

## EN BANC

[ G.R. No. 143596, December 11, 2003 ]

**JUDGE TOMAS C. LEYNES, PETITIONER, VS. THE COMMISSION ON AUDIT (COA), HON. GREGORIA S. ONG, DIRECTOR, COMMISSION ON AUDIT AND HON. SALVACION DALISAY, PROVINCIAL AUDITOR, RESPONDENTS.**

### D E C I S I O N

#### **CORONA, J.:**

Before us is a petition for certiorari under Rule 65 in relation to Section 2, Rule 64 of the Rules of Court, seeking to reverse and set aside the decision<sup>[1]</sup> dated September 14, 1999 of the Commission on Audit (COA), affirming the resolution of COA Regional Director Gregoria S. Ong dated March 29, 1994 which in turn affirmed the opinion dated October 19, 1993 of the Provincial Auditor of Oriental Mindoro, Salvacion M. Dalisay. All three denied the grant of P1,600 monthly allowance to petitioner Judge Tomas C. Leynes by the Municipality of Naujan, Oriental Mindoro.

#### **FACTUAL ANTECEDENTS**

Petitioner Judge Tomas C. Leynes who, at present, is the presiding judge of the Regional Trial Court of Calapan City, Oriental Mindoro, Branch 40 was formerly assigned to the Municipality of Naujan, Oriental Mindoro as the sole presiding judge of the Municipal Trial Court thereof. As such, his salary and representation and transportation allowance (RATA) were drawn from the budget of the Supreme Court. In addition, petitioner received a monthly allowance of P944 *from the local funds*<sup>[2]</sup> of the Municipality of Naujan starting 1984. <sup>[3]</sup>

On March 15, 1993, the *Sangguniang Bayan* of Naujan, through Resolution No. 057, sought the opinion of the Provincial Auditor and the Provincial Budget Officer regarding any budgetary limitation on the grant of a monthly allowance by the municipality to petitioner judge. On May 7, 1993, the *Sangguniang Bayan* unanimously approved Resolution No. 101 increasing petitioner judge's monthly allowance from P944 to P1,600 (an increase of P656) starting May 1993.<sup>[4]</sup> By virtue of said resolution, the municipal government (the Municipal Mayor and the *Sangguniang Bayan*) approved a supplemental budget which was likewise approved by the *Sangguniang Panlalawigan* and the Office of Provincial Budget and Management of Oriental Mindoro. In 1994, the Municipal Government of Naujan again provided for petitioner judge's P1,600 monthly allowance in its annual budget which was again approved by the *Sangguniang Panlalawigan* and the Office of Provincial Budget and Management of Oriental Mindoro.<sup>[5]</sup>

On February 17, 1994, Provincial Auditor Salvacion M. Dalisay sent a letter to the Municipal Mayor and the *Sangguniang Bayan* of Naujan directing them to stop the

payment of the P1,600 monthly allowance or RATA to petitioner judge and to require the immediate refund of the amounts previously paid to the latter. She opined that the Municipality of Naujan could not grant RATA to petitioner judge in addition to the RATA the latter was already receiving from the Supreme Court. Her directive was based on the following:

Section 36, RA No. 7645, General Appropriations Act of 1993

Representation and Transportation Allowances. The following officials and those of equivalent rank as may be determined by the Department of Budget and Management (DBM) while in the actual performance of their respective functions *are hereby granted monthly commutable representation and transportation allowances payable from the programmed appropriations provided for their respective offices, not exceeding the rates indicated below . . .*

National Compensation Circular No. 67 dated January 1, 1992, of the Department of Budget and Management

Subject: Representation and Transportation Allowances of National Government Officials and Employees

x x x

x x x

x x x

4. Funding Source: *In all cases, commutable and reimbursable RATA shall be paid from the amount appropriated for the purpose and other personal services savings of the agency or project from where the officials and employees covered under this Circular draw their salaries. No one shall be allowed to collect RATA from more than one source.*<sup>[6]</sup> (emphasis supplied)

