

EN BANC

[G.R. No. 189767, July 03, 2012]

**PHILIPPINE ECONOMIC ZONE AUTHORITY (PEZA), PETITIONER,
VS. COMMISSION ON AUDIT AND REYNALDO A. VILLAR,
CHAIRMAN, COMMISSION ON AUDIT, RESPONDENTS.**

R E S O L U T I O N**VILLARAMA, JR., J.:**

Before us is a petition for certiorari under Rule 64 in relation to Rule 65 of the 1997 Rules of Civil Procedure, as amended, seeking to annul Commission on Audit (COA) Decision No. 2009-081^[1] which affirmed the Decision^[2] of the Director, Cluster IV - Industrial and Area Development and Regulatory, Corporate Government Sector, COA, affirming Notice of Disallowance Nos. 2006-001-101 (02-06) to 2006-021-101 (01-03)^[3] for the payment of P5,451,500.00 worth of per diems to *ex officio* members of the Board of Directors of petitioner Philippine Economic Zone Authority (PEZA).

The Facts

The PEZA Board of Directors is composed of 13 members which include the Undersecretaries of the Department of Finance, the Department of Labor and Employment, the Department of the Interior and Local Government, the Department of Environment and Natural Resources, the Department of Agriculture, the Department of Public Works and Highways, the Department of Science and Technology and the Department of Energy. Said Undersecretaries serve in *ex officio* capacity and were granted per diems by PEZA for every attendance in a board meeting.

On September 13, 2007, the PEZA Auditor Corazon V. España issued Notice of Disallowance Nos. 2006-001-101 (02-06) to 2006-021-101 (01-03) on the following payments of per diems to *ex officio* members of the PEZA Board for the period 2001-2006:

N.D. No.	DATE	PAYEE	TOTAL AMOUNT
2006-001-101 (02-06)	7/26/07	Eduardo R. Soliman, Jr.	P 632,000.00
2006-002-101 (02-05)	7/16/07	Juanita D. Amatong	448,000.00
2006-003-101 (01-02)	7/16/07	Anselmo S. Avenido	162,000.00
2006-004-101 (01)	7/16/07	Rosalinda Dimapilis- Baldoz	45,000.00
2006-005- 101(05)	7/16/07	Benedicto Ernesto R. Bitonio, Jr.	56,000.00

2006-006-101 (05-06)	7/19/07	Manuel M. Bonoan	112,000.00
2006-007- 101(01-02)	7/19/07	Arturo D. Brion	177,000.00
2006-008- 101(05/06)	7/19/07	Armando A. De Castro	144,000.00
2006-009- 101(02-06)	7/19/07	Fortunato T. De La Peña	904,000.00
2006-010- 101(01)	7/19/07	Roseller S. Dela Peña	36,000.00
2006-011- 101(01-05)	7/23/07	Cyril Del Callar	762,000.00
2006-012- 101(03)	7/23/07	Renato A. De Rueda	48,000.00
2006-013- 101(01-06)	7/23/07	Cesar M. Drilon, Jr.	811,000.00
2006-014- 101(03-05)	7/23/07	Josephus B. Jimenez	336,000.00
2006-015- 101(01)	7/23/07	Rufino C. Lirag, Jr.	63,000.00
2006-016- 101(06)	7/26/07	Gaudencio A. Mendoza, Jr.	16,000.00
2006-017- 101(03-04)	7/26/07	Rolando L. Metin	256,000.00
2006-018- 101(01-02)	7/26/07	Edmundo V. Mir	124,500.00
2006-019- 101(05-06)	7/26/07	Melinda L. Ocampo	104,000.00
2006-020- 101(05-06)	7/26/07	Luzviminda G. Padilla	56,000.00
2006-021- 101(01-03)	7/26/07	Ramon J.P. Paje	<u>159,000.00</u>

TOTAL P5,451,500.00^[4]

The disallowance was based on this Court's April 4, 2006 En Banc Resolution dismissing the petition for certiorari in *Cyril del Callar, et al., Members of the Board of Directors, Philippine Economic Zone Authority v. COA and Guillermo N. Carague, Chairman, COA*^[5] which assailed COA Decision No. 2006-009 dated January 31, 2006 affirming the March 29, 2002 decision of the Director, then Corporate Audit Office II, disallowing the payment of per diems of *ex officio* members of the PEZA Board of Directors. Said disallowance was based on COA Memorandum No. 97-038 dated September 19, 1997 implementing Senate Committee Report No. 509 and this Court's ruling in *Civil Liberties Union v. Executive Secretary*.^[6]

