

EN BANC

[G.R. No. 213200, September 19, 2017]

**NAYONG PILIPINO FOUNDATION, INC., PETITIONER, VS.
CHAIRPERSON MA. GRACIA M. PULIDO TAN, COMMISSIONER
HEIDI L. MENDOZA, COMMISSIONER ROWENA V. GUANZON, THE
COMMISSIONERS, COMMISSION ON AUDIT (COA),
RESPONDENTS.**

DECISION

REYES, JR., J:

This is a petition for *certiorari*^[1] under Rule 64 and Rule 65 of the Rules of Court filed by petitioner Nayong Pilipino Foundation, Inc. (NPFI), seeking to annul respondent Commission on Audit's (COA) Decision dated November 20, 2013, and Resolution dated April 4, 2014.

The Decision dated November 20, 2013 affirmed Decision No. 2011-074 dated June 7, 2011 of the Adjudication and Settlement Board (ASB) and Decision No. 2007-031 dated May 25, 2007 of the Legal and Adjudication Office (LAO)-Corporate, both of which sustained Notice of Disallowance (ND) No. 2007-001 dated June 14, 2007 relating to the payments of Anniversary Bonus and Extra Cash Gift to NPFI's officers and employees amounting to Php 108,000.00 and Php 90,500.00, respectively, and excess *honoraria* to the members of the Bids and Awards Committee (BAC) and Technical Working Group (TWG) in the amount of Php 132,000.00.

The Facts

On June 6, 2000, in commemoration of NPFI's 30th Founding Anniversary, NPFI Board of Trustees, through Board Resolution No. 63-0606000, authorized the grant to its officers and employees who have rendered services for at least one (1) year, an Anniversary Bonus amounting to Php 3,000.00 each.

In May 2004, NPFI's Board of Trustees issued Board Resolution No. 82-052104, where on the occasion of NPFI's 35th Founding Anniversary, it authorized the grant of Anniversary Bonus amounting to a total of Php 108,000.00 to its trustees, employees, and Job Order personnel.^[2] On even date, Board Resolution No. 95-120804 was passed authorizing the release to the same recipients, Extra Cash Gift in the total amount of Php 90,500.00.^[3]

For 2004, NPFI paid a total of Php 132,000.00 as *honoraria* to the members of its BAC and TWG.

On February 4, 2005, COA issued Audit Observation Memorandum (AOM) No. 2004-002, finding that the grant of NPFI in May 2004 of Anniversary Bonus and Extra

Cash Gift amounting to Php 108,000.00 and Php 90,500.00, respectively have no legal basis nor approval of the President;^[4] and AOM No. 2004-003, stating that NPFI did not submit the required exemption from the Department of Budget and Management (DBM) for the payment of *honoraria* to its BAC and TWG members.

In response to AOM No. 2004-002, on April 28, 2005, NPFI sent separate letters to the Office of the President^[5] (OP) and DBM^[6] requesting approval of the grant of Anniversary Bonus and Extra Cash Gift to NPFI officials and employees on the basis of Administrative Order No. 263 dated March 28, 1996 and National Budget Circular No. 452 dated May 20, 1996 and Budget Circular No. 2002-4 dated November 28, 2002.

On September 30, 2005, acting on the referral for comment and/or recommendation by the OP, the DBM issued a letter-resolution.^[7] Therein, DBM Secretary Romulo L. Neri concluded that the payment to NPFI personnel of Anniversary Bonus for the years 2000 and 2004 is unauthorized and contrary to existing policy, as the reckoning date of the NPFI's anniversary is November 6, 1972, the date of its establishment as a public corporation under Presidential Decree (P.D.) No. 37, instead of June 11, 1969, when it was a private corporation. Thus, NPFI's entitlement to Anniversary Bonus shall be in 1987 on its 15th anniversary, 1992 on its 20th, 1997 on its 25th, 2002 on its 30th and 2007 on its 35th anniversary.

Similarly, the DBM found the grant of Extra Cash Gift for the year 2004 to be improper, considering that it was not specifically authorized by law or approved by the President.

NPFI sought reconsideration^[8] of the DBM Letter-Resolution but the same remain unresolved.