Petitioner judge appealed to COA Regional Director Gregoria S. Ong who, however, upheld the opinion of Provincial Auditor Dalisay and who added that Resolution No. 101, Series of 1993 of the *Sangguniang Bayan* of Naujan failed to comply with Section 3 of Local Budget Circular No. 53 dated September 1, 1993 outlining the conditions for the grant of allowances to judges and other national officials or employees by the local government units (LGUs). Section 3 of the said budget circular provides that:

Sec. 3 Allowances. — LGUs may grant allowances/additional compensation to the national government officials/employees assigned to their locality at rates authorized by law, rules and regulations and subject to the following preconditions:

- a. That the annual income or finances of the municipality, city or province as certified by the Accountant concerned will allow the grant of the allowances/additional compensation without exceeding the general limitations for personal services under Section 325 of RA 7160;
- b. That the budgetary requirements under Section 324 of RA 7160 including the full requirement of RA 6758 have been satisfied and provided fully in the budget as certified by the Budget Officer and

COA representative in the LGU concerned;

- c. That the LGU has fully implemented the devolution of personnel/functions in accordance with the provisions of RA 7160;
- d. That the LGU has already created mandatory positions prescribed in RA 7160; and
- e. That similar allowances/additional compensation are not granted by the national government to the officials/employees assigned to the LGU.<sup>[7]</sup>

Petitioner judge appealed the unfavorable resolution of the Regional Director to the Commission on Audit. In the meantime, a disallowance of the payment of the P1,600 monthly allowance to petitioner was issued. Thus he received his P1,600 monthly allowance from the Municipality of Naujan only for the period May 1993 to January 1994.

On September 14, 1999, the COA issued its decision affirming the resolution of Regional Director Gregoria S. Ong:

The main issue . . . is whether or not the Municipality of Naujan, Oriental Mindoro can validly provide RATA to its Municipal Judge, in addition to that provided by the Supreme Court.

Generally, the grant of (RATA) [*sic*] to qualified national government officials and employees pursuant to Section 36 of R.A. 7645 [General Appropriations Act of 1993] and NCC No. 67 dated 01 January 1992 is subject to the following conditions to wit:

1. Payable from the programmed /appropriated amount and others from personal services savings of the respective offices where the officials or employees draw their salaries;
2. Not exceeding the rates prescribed by the Annual General Appropriations Act;
3. Officials /employees on detail with other offices or assigned to serve other offices or agencies shall be paid from their parent agencies;
4. No one shall be allowed to collect RATA from more than one source.

On the other hand, the municipal government may provide additional allowances and other benefits to judges and other national government officials or employees assigned or stationed in the municipality, provided, that the finances of the municipality allow the grant thereof pursuant to Section 447, Par. 1 (xi), R.A. 7160, and provided further, that similar allowance/additional compensation are not granted by the national government to the official/employee assigned to the local government unit as provided under Section 3(e) of Local Budget Circular No. 53, dated 01 September 1993.

*The conflicting provisions of Section 447, Par. (1) (xi) of the Local*

*Government Code of 1991 and Section 36 of the General Appropriations Act of 1993 [RA 7645] have been harmonized by the Local Budget Circular No. 53 dated 01 September 1993, issued by the Department of Budget and Management pursuant to its powers under Section 25 and Section 327 of the Local Government Code. The said circular must be adhered to by the local government units particularly Section 3 thereof which provides the implementing guidelines of Section 447, Par. (1) (xi) of the Local Government Code of 1991 in the grant of allowances to national government officials/employees assigned or stationed in their respective local government units.*

Consequently, the subject SB Resolution No. 101 dated 11 May 1993 of the Sangguniang Bayan of Naujan, Oriental Mindoro, having failed to comply with the inherent precondition as defined in Section 3 (e). . . is null and void. Furthermore, the Honorable Judge Tomas C. Leynes, being a national government official is prohibited to receive additional RATA from the local government fund pursuant to Section 36 of the General Appropriations Act (R.A. 7645 for 1993) and National Compensation Circular No. 67 dated 1 January 1992.<sup>[8]</sup> (emphasis ours)

## **ASSIGNMENTS OF ERROR**

Petitioner judge filed a motion for reconsideration of the above decision but it was denied by the Commission in a resolution dated May 30, 2000. Aggrieved, petitioner filed the instant petition, raising the following assignments of error for our consideration:

### **I**

WHETHER OR NOT RESOLUTION NO. 101, SERIES OF 1993 OF NAUJAN, ORIENTAL MINDORO, WHICH GRANTED ADDITIONAL ALLOWANCE TO THE MUNICIPAL TRIAL JUDGE OF NAUJAN, ORIENTAL MINDORO AND INCREASING HIS CURRENT REPRESENTATION AND TRAVELLING ALLOWANCE (RATA) TO AN AMOUNT EQUIVALENT TO THAT RECEIVED MONTHLY BY SANGGUNIANG MEMBERS IN PESOS: ONE THOUSAND SIX HUNDRED (P1,600.00) EFFECTIVE 1993, IS VALID.

### **II**

WHETHER OR NOT THE POWER OF MUNICIPAL GOVERNMENTS TO GRANT ADDITIONAL ALLOWANCES AND OTHER BENEFITS TO NATIONAL GOVERNMENT EMPLOYEES STATIONED IN THEIR MUNICIPALITY IS VERY EXPLICIT AND UNEQUIVOCAL UNDER THE LOCAL GOVERNMENT CODE OF 1991 PARTICULARLY SECTION 447 IN RELATION TO SECTIONS 17 AND 22 THEREOF.

### **III**

WHETHER OR NOT THE DEPARTMENT OF BUDGET AND MANAGEMENT (DBM) CAN, BY THE ISSUANCE OF BUDGET CIRCULARS, RESTRICT A MUNICIPAL GOVERNMENT FROM EXERCISING ITS GIVEN LEGISLATIVE POWERS OF PROVIDING ADDITIONAL ALLOWANCES AND OTHER

BENEFITS TO NATIONAL EMPLOYEES STATIONED OR ASSIGNED TO THEIR MUNICIPALITY FOR AS LONG AS THEIR FINANCES SO ALLOW.

#### IV

WHETHER OR NOT THE LOCAL GOVERNMENT CODE OF 1991 PARTICULARLY SECTION 447 (a) (1) (xi) WAS EXPRESSLY OR IMPLIEDLY REPEALED OR MODIFIED BY REPUBLIC ACT 7645 AND THE GENERAL APPROPRIATIONS ACT OF 1993.

#### V

WHETHER OR NOT PETITIONER WAS ENTITLED TO RECEIVE THE ADDITIONAL ALLOWANCES GRANTED TO HIM BY THE MUNICIPALITY OF NAUJAN, ORIENTAL MINDORO BY VIRTUE OF ITS RESOLUTION NO. 101, SERIES OF 1993.

### **POSITION OF COA**

Respondent Commission on Audit opposes the grant by the Municipality of Naujan of the P1,600 monthly allowance to petitioner Judge Leynes for the reason that the municipality could not grant RATA to judges *in addition* to the RATA already received from the Supreme Court.<sup>[9]</sup> Respondent bases its contention on the following:

1. National Compensation Circular No. 67 (hereafter NCC No. 67) dated January 1, 1992 of the Department of Budget and Management (DBM) which provides that (a) the RATA of national officials and employees shall be payable from the programmed appropriations or personal services savings of the agency where such officials or employees draw their salary and (b) no one shall be allowed to collect RATA from more than one source;
2. the General Appropriations Act of 1993 (RA 7645) which provided that the RATA of national officials shall be payable from the programmed appropriations of their respective offices and
3. Local Budget Circular No. 53 (hereafter LBC No. 53) dated September 1, 1993 of the DBM which prohibits local government units from granting allowances to national government officials or employees stationed in their localities when such allowances are also granted by the national government or are *similar* to the allowances granted by the national government to such officials or employees.<sup>[10]</sup>

### **POSITION OF PETITIONER**

Petitioner judge, on the other hand, asserts that the municipality is expressly and unequivocally empowered by RA 7160 (the Local Government Code of 1991) to enact appropriation ordinances granting allowances and other benefits to judges stationed in its territory. Section 447(a)(1)(xi) of the Local Government Code of 1991 imposes only one condition, that is, "when the finances of the municipal government allow." The Code does not impose any other restrictions in the exercise of such power by the municipality. Petitioner also asserts that the DBM cannot amend or modify a substantive law like the Local Government Code of 1991 through