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[G.R. No. 216538, April 18, 2017]

**DEVELOPMENT BANK OF THE PHILIPPINES, PETITIONER, V.
COMMISSION ON AUDIT, RESPONDENT.**

[G.R. No. 216954, April 18, 2017]

**ALFREDO C. ANTONIO, RUBEN O. FRUTO AND CESAR M. DRILON,
JR., PETITIONERS, V. COMMISSION ON AUDIT, RESPONDENT.**

DECISION

BERSAMIN, J.:

Before us are the consolidated petitions assailing Decision No. 2012-269 dated December 28, 2012^[1] and Resolution dated December 4, 2014^[2] issued by respondent Commission on Audit (COA) disallowing the 50% subsidy granted by petitioner Development Bank of the Philippines (DBP) to its officers who had availed themselves of the benefits granted under the Motor Vehicle Lease Purchase Plan (MVLPP).^[3]

Antecedents

On February 9, 1990, the Monetary Board, through Board Resolution No. 132, approved the Rules and Regulations for the Implementation of the Motor Vehicle Lease-Purchase Plan (RR-MVLPP) for Government Financial Institution (GFI) officers as part of the package of fringe benefits "to enable them to meet the demands of their work with more facility and efficiency and provide them with economic means of coping with the prestige and stature attendant to their respective positions."^[4]

The RR-MVLPP involved the acquisition of motor vehicles to be leased or sold to qualified officers of GFIs. Under the plan, the GFI concerned was to constitute a fund sourced from the appropriation in such amount necessary to finance the acquisition of brand-new motor vehicles to be leased or sold to the GFI's eligible officers. The officers availing themselves of the benefits under the plan were required to execute a Lease Purchase Agreement with maximum periods of 10 years, and the aggregate monthly rentals for one year of not exceeding 10% of the acquisition cost of each motor vehicle would be payable through salary deduction. The plan specified that at the end of the lease periods, the GFI would transfer the ownership over the vehicles to the officers concerned, but should the officers opt to purchase the vehicles prior to the termination of the lease periods, the purchase prices would be equal to the acquisition costs minus the rentals already paid. The same arrangement would apply should the officers retire or be separated from the service prior to the end of the 10-year lease periods.^[5] In addition, each GFI was authorized to adopt uniform supplementary rules that would detail the implementation of the RR-MVLPP covering, but not necessarily limited to, the

procedure for availment, definition of net take-home pay of the officers-awardees and similar areas that needed further clarification.^[6]

On July 20, 1992, the Office of the President approved with certain modifications the RR-MVLPP, which applied to GFI officers occupying positions with salary grades (SG) of not lower than SG-25.^[7]

Among the GFIs covered by the RR-MVLPP was DBP. On July 30, 1992, DBP issued Circular No. 25 to establish the conditions for the plan consistent with the RR-MVLPP, ^[8] including the maximum loan period of 10 years and annual rental equivalent to 10% of the acquisition cost of the vehicle payable through salary deduction. Five years later, DBP's Board of Directors adopted Board Resolution No. 0246 dated June 13, 1997 constituting the MVLPP Fund.

Board Resolution No. 0246 stated:

- I. 1. The MVLPP Fund shall consist of:
 - a. the money provided by the Bank interest-free to fund the acquisition of vehicles for the officer-availees;
 - b. the pooled funds coming from contributions of officer-availees;
 2. The DBP Provident Fund (PF) shall manage the MVLPP Fund.
 3. The return of the amount advanced by the Bank at the end of the ten (10) year lease period, without interest. PF shall be charged with 24% interest rate per annum in case of failure to remit the funds to the Bank after the 10th year.
 4. The utilization of the MVLPP Fund for the officer's availments and re-availments of the MVLPP.
 5. Retirement according to law and involuntary secession from the Bank of any member of the DBP Board of Directors shall be covered under this Plan.
 6. Authority for PF to distribute income of the MVLPP Fund and to grant multi-purpose loans to officer-availees, if necessary. This authority shall also apply to the initial MVLPP availments.
- II. Authority for the Provident Fund to declare a "special dividend" out of the income of the MVLPP Fund, for a maximum amount equivalent to 50% of their availments, which dividend shall be applied in full liquidation of existing availments of officer-availees who have already retired or the members of the DBP Board of Directors who have seceded from the Bank prior to the expiration of the lease and with outstanding MVLPP availments, provided, that such retirees/directors have paid at least sixty (60) monthly rentals. The term "retiree" referred to hereof shall have the same meaning attached to it in the mechanics.

PROVIDED, That all other terms and conditions of the Motor Vehicle Lease Purchase Plan not herein affected shall remain in full force and effect.^[9]

DBP implemented its MVLPP in accordance with Board Resolution No. 0246. On April 12, 2007, however, the supervising auditor of the COA assigned to DBP issued Audit Observation Memorandum No. HO-HRM (PF)-MVLPP-AOM-20006-005^[10] to the effect that what had been duly approved by the Office of the President through the RR-MVLPP was for DBP to advance the money to pay for the acquisition of the vehicles and for the officers-availees to pay in full the cost of the vehicle. The supervising auditor opined that because Board Resolution No. 0246 ran contrary to the RR-MVLPP, DBP should cease its practice of requiring officers-availees to pay only 50% of the cost of the vehicle; and that DBP should oblige all its officers-availees to pay the remaining 50% cost of their vehicles.^[11]

DBP, by way of comment,^[12] contested the supervising auditor's interpretation of the RR-MVLPP, and asserted that under Section 7 of the RR-MVLPP, each GFI was authorized to adopt uniform supplementary rules that would detail the implementation of the car loan plan. It contended that the car fund was not meant to be an income-generating fund whose earnings would flow back to it; that contrary to the findings of the supervising auditor, the total cost of each vehicle was paid on the fifth year from availment; that 50% of the total cost of each vehicle was paid through the lease rentals (salary deduction) by the officers-availees, and the remaining 50% was paid through an interest-free loan extended to the officers-availees from the earnings of the car fund; that on the tenth year from availment, the earnings of the car fund were distributed and applied in full liquidation of the officers-availees' loan; and that expenditures related to DBP's MVLPP had been passed in audit since its implementation in 1983. Thus, the present corporate auditor could not properly raise the issues given that previous COA audits had already ruled in favor of the legality or compliance with the legal requirements of the expenses.^[13]

On May 20, 2007, the supervising auditor issued a Notice of Disallowance^[14] relative to the subsidy granted by DBP to its officers who had availed themselves of the MVLPP benefits amounting to 50% of the acquisition costs of the motor vehicles, or totalling P64,436,931.61. The Notice of Disallowance declared the Members of the Board of Directors, Certify payroll/HRM, Accountant, and Cashier of DBP liable "based on their respective participation in the subject transaction."^[15]

DBP filed its appeal with the Corporate Government Sector (CGS)-Cluster A of the COA. On July 22, 2010, during the pendency of the appeal, it also filed its manifestation and motion alleging that President Arroyo, upon the request of DBP, had confirmed the power and authority of its Board of Directors to approve and implement the Compensation Plan from 1999 onwards, including the implementation of the MVLPP.^[16]

However, on February 10, 2011, the Director of the CGS-Cluster A of COA denied the appeal through CGS-A Decision No. 2011-001 and affirmed the Notice of Disallowance,^[17] disposing:

WHEREFORE, premises considered, this Commission finds the instant appeal devoid of merit. Accordingly, said Notice of Disallowance No. MVLPP-2006-10 (06) is hereby **AFFIRMED**.^[18]

DBP further appealed to seek the reversal and setting aside of CGS-A Decision No. 2011-001.

On December 28, 2012, the COA Commission Proper rendered the assailed Decision No. 2012-269 denying DBP's petition for review, viz.:

WHEREFORE, this Commission **DENIES** the Petition for Review and **AFFIRMS** COA CGS-A Decision No. 2011-001 dated February 10, 2011 and ND No. MVLPP-2006-10 dated May 20, 2007. The list of MVLPP avalees is attached herein.^[19]

On February 8, 2013, DBP filed its motion for reconsideration of the COA's Decision No. 2012-269.^[20]

A few months later, or in June 2013, Alfredo C. Antonio, Ruben O. Fruto and Cesar M. Drilon, Jr., who are the petitioners in G.R. No. 216954, were informed about Decision No. 2012-269 by a concerned employee of DBP. Being former Members of the Board of Directors of DBP thereby affected, they immediately submitted a letter-request for reconsideration on June 6, 2013 taking issue against the decision for lack of notice to them, and claiming good faith on the subject matter thereof, among others.^[21]

On December 4, 2014, the COA Commission Proper *En Banc* issued the assailed Resolution denying DBP's motion for reconsideration and the supplemental motions for reconsideration of the petitioners in G.R. No. 216954 for lack of merit.^[22]

Hence, the petitioners have all come to the Court via separate petitions under Rule 64, in relation to Rule 65, of the *Rules of Court*.

On May 19, 2015, the Office of the Solicitor General, as counsel of the COA, moved to consolidate the petitions in G.R. No. 216538 and G.R. No. 216954.^[23] Accordingly, on July 7, 2015, this Court ordered the consolidation of G.R. No. 216538 and G.R. No. 216954.^[24]

Issues

DBP raises the following issues in G.R. No. 216538, namely:

A.