On July 28, 2005, COA LAO-Corporate issued Notice of Suspension No. NPFI-05-001-(04)^[9] dated July 28, 2005, suspending the subject disbursements and requiring NPFI to submit the required documents. On reconsideration, COA LAO-Corporate found the documents submitted by NPFI in its letter manifestation insufficient; thus on May 25, 2007, it issued Notice of Disallowance No. NPFI 2007-001^[10] and Decision No. 2007-031, the dispositive portion of which reads:

WHEREFORE, the premises considered, and in view of Management's compliance with our requirements on the allowances granted to OGCC lawyers charged to NPFI, this Office LIFTS the suspension thereon and accordingly allows the same in audit. However, as regard the other suspended payments for anniversary bonus and Christmas cash gift as well as the excessive honoraria to BAC members under the same NS, said payments have matured into disallowance for non-compliance of the audit requirements. Accordingly, Notice of Disallowance No. 2007-001 is hereby issued by this Office.^[11]

On appeal, the Adjudication and Settlement Board (ASB) dismissed the appeal and affirmed the Decision of the LAO-Corporate through its Decision No. 2011-074 dated June 7, 2011.^[12]

NPFI filed a Petition for Review before the COA but the same was denied by the Commission proper *en banc* in its Decision No. 2013-206 dated November 20, 2013. [13] Motion for Reconsideration [14] of the said Decision was denied in a Resolution dated April 4, 2014, [15] prompting NPFI to file the instant petition for *certiorari*.

NPFI maintains in this petition that the COA gravely abused its discretion when it disallowed the payment of the total aggregate amount of Php 330,500.00 comprising of Anniversary Bonus, Extra Cash Gift, to its trustees, officials, and personnel; and *honoraria* to the members of its BAC and TWG..

NPFI argues that Administrative Order (A.O.) No. 263 dated March 28, 1996 and DBM National Budget Circular No. 452 dated May 20, 1996 explicitly authorize the grant of Anniversary Bonus to agencies in celebration of their milestone year in the amount of Php 3,000.00, as in the case at bar where it was granted in celebration of NPFI's 30th and 35th anniversary. Further, NPFI argues that COA should have allowed the 35th Anniversary Bonus given in 2004 to be applied in 2007 considering that the pronouncement that NPFI's anniversary should be reckoned from November 6, 1972 instead of June 11, 1969, was made only on September 11, 2005.

Anent the allowance of Extra Cash Gift, NPFI claims that same is supported by DBM Budget Circular No. 2002-04 dated November 28, 2002, which then President Gloria Macapagal-Arroyo approved.

All told, NPFI points out that COA should not have disallowed the grant of Anniversary Bonus and Extra Cash Gift as it is still the subject of a Motion for Reconsideration pending before the OP through the DBM.

On the matter of *honoraria* given to its BAC and TWO members, NPFI alleges that COA erred in making a sweeping disallowance absent any evidence that the same is in excess of the 25% (of the basic salary) ceiling set forth under Section 15 of Republic Act (R.A.) No. 9184.

Finally, NPFI, citing good faith at the time the disallowed benefits were granted and received, seeks this Court's consideration to rule in its favor.

On the other hand, the respondents claim, in sum, that no grave abuse of discretion may be attributed to them in affirming the disallowance of the Anniversary Bonus and Extra Cash Gift granted to NPFI's trustees, officials and personnel; and *honoraria* to its BAC and TWG members, as the same is supported by pertinent laws, circulars, and orders.

The Issue

The lone issue presented for resolution in this case is whether the COA gravely abused its discretion when it disallowed NPFI's payment of Anniversary Bonus and Extra Cash Gift to its trustees, officials and personnel; and *honoraria* to its BAC and TWG members.

Ruling of the Court

The petition is partly meritorious.

The COA, by mandate of the 1987 Constitution, is the guardian of public funds, vested of broad powers over all accounts pertaining to government revenue and expenditures and the uses of public funds and property, including the exclusive authority to define the scope of its audit and examination, to establish the techniques and methods for such review, and to promulgate accounting and auditing rules and regulations.^[16]

In the exercise of its constitutional duty, the COA is given a wide latitude of discretion "to determine, prevent, and disallow irregular, unnecessary, excessive, extravagant, or unconscionable expenditures of government funds"^[17] and has the power to ascertain whether public funds were utilized for the purpose for which they had been intended by law.^[18]

In the performance of COA's functions, the Court has been consistent with its policy enunciated in the case of *Nazareth v. Hon. Villar, et al.*:^[19]

Verily, the Court has sustained the decisions of administrative authorities like the COA as a matter of general policy, not only on the basis of the doctrine of separation of powers but also upon the recognition that such administrative authorities held the expertise as to the laws they are entrusted to enforce.^[20]

Thus, the Court has accorded not only respect but also finality to COA's findings particularly when their decisions are not tainted with unfairness or arbitrariness that would amount to grave abuse of discretion.^[21]

To warrant the issuance of the extraordinary writ of *certiorari* under Rule 64 in relation to Rule 65 of the Rules of Court and set aside the Decision of the COA, the petitioner must show that the latter acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction.

