

EN BANC

[G.R. No. 169637, June 08, 2007]

BENGUET STATE UNIVERSITY REPRESENTED BY ITS PRESIDENT ROGELIO D. COLTING, PETITIONER, VS. COMMISSION ON AUDIT, RESPONDENT.

D E C I S I O N

NACHURA, J.:

Before this Court is a Petition for Review on *Certiorari* filed by petitioner Benguet State University (BSU) seeking to nullify Commission on Audit (COA) Decision No. 2003-112^[1] and Decision No. 2005-019^[2] dated March 17, 2005. COA Decision No. 2003-112 affirmed COA-CAR Decision No. 2000-3, disallowing the rice subsidy and health care allowance to the employees of BSU, while COA Decision 2005-019 denied BSU's motion for reconsideration.

On July 6, 1997, Congress passed Republic Act No. 8292 entitled *An Act Providing for the Uniform Composition and Powers of the Governing Boards, the Manner of Appointment and Term of Office of the President of Chartered State Universities and Colleges, and for Other Purposes*, commonly known as the *Higher Education Modernization Act of 1997*. Pursuant to Section 4 (d) of the said law, the Board of Regents of BSU passed and approved Board Resolution No. 794 on October 31, 1997, granting rice subsidy and health care allowance to BSU's employees. The sums were taken from the income derived from the operations of BSU and were given to the employees at different periods in 1998.

On October 20, 1999, the grant of this rice subsidy and health care allowance in the total amount of P4,350,000.00 was disallowed in audit under Notice of Disallowance No. 99-001-STF (98), stating that R.A. No. 8292 does not provide for the grant of said allowance to employees and officials of the university.^[3]

BSU requested the lifting of the disallowance with the COA Regional Office but it was denied in COA-CAR Decision No. 2000-3 dated January 26, 2000.^[4] Citing Section 55 (2) of R.A. No. 8522 or the *General Appropriation Act of 1998*, it held that a non-existent item, project, activity, purpose, or object of expenditure cannot be funded by augmentation from savings or by the use of appropriations. It further held that the grant of said allowances lacked statutory basis, transgressed the constitutional proscription on additional, double, or indirect compensation and ran counter to the provisions of the Salary Standardization Law.

BSU thereafter filed a petition for review of Decision No. 2000-3 with the COA, which petition was denied in Decision No. 2003-112^[5] dated July 17, 2003. The Commission ratiocinated:

Concededly, the provision in Section 8, Article IX-B, 1987 Constitution that, "No elective or appointive public officers or employee shall receive additional, double or indirect compensation, unless specifically authorized by law" allows the payment of additional compensation when specifically authorized by law. In the instant case, BSU alleges that the grant of Rice Subsidy and Health Care allowance to its employees in 1998 is authorized by law, specifically Section 4 of R.A. No. 8292, otherwise known as the Higher Education Modernization Act of 1997. However, a closer perusal of the specific legal provision which reads thus:

"Sec. 4. Powers and Duties of Governing Boards

x x x

"d) x x x

Any provision of existing laws, rules and regulations to the contrary notwithstanding, any income generated by the university or college, from tuition fee and other charges, as well as from the operation of auxiliary services and land grants, shall be retained by the university or college, and may be disbursed by the Board of Regents/Trustees for instruction, research, extension or other programs/projects of the university or college x x x"

clearly negate such claim of authority. It is noted that the term "other programs/projects" refers to such programs which the university may specifically undertake in pursuance of its primary objective which is to attain quality higher education. The law could not have intended that the term "program/projects" embrace all programs of BSU, for these benefits, though part of the overall operations, are not directly related to BSU's academic program. Under the maxim of *ejusdem generis*, the mention of a general term after the enumeration of specific matters should be held to mean that the general term should be of the same genus as the specific matters enumerated and, therefore, the "other programs and projects"

should be held to be of the same nature as instruction, research and

extension. The inclusion of an incentive such as Rice Subsidy and Health Care Allowance to its teachers and non-teaching personnel is a patent or blatant disregard of the statutory limitation on the powers of the governing Board of SUCs, as these benefits are indubitably not one of instruction, research or extension.

