

EN BANC

[G.R. No. 217999, July 26, 2016]

TERESITA P. DE GUZMAN, IN HER CAPACITY AS FORMER GENERAL MANAGER; BERNADETTE B. VELASQUEZ, IN HER CAPACITY AS FINANCE MANAGER; ATTY. RODOLFO T. TABANGIN, ATTY. ANTONIO A. ESPIRITU, ATTY. MOISES P. CATING, IN THEIR CAPACITIES AS FORMER MEMBERS OF THE BAGNIO WATER DISTRICT (BWD) BOARD OF DIRECTORS; AND SONIA A. DAOAS AND ENGR. FELINO D. LAGMAN, IN THEIR CAPACITIES AS INCUMBENT MEMBERS OF THE BOARD OF DIRECTORS, PETITIONERS, VS. COMMISSION ON AUDIT, CENTRAL OFFICE, REPRESENTED BY ITS CHAIRPERSON MICHAEL G. AGUINALDO, COMMISSIONER JUANITO G. ESPINO, JR., COMMISSIONER HEIDI MENDOZA, AND NILDA B. PLARAS, DIRECTOR IV, COMMISSION SECRETARY, RESPONDENTS.

DECISION

VELASCO JR., J.:

The Case

Before the Court is a Petition for Certiorari under Rule 64 of the Rules of Court, assailing the September 25, 2012 Decision^[1] and February 27, 2015 Resolution of the Commission on Audit (COA).

The Facts

Petitioners Atty. Rodolfo T. Tabangin (Tabangin), Atty. Antonio A. Espiritu (Espiritu), Atty. Moises P. Cating (Cating), Sonia A. Daoas (Daoas) and Engr. Felino D. Lagman (Lagman) were members of. the board of the Baguio Water District (BWD). For the month of September 2004, they received per diems amounting to P33,600 each.

Following a, routine audit of the BWD, the COA-Cordillera Administrative Region (COA-CAR) issued Audit Observation Memorandum No. 04-003 pointing out that petitioners' per diems exceeded the limit prescribed under Sec. 3 (c) (ii) of Administrative Order No. (AO) 103, entitled: *Directing The Continued Adoption of Austerity Measures in The Government*. AO 103 was issued on August 31, 2004 by then President Gloria Macapagal-Arroyo and limits the per diems of the members of the governing board of government-owned and controlled corporations to P20,000.

Thereafter, C,OA-CAR issued Notice of Disallowance No. 06-026 disapproving the per diems of the BWD directors in excess of the P20,000 prescribed by AO 103, or a total aggregate amount of P68,000, for the month of September 2004.^[2] Under the Notice of Disallowance, petitioners De Guzman and Velasquez were liable as the approving officers for the per diems, while petitioners Lagman, Espiritu, Tabangin,

Daoas and Cating were liable as payees thereof.

Petitioners appealed the Notice of Disallowance claiming that the per diems they received were approved by the Local Water Utilities Administration (LWUA) through Memorandum Circular No. (MC) 004-02 issued on May 21, 2002. MC 004-02 prescribed per diems of P8,400.00 for each director every meeting, not exceeding four (4) meetings in a month.^[3] For the petitioners, the LWUA was authorized to lay down the per diems of the BWD directors pursuant to Presidential Decree No. (PD) 198 or the *Provincial Water Utilities Act of 1973*, as amended by Republic Act No. (RA) 9286.

COA-CAR, however, sustained the Notice of Disallowance in its Decision No. 2009-012^[4] and disposed of the petitioners' appeal as follows:

Foregoing premises considered, herein appeal by the BWD is denied and the disallowance sustained.

In the presently assailed September 25, 2012 Decision, the COA-Commission Proper similarly affirmed the Notice of Disallowance and sustained the Regional Office's decision, ruling in this wise:

WHEREFORE, premises considered, the instant appeal is DENIED for lack of merit and the COA-CAR Decision No. 2009-012 dated September 14, 2009 is AFFIRMED.

Hence, the present petition.

The Issues

As asserted by petitioners, the issues in the present case are two-fold. *First*, did the COA commit grievous error in relying on AO 103 instead of PD 198? And *second*, should petitioners refund the alleged excess per diems they received in the total amount of P68,000?^[5]

The Court's Ruling

The petition is unmeritorious.

PD 198 and AO 103 are not irreconcilable; MC No. 004-02 is overruled

It is a basic principle in statutory construction that when faced with apparently irreconcilable inconsistencies between two laws, the first step is to attempt to harmonize the seemingly inconsistent laws.^[6] In other words, courts must first exhaust all efforts to harmonize seemingly conflicting laws and only resort to choosing which law to apply when harmonization is impossible.^[7]

In the present case, petitioners, posit that AO 103 and PD 198 are conflicting and so maintain that PD 198, a law, must prevail over AO 103, a mere executive issuance. This Court, however, need not choose between PD 198 and AO 103 as there is no irreconcilable conflict between them.

Section 13 of PD 198, as amended by RA 9286, provides:

Sec. 13. Compensation. - Each director shall receive per diem to be determined by the Board, for each meeting of the Board actually attended by him, but no director shall receive per diems in any given month in excess of the equivalent of the total per diem of four meetings in any given month.

Any per diem in excess of One hundred fifty pesos (P150.00) shall be subject to the approval of the Administration. In addition thereto, each director shall receive allowances and benefits as the Board may prescribe subject to the approval of the Administration. (emphasis supplied)

Meanwhile, Section 3(c) of AO 103 states:

SEC. 3. All NGAs, SUCs, GOCCs, GFIs and OGCEs, whether exempt from the Salary Standardization Law or not, are hereby directed to:

x x x x

(c) For other non-full-time officials and employees, including members of their governing boards, committees, and commissions: (i) suspend the grant of new or additional benefits, such as but not limited to per diems, honoraria, housing and miscellaneous allowances, or car plans; and (ii) **in the case of those receiving per diems, honoraria and other fringe benefits in excess of Twenty Thousand Pesos (P20,000.00) per month, reduce the combined total of said per diems, honoraria and benefits to a maximum of Twenty Thousand Pesos (P20,000.00) per month.** (emphasis supplied)

Plainly stated, PD 198 allows the BWD to prescribe per diems greater than P150 per member for each meeting, subject to the approval of the LWUA, while AO 103 prescribes a limit on the total amount of per diems a director can receive in a month. There is clearly no conflict between PD 198 and AO 103, as AO 103 does not negate the power of the LWUA to approve applications for per diems greater than P150.

The conflict lies between AO 103 and MC 004-02, which prescribed a per diem of P8,400 for each director every meeting, not exceeding four (4) meetings in a month—way beyond the P20,000 cap provided under AO 103. Thus, the question is begged: can the President overrule MC 004-02 by issuing AO 103? The answer is a resounding yes.

Section 17, Article VII of the 1987 Constitution provides:

Section 17. The President shall have **control** of all the executive departments, bureaus, and offices. He shall ensure that the laws be faithfully executed. (emphasis supplied)

The President's power of control was explained in *Province of Negros Occidental v. Commissioners, Commission on Audit*^[8] as "the power to alter or modify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the President over that of the subordinate officer."