

## EN BANC

[ G. R. NO. 149941, August 28, 2007 ]

**GABRIEL A. MAGNO, NIEVES P. CASTRO, EMIDIO S. MORALES,  
CONCEPCION Y. AQUINO AND RODOLFO Y. CERVAS, AS  
MEMBERS OF THE BOARD OF DIRECTORS, MANGALDAN WATER  
DISTRICT, PETITIONERS, VS. HON. COMMISSION ON AUDIT,  
RESPONDENT.**

### D E C I S I O N

**CHICO-NAZARIO, J.:**

This case is a Petition for *Certiorari* under Rule 64 in relation to Rule 65 of the 1997 Revised Rules of Civil Procedure, seeking to annul or modify on the grounds of grave abuse of discretion amounting to lack or excess of jurisdiction and for being contrary to law and jurisprudence, (1) Commission on Audit (COA) Decision No. 2000-385,<sup>[1]</sup> dated 29 December 2000, which affirmed the decision<sup>[2]</sup> of the Director, COA Regional Office No. 1, San Fernando, La Union, disallowing the payment of various monetary benefits to herein petitioners for calendar year 1997 in the total amount of P303,172.00; and (2) COA Resolution No. 2000-177,<sup>[3]</sup> dated 6 September 2001, which denied petitioners' Motion for Reconsideration.

Herein petitioners Gabriel A. Magno, Nieves P. Castro, Emidio S. Morales, Concepcion Y. Aquino and Rodolfo Y. Cervas were members of the Board of Directors of the Mangaldan Water District (MAWAD), Mangaldan, Pangasinan from 1 January 1997 to 31 December 1997, the period covered by the audit in question.

The factual milieu of the present case are the following:

The Local Water Utilities Administration,<sup>[4]</sup> through its Board of Trustees, adopted and approved Resolution No. 313, Series of 1995, as amended by Board Resolution No. 39, Series of 1996 (Resolution No. 313, as amended), entitled *Policy Guidelines on Compensation and Other Benefits for the Water District Board of Directors*, under which the members of the Water District Board of Directors were granted bonuses, benefits, and allowances. By virtue of the said Resolution, various benefits consisting of rice, uniform, representation, transportation, special financial assistance, bonus, cash gift and productivity/incentive allowances amounting to P303,172.00 were granted by MAWAD to the petitioners.

Meanwhile, the Director and Officer-in-Charge of Corporate Audit Office II, COA, sent a Memorandum to the COA General Counsel requesting an Authoritative Opinion regarding the above-mentioned Policy Guidelines. In response to the said Memorandum, the COA General Counsel issued Opinion No. 97-015,<sup>[5]</sup> dated 7 August 1997, stating therein that the payments of compensation and other benefits aside from the allowable *per diems* to Water District Board of Directors pursuant to

Resolution No. 313, as amended, should be disallowed in audit for lack of legal basis, because the same was inconsistent with the provision of Section 13 of Presidential Decree No. 198,<sup>[6]</sup> as amended, which is the law governing the Local Water Districts. Said Section 13, Presidential Decree No. 198, as amended, specifically provides that:

Sec. 13. Compensation. - Each director shall receive a *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. **No director shall receive other compensation for services to the district.**

Any *per diem* in excess of P50 shall be subject to approval of the Administration. (Emphasis supplied.)

The Director, COA Regional Office No. 1, San Fernando, La Union, then issued a Memorandum, together with a copy of Opinion No. 97-015, addressed to all the General Managers of various Water Districts in Region I for their guidance and information.

The COA, through its Auditors --namely: Elsa H. Ramos-Mapili and Concordia R. Decano from COA Regional Office No. 1, San Fernando, La Union, in their capacity as team leader and member, respectively -- conducted a special audit on the operations of MAWAD for the year 1997. On 19 May 1998, the aforesaid Auditors submitted a Financial Audit Report in the form of Certificate of Settlement and Balances; and appended thereto were Notices of Suspension and Summary of Suspensions, Disallowances and Charges.<sup>[7]</sup> "Finding No. 9" of the said Financial Audit Report recommended the disallowance of different bonuses, benefits and allowances amounting to P303,172.00, which were granted to the petitioners in violation of aforesaid Section 13, Presidential Decree No. 198, as amended. The said disallowance was stated under Notice of Disallowance No. 98-002-000 (97). The petitioners were likewise requested to refund the allowances, bonuses and benefits conferred upon them.

Petitioners appealed the aforesaid disallowance to the Director, COA Regional Office No. 1, San Fernando, La Union, asking for the reconsideration of the same, but it was denied. After the denial of the petitioners' request for reconsideration, they filed a Petition for Review before the COA. The COA rendered its Decision No. 2000-0385, dated 29 December 2000, finding the disallowance to be proper. Petitioners moved for the reconsideration of the said Decision, but it was similarly denied by the COA in its Resolution No. 2001-177, dated 6 September 2001.

Hence, this Petition.

Petitioners vehemently argue that the COA acted with grave abuse of discretion amounting to lack or excess of jurisdiction in sustaining the Notice of Disallowance against them. Petitioners further claim that the COA Decision, affirming the said Notice of Disallowance, was rendered by it on the basis of Opinion No. 97-015 of the COA General Counsel, which Opinion was not approved by the COA as a collegial body. Citing *Orocio v. Commission on Audit*,<sup>[8]</sup> petitioners maintain that the COA General Counsel can only offer legal advice or render an opinion to aid the COA in

the resolution of a case or a legal question, but it is bereft of any power to act for or on behalf of the COA.