Furthermore, employment in government service guarantees

salaries and other compensation packages and benefits pursuant to pertinent provisions of the Civil Service Law. Allowing other benefits to be granted in excess of those authorized by law is illegal. As such, BSU's

attempt to grant benefits over and above those granted by the Civil Service Law cannot be countenanced.^[6]

A motion for reconsideration was filed but was denied in the assailed Decision No. 2005-019 dated March 17, 2005.^[7]

Hence, this petition with BSU positing these issues:

- A. Whether or not Petitioner is authorized to grant Health Care Allowance and Rice Subsidy to its employees; and
- B. Whether or not the recipients should reimburse the amounts received by them.^[8]

Before addressing the issues raised in the present petition, it bears noting that what was filed before this Court is a petition captioned as a *Petition for Review on Certiorari*. We point out that a petition for review on certiorari is not the proper mode by which the COA's decisions are reviewed by this Court. Under Rule 64, Section 2 of the 1997 Rules of Civil Procedure, a judgment or final order of the COA may be brought by an aggrieved party to this Court on *certiorari* under Rule 65.^[9] Thus, it is only through a petition for *certiorari* under Rule 65 that the COA's decisions may be reviewed and nullified by us on the ground of grave abuse of discretion or lack or excess of jurisdiction.^[10]

However, though captioned as a *Petition for Review on Certiorari*, we treat this petition as a petition for certiorari under Rule 65 for it alleges "grave abuse of discretion" and "reversible legal error." The averments in the complaint, not the nomenclature given by the parties, determine the nature of the action.^[11] Likewise, in previous rulings, We have treated differently labeled actions as special civil actions for *certiorari* under Rule 65 for reasons such as justice, equity, and fair play.^[12]

BSU ascribes legal error and grave abuse of discretion to the COA in affirming the disallowance of the rice subsidy and health care benefits. Relying on R.A. No. 8292, BSU maintains that it can grant said benefits to its employees. It argues that the said law vests state universities and colleges with fiscal autonomy, and grants them ample leeway in the appropriation and disbursement of their funds. BSU adds that the grant did not contravene the constitutional prohibition on additional compensation because the allowances are granted as an incentive in appreciation of services rendered and in recognition of the economic plight of the employees. Also, the amounts used were taken from income generated by its operation and retained by the university which, under R.A. No. 8292, may be disbursed by its Governing Board in a manner it may determine to carry out its programs. Finally, it argues that the Salary Standardization Law does not expressly prohibit the benefits, because the said allowances are in the nature of a financial assistance and not an additional income.

We affirm the assailed Decisions.

BSU's contention that it is authorized to grant allowances to its employees is based on Section 4 (d) of R.A. No. 8292. The provision reads:

SECTION 4. *Powers and Duties of Governing Boards.* – The governing board shall have the following specific powers and duties in addition to its general powers of administration and the exercise of all the powers granted to the board of directors of a corporation under Section 36 of Batas Pambansa Blg. 68, otherwise known as the Corporation Code of the Philippines:

X X X X X X X X

d) to fix the tuition fees and other necessary school charges, such as but not limited to matriculation fees, graduation fees and laboratory fees, as their respective boards may deem proper to impose after due consultations with the involved sectors.

Such fees and charges, including government subsidies and other income generated by the university or college, shall constitute special trust funds and shall be deposited in any authorized government depository bank, and all interests shall accrue therefrom shall part of the same fund for the use of the university or college: Provided, That income derived from university hospitals shall be exclusively earmarked for the operating expenses of the hospitals.

Any provision of existing laws, rules and regulations to the contrary notwithstanding, any income generated by the university or college from tuition fees and other charges, as well as from the operation of auxiliary services and land grants, shall be retained by the university or college, and may be disbursed by the Board of Regents/Trustees for instruction, research, extension, or other programs/projects of the university or college: Provided, That all fiduciary fees shall be disbursed for the specific purposes for which they are collected.

If, for reasons beyond its control, the university or college, shall not be able to pursue any project for which funds have been appropriated and, allocated under its approved program of expenditures, the Board of Regents/Trustees may authorize the use of said funds for any reasonable purpose which, in its discretion, may be necessary and urgent for the attainment of the objectives and goals of the universities or college;

X X X X X X X X

Similarly, Commission on Higher Education (CHED) Memorandum No. 03-01, the Revised Implementing Rules and Regulations (IRR) for R.A. No. 8292, provides:

RULE V

Powers and Duties of the Governing Boards

SECTION 18. *Powers and Duties of Governing Boards (GBs).* – The GBs of chartered SUCs shall have the following powers and duties, in addition to its general powers of administration and the exercise of all the powers granted to a Board of Directors of a corporation under Section 36 of Batas Pambansa Blg. 68, otherwise known as the "Corporation Code of