THE COMMISSION ON AUDIT CITED NO LEGAL OR FACTUAL BASIS IN HOLDING THAT THE DBP-MVLPP VIOLATED ANY OF THE PROVISIONS OF THE RR-MVLPP. ON THE CONTRARY, DBP HAS SHOWN THAT ITS MVLPP IS CONSISTENT AND COMPLIES WITH THE RR-MVLPP.

B.

THE COA, THROUGH COUNTLESS PAST SUPERVISING AUDITORS AND CLUSTER DIRECTORS, HAD ALREADY PASSED IN AUDIT THE BENEFITS GRANTED AND EXPENSES INCURRED BY THE BANK UNDER THE DBP MVLPP FROM 1992 UP TO 2007, OR FIFTEEN LONG YEARS. IT WOULD BE UNJUST, UNFAIR AND INEQUITABLE FOR COA TO BELATEDLY RECALL THESE FINDINGS WITH REGARD TO THE VALIDITY OF THE 1992-1996 DBP-MVLPP DISBURSEMENTS WITH THE ISSUANCE OF A NOTICE OF DISALLOWANCE ONLY IN 2007.

C.

COA VIOLATED THE LAW WHEN IT DISREGARDED THE AUTHORITY GRANTED BY THE DBP CHARTER TO THE DBP BOARD OF DIRECTORS TO FORMULATE POLICIES NECESSARY TO CARRY OUT EFFECTIVELY THE OPERATIONS OF THE BANK AND TO FIX THE COMPENSATION OF ITS OFFICERS AND EMPLOYEES. THE ADOPTION AND CONTINUED IMPLEMENTATION OF THE DBP MVLPP IS PART OF THE COMPENSATION SET BY THE DBP BOARD FOR THE BENEFIT OF ITS EMPLOYEES.

D.

COA IGNORED THE BASIC AND ELEMENTARY PRINCIPLE THAT A LAW PREVAILS OVER A MERE EXECUTIVE ISSUANCE. ITS INVOCATION OF MEMORANDUM ORDER NO. 20 TO DEFEAT THE PROVISIONS OF E.O. NO. 81, AS AMENDED BY R.A. NO. 8523. THE BASIS OF THE DBP MVLPP, IS PATENTLY ERRONEOUS. BESIDES, M.O. NO. 20 CLEARLY DOES NOT APPLY TO DBP IN VIEW OF ITS RECOGNIZED EXEMPTION FROM THE SALARY STANDARDIZATION LAW.

E.

WHILE INVOKING M.O. NO. 20 AGAINST THE DBP MVLPP ON THE PURPORTED LACK OF PRESIDENTIAL APPROVAL, COA REFUSED TO ACKNOWLEDGE THE CONFIRMATION BY FORMER PRESIDENT GLORIA MACAPAGAL ARROYO, WHO ISSUED THE SAME M.O. NO. 20, OF THE AUTHORITY OF THE DBP BOARD TO ADOPT AND CONTINUE TO IMPLEMENT THE DBP MVLPP.

F.

IN ITS EAGER, IF NOT OVERZEALOUS, DESIRE TO SUSTAIN THE DISALLOWANCE ALREADY ISSUED, THE COA ADDED A NEW GROUND FOR DISALLOWING THE DBP MVLPP THE ALLEGED LACK OF PRIOR BSP APPROVAL. SAID REQUIREMENT IS UNNECESSARY AND IRRELEVANT.

G.

ASSUMING THAT THE AVAILMENT OF THE MULTI PURPOSE LOAN AND DISTRIBUTION OF INCOME UNDER THE DBP MVLPP FOR THE PAYMENT OF THE PURCHASE PRICE BALANCE WERE PROPERLY DISALLOWED, THE COA SHOULD HAVE APPLIED TO THE INSTANT CASE THE PREVAILING JURISPRUDENCE THAT DISALLOWED BENEFITS RECEIVED IN GOOD FAITH NEED NOT BE REFUNDED. THE MVLPP AVAILEES WHO RECEIVED THE BENEFIT, THE OFFICERS WHO APPROVED THE MVLPP AND THOSE WHO MERELY PARTICIPATED IN THE APPROVAL AND RELEASE OF THE BENEFITS, ALL OF WHOM ACTED IN GOOD FAITH, NEED NOT REFUND THE SAME.^[25]

The petitioners in G.R. No. 216954 posit that the COA committed grave abuse of discretion amounting to excess or lack of jurisdiction as follows:

I.

In rendering the Decision dated 28 December 2012 and Resolution dated 4 December 2014, which affirmed the personal liability of the petitioners, without affording them their constitutional right to due process by