On October 31, 2007, the Deputy Director General for Finance and Administration of PEZA moved to reconsider^[7] the subject Notices of Disallowance (NDs) and prayed that the concerned *ex officio* members be allowed to retain the per diems already received as they received them in good faith. It was contended that the payment of the per diems covered the period when the April 4, 2006 Supreme Court Resolution was not yet final and thus, PEZA honestly believed that the grant of the same was moral and legal. In the same vein, the *ex officio* members received them in good faith. The motion cited the cases of *Home Development Mutual Fund v. Commission*

on Audit^[8] and De Jesus v. Commission on Audit^[9] as bases.

In a letter^[10] dated November 16, 2007, PEZA Auditor España denied the motion for reconsideration. She stated that the PEZA Management continued paying the per diems even after they were duly notified through said NDs that such was in violation of the Constitution as explained in the *Civil Liberties Union* case. She opined that the receipt of the NDs in effect notified the recipients and PEZA officials that such payment was illegal and hence, the failure of PEZA to heed the notices cannot be deemed consistent with the presumption of good faith.

By letter^[11] dated January 4, 2008, PEZA Director General Lilia B. De Lima appealed the denial of their motion for reconsideration to the Office of the Cluster Director, COA. De Lima reiterated their claim of good faith contending that the *De/ Callar* case had yet to be decided with finality when the subject per diems were disbursed. She argued that since the issue on the propriety of giving per diems to *ex officio* members was still unresolved, and because PEZA firmly believed that it had legal basis, it continued to pay the per diems despite knowledge and receipt of NDs. Good faith, therefore, guided PEZA in releasing the payments.

In a 2nd Indorsement^[12] dated March 17, 2008, the COA Cluster Director, Ma. Cristina Dizon-Dimagiba, denied PEZA's appeal. She ruled that PEZA's claim of good faith cannot be given merit because in several other instances previous payments of per diems have been disallowed. She noted that by the time PEZA received the notices of disallowance, it can be said that there is already an iota of doubt as to whether the said transaction is valid or not. Hence, good faith can no longer apply.

On April 30, 2008, PEZA filed a petition for review^[13] before the COA to assail the denial of its appeal by the Office of the Cluster Director. PEZA reiterated the same arguments it raised in its appeal.

On September 15, 2009, the COA rendered the assailed decision denying PEZA's petition for review. The dispositive portion reads:

WHEREFORE, foregoing premises considered, the instant petition is hereby DENIED for lack of merit. Accordingly, ND Nos. 2006-001-101 (02-06) to 2006-021-101 (01-03) in the total amount of P5,451,500.00 representing payment of per diems to *ex-officio* members of the Board of Directors of PEZA are hereby AFFIRMED. All the recipients and the persons liable thereon are required to refund the said disallowed per diems. The Auditor of PEZA is also directed to inform this Commission of the settlement made thereon.^[14]

The COA ruled that the last paragraph of Section 11 of Republic Act (R.A.) No. 7916 authorizing the members of the Board to receive per diems was deleted in the amendatory law, R.A. No. 8748. Hence, from the time of the effectivity of R.A. No. 8748 in 1999, the members of the PEZA Board of Directors were no longer entitled to per diems. It further held that the payments to and receipt by *ex officio* members of the PEZA Board of per diems for CYs 2001-2006 run counter to the express prohibition in Section 13, Article VII of the 1987 Constitution.

The COA also dismissed PEZA's claim of good faith in making the disbursements of per diems to the *ex officio* members of its Board. It ruled:

As to the petitioners' claim of "good faith," it must be emphasized that under the *Bitonio* case, as early as 1998, PEZA was already notified of the illegality of the payment of per diems to *ex-officio* members of the PEZA Board thru the NDs issued by the COA Auditor from 1995 to 1998 on the payment of per diem to every board meeting attended by the petitioner Benedicto Ernesto R. Bitonio, Jr. as representative of the Secretary of Labor to the PEZA. This was anchored on the case of *Civil Liberties Union v. Executive Secretary, supra*, which affirmed COA Decision Nos. 2001-045 and 98-017-101(97) dated January 30, 2001 and October 9, 1998, respectively, which declared that:

"x x x The framers of R.A. No. 7916 (*Special Economic Zone Act of 1995*) must have realized the flaw in the law which is the reason why the law was later amended by R.A. No. 8748 to cure such defect.

x x x

Likewise, the last paragraph as to the payment of per diems to the members of the Board of Directors was also deleted, considering that such stipulation was clearly in conflict with proscription set by the Constitution.

Prescinding from the above, the petitioner (*Benedicto Ernesto R. Bitonio, Jr.*) is indeed, not entitled to receive a per diem for his attendance at board meetings during his tenure as member of the Board of Directors of the PEZA." (italics ours)

After the *Bitonio* case, the Auditor again disallowed the payments of per diems granted for the period 1999 to 2000 by PEZA to the *ex-officio* members of the PEZA Board under ND Nos. 2001-001-101 to 2001-008-101, which were upheld under COA Decision No. 2006-009 dated January 31, 2006. Thus, PEZA was repeatedly notified of the illegality of the payment of the said per diems. However, similar disbursements were continued, ignoring the Auditor's findings. At the time they first received the ND in 1998, it can be said that there should already have been a doubt to say the least, on the legality of the said transaction which should have made management discontinue such payments. But even after the promulgation of the SC decision in the *Bitonio* case, PEZA continued the payment of the same until year 2006. Indeed, such actuation is incompatible with good faith. Hence, even if the per diems were granted prior to the finality of the *Cyril Del Callar v. COA* case cited by herein petitioner, PEZA management was already aware that the

payment thereof had been declared illegal by the SC in the earlier
aforecited cases.^[15]

PEZA now comes to this Court seeking to annul the assailed decision on the following grounds:

REPUBLIC ACT NO. 7916, AS AMENDED BY REPUBLIC ACT NO. 8748
ALLOWS THE PAYMENT OF *PER DIEMS* TO THE MEMBERS OF THE PEZA
BOARD OF DIRECTORS.

THE *EX-OFFICIO* MEMBERS OF THE PEZA BOARD OF DIRECTORS
SHOULD NO LONGER BE REQUIRED TO REFUND THE *PER DIEMS*
ALREADY RECEIVED BECAUSE THEY WERE OF THE HONEST BELIEF THAT
THEY WERE LEGALLY ENTITLED TO RECEIVE THE SAME.^[16]

PEZA argues that contrary to the COA's position, the last paragraph of Section 11, R.A. No. 7916 authorizing the members of the PEZA Board to receive per diems still exists because it was never deleted in R.A. No. 8748. It contends that just because the last paragraph of Section 11, R.A. No. 7916 does not appear in Section 1 of R.A. No. 8748 but is merely represented by the characters "x x x" does not mean that it has already been deleted. PEZA submits that since there was no repeal by R.A. No. 8748 and neither was the last paragraph of Section 11 of R.A. No. 7916 declared void or unconstitutional by this Court, the provision enjoys the presumption of validity and therefore, PEZA cannot be faulted for relying on the authority granted by law.

PEZA also insists on its claim of good faith. It emphasizes that the per diems were granted by PEZA in good faith as it honestly believed that the grant of the same was legal and similarly, the *ex officio* members of the PEZA Board received the per diems in good faith.

COA, for its part, opposes PEZA's contention that the last paragraph of Section 11 of R.A. No. 7916 authorizing the grant of per diems to *ex officio* members of the PEZA Board was not deleted by its amendatory law, R.A. No. 8748, citing this Court's ruling in *Bitonio, Jr. v. Commission on Audit*.^[17]

COA likewise contends that the deletion of the last paragraphs of the subject provision merely conformed with the Constitution. It argues that the position of the undersecretaries of the Cabinet as members of the Board is in an *ex officio* capacity or part of their principal office and thus, they were already being paid in their respective Departments. To allow them to receive additional compensation in PEZA would amount to double compensation. COA submits that this is precisely the reason why this Court, in several cases, declared unconstitutional the payment of additional compensation to *ex officio* officials.

The Issues

Does the PEZA have legal basis in granting per diems to the *ex officio* members of its Board? And if there is no legal basis, was there good faith in PEZA's grant and