Mere abuse of discretion is not enough. The abuse of discretion must be grave in that there is a capricious and whimsical exercise of judgment which is equivalent to lack of jurisdiction. Abuse of discretion is grave when there is an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law as when the judgment rendered is not based on law and evidence but on caprice, whim, and despotism.^[22]

In this case, the Court finds that the petitioner NPFI failed to discharge this burden. The respondents did not commit any grave abuse of discretion as their concurrence to the decisions of the LAO-Corporate and ASB is based on cogent legal grounds.

First, the Court agrees with the COA in that the award of Anniversary Bonus for the year 2004 is unwarranted for failure to comply with the requirements set forth under A.O. No. 263 and DBM NBC No. 452-96.

A.O. No. 263,^[23] issued on March 28, 1996 provides for general authority to Government-owned and controlled corporations (GOCCs), Government Financial Institutions (GFIs), and national government agencies to commemorate milestone anniversaries through the grant of anniversary bonus to their employees in an

amount not exceeding Php 3,000.00. To amplify and clarify the implementation of the order, the DBM issued NBC No. 452-96^[24] on May 20, 1996.

From these guidelines, the Court can infer the following rules relative to the grant of Anniversary Bonus and pertinent to the issue at hand:

- a) All government personnel whether employed on a regular or part time basis, or under permanent, temporary or casual status, and contractual personnel whose employment is in the nature of a regular employee, who have been appointed as such in a specific government entity by virtue of a valid appointment and continue to be employed in the same government entity as of the occasion of its milestone anniversary, shall be entitled to the Anniversary Bonus;
- b) The Anniversary Bonus may only be granted in celebration of milestone year or the 15th anniversary and to every fifth year thereafter; and
- c) The counting of milestone year shall start from the year the government entity was created regardless of whether it was subsequently renamed or reorganized provided that its original primary functions have not substantially changed.

Applied in this case, considering that the grant specifically covers government entities and commemorates their creation as such, the DBM and COA are correct in that for the purpose of determining entitlement to Anniversary Bonus, NPFI's milestone year should be reckoned from the date it was incorporated as a public corporation by virtue of Presidential Decree No. 37 or on November 6, 1972 instead of June 11, 1969 when it was then incorporated as a private corporation. It follows therefore, that NPFI is entitled to Anniversary Bonus in 1997 for its 25th Anniversary, 2002 for its 30th and 2007 for its 35th Anniversary. Clearly, the payment of Anniversary Bonus in 2000 and 2004 is therefore unauthorized.

That notwithstanding, as NPFI granted the Anniversary Bonus and the recipients received the same in good faith, acting on the honest belief based on NPFI's articles of incorporation that its founding anniversary is reckoned from May 7, 1969 and traditionally observed on June 11, 1969, no refund is necessary consistent with the Court's ruling in the case of *Nazareth*^[25] that "the refund of the disallowed payment of a benefit granted by law to a covered person, agency or office of the Government may be barred by the good faith of the approving official and of the recipient." In so ruling, the Court in *Nazareth* followed the doctrine laid down in *Blaquera v. Alcala*^[26] and *De Jesus v. Commission on Audit*.^[27]

In *Blaquera*,^[28] the Petition assailed the constitutionality of Administrative Order (A.O.) Nos. 29 and 268, issued on January 19, 1993 and February 21, 1992, respectively. The subject A.O.s grant officials and employees of the government Productivity Incentive Benefits (PIB) and prohibit at the same time the grant of similar benefit in the future without prior approval from the President. A.O. No. 29 further orders the refund of any amount granted as PIB for the year 1992 in excess of Php 1,000.00. The Court upheld the validity of the subject A.O.s as valid exercise of the President's power of control. Nonetheless, it saw no need to order the refund of the excessive PIB paid on account of good faith of the parties, viz.: