (DOST), of National Government Sector Cluster B Decision No. 2012-013 dated October 4, 2012, is hereby DENIED for lack of merit. Accordingly, Notice of Disallowance Nos. 2011-021-101-(11) dated November 17, 2011 and 2011-022-101-(11) dated November 18, 2011, on the payment of Collective Negotiation Agreement Incentives for calendar years 2010 and 2011 to DOST Central Office officials and employees in the total amount of P10,644,705.28 are AFFIRMED.<sup>[9]</sup>

According to the COA *En Banc*, the grant of CNA Incentives by petitioner violated Sections 5.7, 7.1 and 7.1.1 of DBM Budget Circular No. 2006-1, since petitioner paid the CNA Incentives during the middle of CY 2010 and 2011 and at the end of CY 2010. The COA *En Banc* also found that petitioner failed to submit proof that the

grant of CNA incentives was sourced from the savings generated from the cost-cutting measures through a comparative statement of DBM-approved level of operating expenses and actual operating expenses. Furthermore, the COA *En Banc* held that the officers who approved the grant of CNA Incentives should be solidarily liable for the total disbursement and that the payees should be held liable for the amount they received pursuant to the principle of *solutio indebiti*.

Hence, the present petition after the COA *En Banc* denied petitioner's motion for reconsideration.

Petitioner raises the following grounds for the allowance of the present petition:

Respondent COA gravely erred in affirming the 17 and 18 November 2011 Notices of Disallowance Nos. 2011-021-101-(11) and 2011-022-101-(11), which disallowed the payment of Collective Negotiation Agreement Incentives (CNAI) for calendar years 2010 and 2011 to DOST Central Office employees in the total amount of P10,644,705.28 because:

- a) Petitioner's grant of CNAI was based on identified cost-cutting measures;
- b) Petitioner's grant of CNAI was sourced from the savings generated from the cost-cutting measures through a comparative statement of DBM approved level of operating expenses and actual operating expenses;
- c) Petitioner's grant of CNAI substantially complied with the requirements under DBM Circular No. 2006-1; and
- d) The payment of CNAI was done in good faith, hence, no liability attaches therefrom.<sup>[10]</sup>

Petitioner argues that the grant of CNA Incentive was based on duly identified and approved cost-cutting measures and systems improvement. He also claims that its grant of the CNA Incentive was sourced from the savings generated from the cost-cutting measures through a comparative statement of DBM-approved level of operating expenses and actual operating expenses. Petitioner further avers that the grant of CNA Incentive substantially complied with the requirement of DBM Circular No. 2006-1 and that the payment of CNA Incentives was made in good faith, hence, no liability attaches therefrom.

In its Comment<sup>[11]</sup> dated August 30, 2017, respondent claims that it did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in rendering the assailed decision as the same is in consonance with prevailing laws, rules and regulations and established jurisprudence. Respondent also argues that it correctly disallowed petitioner's grant of CNA Incentives to DOST officials and employees and that the employees and officials of petitioner agency are not excused from refunding the amounts unduly disbursed to them.

The petition is partly meritorious.

This Court finds that the COA did not err in disallowing petitioner's grant of CNA Incentives to DOST officials and employees.

As aptly found by the COA, several provisions of DBNI BC No. 2006-1, particularly Items 5.7 and 7.1, have been violated in the release of the CNA Incentives. The said provisions read as follows:

5.7 The CNA Incentive for the year shall be paid as a **one-time benefit after the end of the year**, provided that the planned programs/activities/projects have been implemented and completed in accordance with the performance targets for the year.

x x x

7.1 **The CNA Incentive shall be sourced solely from savings from released MOOE allotments** for the year under review, still valid for obligation during the year of payment of the CNA, subject to the following conditions:

7.1.1 Such **savings were generated out of the cost-cutting measures identified in the CNA** and supplements thereto; x x x<sup>[12]</sup>

In this case, the DOST paid or granted the CNA Incentive during the middle of CY 2010 and CY 2011, and again at the end of the same year in 2010. Petitioner, however, claims that the DOST substantially complied with the requirement of DBM BC No. 2006-1 in its grant of the CNA Incentives. According to petitioner, while the DBM Circular provides that the grant of the CNA Incentives should be granted after the end of the year, it was qualified by a provision that the grant shall be released only after the planned/activities/projects of the concerned agency have been implemented in accordance with the performance targets for the year. Petitioner adds that the DOST has repeatedly submitted documents proving that the proposed program or planned activities for the particular month have been achieved and savings were generated following the DOST Internal Guidelines, thus, while the CNA Incentives was released in the middle of the year, the grant was nevertheless compliant with the condition that it should be anchored on savings actually generated for a particular year.

Petitioners reasoning is flawed. The above-provisions of DBM BC No. 2006-1 is clear and self-explanatory. As correctly ruled by the COA *En Banc*, petitioner did not comply with the directive of the DBM Circular, thus:

x x x It is clear from the aforecited provisions that the payment of CNA incentive should be a one-time benefit after the end of the year, when the planned programs/activities/projects have already been implemented and completed in accordance with the performance targets for the year. DOST did not comply with this directive as it made a mid-year payment of CNA incentive. While the savings could be possibly determinable by then, it is mandated that programs/activities/projects should have already been implemented and completed to determine whether such activities generated savings from which CNA incentive can be sourced.

Likewise, DOST could have easily proven that the payment of CNA incentive was solely sourced from the savings generated from the cost-cutting measures conducted by showing a comparative statement of DBM