Petitioners likewise ascribe grave abuse of discretion amounting to lack or excess of jurisdiction on the part of COA in finding that they were already under the coverage of Republic Act No. 6758,<sup>[9]</sup> and were governed by the implementing guidelines set forth in Department of Budget and Management Corporate Compensation Circular (DBM CCC) No. 10, Section 2.0, dated 23 October 1989; thus, they were no longer entitled to the allowances, benefits and bonuses provided for under the previously mentioned Resolution No. 313, as amended. Petitioners contend that for the year 1997, the year covered by the assailed audit, they cannot be said to have been governed by DBM CCC No. 10, dated 23 October 1989, because the same had not yet taken effect in 1989, as it was neither published in the Official Gazette nor in any newspaper of general circulation. Even though the said DBM CCC No. 10 was re-issued on 15 February 1999 and published on 1 March 1999, the same cannot be enforced against them as it can only be implemented after 1 March 1999 or upon the completion of the required publication. Thus, the grant of benefits and allowances in the year 1997 to the petitioners should still be governed by Resolution No. 313, as amended, and not by Republic Act No. 6758, as implemented by DBM CCC No. 10.

Given the foregoing, the issues that must be resolved in this Petition are the following:

- I. Whether the COA acted with grave abuse of discretion in affirming the Notice of Disallowance against the petitioners, allegedly based on the Opinion of the COA General Counsel.
- II. Whether the COA gravely abused its discretion in finding that the petitioners were governed by Republic Act No. 6758, as implemented by DBM CCC No. 10, thus, they were not anymore entitled to the bonuses, allowances and benefits provided for in Resolution No 313, as amended.

The petitioners in this case are laboring under the wrong impression that the COA Decision, affirming the Notice of Disallowance against them, was based on the Opinion of the COA General Counsel. The Court believes otherwise.

It must be remembered that the COA, before sustaining the Notice of Disallowance against the petitioners, had taken into consideration the findings of its Auditors from COA Regional Office No. 1, San Fernando, La Union, who were duly authorized to conduct an audit examination on the operations of MAWAD; as well as the decision of the Director, COA Regional Office No. 1, San Fernando, La Union. The COA, in affirming the Notice of Disallowance against the petitioners, went further by applying Republic Act No. 6758, as implemented by DBM CCC No. 10. The pertinent portion of the questioned COA Decision reads as follows:

Markworthy is the fact that the decision to impose the subject disallowance was rendered by Auditors Elsa H. Ramos-Mapili and Concordia R. Decano and was affirmed by Atty. Rafael C. Marquez, Director, COA Regional Office No. 1, San Fernando, La Union, obviously convinced that the legal opinion rendered by the then COA General

Counsel, Director Raquel R. Habitan, was in order. It must be pointed out that the COA General Counsel is authorized to render opinion or interpret pertinent laws as well as auditing rules and regulations, as a guide to all COA officials/auditors especially on matters within the province of their auditing tasks, as mandated by the Constitution, purposely to see to it that public funds are disbursed pursuant to law.

**In this respect, [COA] finds the imposition of the herein subject disallowance to be proper. This is so because Water Districts like the [MAWAD], are classified as government-controlled corporations, and therefore, the Water District Directors like the herein petitioners, are considered as government officials/employees, whose monetary compensation and other forms of benefits are expressly covered and governed by the provision of R.A. No. 6758 (citation omitted), x x x particularly Section 4 thereof. As the implementing guideline thereon, Corporate Compensation Circular (CCC) No. 10, Section 2.0, issued by the DBM on October 23, 1989, states:**

"The Compensation and Position Classification System herein provided shall apply to all positions, appointive or elective, on full or part-time basis, now existing or hereafter created in the government including government-owned or controlled corporations and government financial institutions", and

"The Compensation and Position Classification System referred to herein, shall apply to all positions, whether permanent, casual, temporary, contractual, on full or part-time basis, now existing or hereafter created in government-owned and/or controlled corporations and government financial institutions whether they perform governmental or proprietary (sic) functions," (Item No. 2.0 DBM CCC No. 10).

x x x x

**x x x. Being such, [herein petitioners] are, therefore, covered and governed by R.A. 6758 and [DBM CCC No. 10, dated 23 October 1989], insofar as establishment of standard guidelines on compensation and other benefits are concerned.**

**x x x. Hence, the grant of the herein questioned benefits by the LWUA to the [petitioners] is, therefore, null and void for being *ultra vires*.<sup>[10]</sup> x x x. (Emphasis supplied.)**

As can be gleaned from the afore-quoted COA Decision, it is crystal clear that its basis for affirming the Notice of Disallowance against the petitioners was Republic Act No. 6758, as implemented by DBM CCC No. 10 and not the Opinion of the COA General Counsel. And this gave rise to the second issue: Whether the COA gravely abused its discretion in finding that the petitioners were governed by Republic Act No. 6758, as implemented by DBM CCC No. 10; thus, they were not anymore entitled to the bonuses, allowances and benefits provided for in Resolution No. 313, as amended.