



Republic of the Philippines
Supreme Court
Manila

SUPREME COURT OF THE PHILIPPINES
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MARIO M. MADERA, BEVERLY
C. MANANGUTE, CARISSA D.
GALING, AND JOSEFINA O.
PELO,

Petitioners,

G.R. No. 244128

Present:

PERALTA, C.J.,
PERLAS-BERNABE,
LEONEN,
CAGUIOA,
GESMUNDO,
J. REYES, JR.,
HERNANDO,
CARANDANG,
LAZARO-JAVIER,
INTING,
ZALAMEDA,
LOPEZ,
DELOS SANTOS,
GAERLAN, and
BALTAZAR-PADILLA,* JJ.

- versus -

COMMISSION ON AUDIT (COA)
AND COA REGIONAL OFFICE
NO. VIII,

Respondents.

Promulgated:

September 8, 2020

x-----x

DECISION

CAGUIOA, J.:

In this case, the Court is presented the optimum opportunity to provide for a clear set of rules regarding the refund of amounts disallowed by the Commission on Audit (COA) in order to reach a just and equitable outcome among persons liable for disallowances.

The Facts

Before the Court is a petition for *certiorari*¹ under Rule 64 in relation to Rule 65 of the Rules of Court, assailing the COA Decision² dated December

* On leave.

¹ *Rollo*, pp. 3-17.

² *Id.* at 18-19.

27, 2017 and Resolutions³ dated August 16, 2018 which affirmed the disallowance of various allowances given in 2013 to the officials and employees of the Municipality of Mondragon, Northern Samar (the Municipality).

In December 2013, the Municipality passed and approved *Sangguniang Bayan* (SB) Ordinance No. 08⁴ and SB Resolutions Nos. 41,⁵ 42,⁶ 43,⁷ and 48,⁸ all series of 2013, granting various allowances to its officials and employees. These allowances are: 1) Economic Crisis Assistance (ECA), 2) Monetary Augmentation of Municipal Agency (MAMA), 3) Agricultural Crisis Assistance (ACA), and 4) Mitigation Allowance to Municipal Employees (MAME).

For the ECA, the Whereas Clauses of SB Resolution No. 41, series of 2013, state:

- WHEREAS,** the effect of continuing increase of cost on prime commodities brought about by the worldwide inflation and its adverse effect in the locality x x x is felt most by our low-income salaried employees;
- WHEREAS,** it is the policy of the local government unit to alleviate the plight of our lowly paid officials and employees; and
- WHEREAS,** the local government unit of Mondragon has shown the willingness to provide its officials, employees and workers whether local or national, serving in the LGU, an assistance to cushion the impact of increasing prices.⁹

As regards the MAMA, the grant of the same is authorized by SB Resolution No. 42, series of 2013, which provides:

- WHEREAS,** the effect of inflation has weakened the purchasing power of the local employees of Mondragon and has become a major burden in their daily subsistence;
- WHEREAS,** it has been observed that the local officials and employees alike succumbed [to] high-interest rates loans in order to augment their

³ See id. at 30.

⁴ Id. at 41-43.

⁵ Id. at 31-32.

⁶ Id. at 33-34.

⁷ Id. at 35-36.

⁸ Id. at 38-39.

⁹ Id. at 31.

low income and minimal x x x take-home pay; and

WHEREAS,

it is the policy of the local government unit of Mondragon to help lighten the financial burden of its local official[s] and employees from the sustaining high interest loans[.]¹⁰

With respect to the ACA, the Whereas Clauses of Resolution No. 43, series of 2013, state:

WHEREAS,

the people of Mondragon are basically dependent on Agriculture;

WHEREAS,

it is deemed proper that the local government unit of Mondragon provides agricultural assistance to its officials and employees to lighten their burden in terms of agricultural shortage of products caused by typhoon "Yolanda" and help them buy agricultural seeds and other farm facilities from other provinces; and

WHEREAS,

premises above cited[,] this council hereby approves the grant of Agricultural Crisis Assistance (ACA) in order to help its officials and employees for their agricultural production.¹¹

Lastly, SB Resolution No. 44, series of 2013, authorizes the grant of the MAME and its Whereas Clauses states:

WHEREAS,

there is the global effort against climate change that continuously provides principles and assistance to reduce the human suffering during disaster and calamity;

WHEREAS,

the Municipality of Mondragon is vulnerable to damaging effects of a possible calamity and disaster because of its location, hence, making its people also susceptible to risk;

WHEREAS,

the LGU of Mondragon deemed it right to provide mitigation capability by providing financial assistance to its employees that would [equip] them to lessen the adverse impact of hazards and disaster; and

WHEREAS,

the mitigation assistance will provide them means to pre-empt risks and hazards such as

¹⁰ Id. at 33.

¹¹ Id. at 35.

providing their families a risk-free place to dwell.¹²

In total, these allowances in question amounted to ₱7,706,253.10¹³ as specified below:

Allowance	Total Amount	Recipients
ECA	₱3,865,203.10	Regular officials and employees, casual and job order/contractual employees, <i>Barangay Tanods</i> , <i>Barangay Nutrition Scholars (BNS)</i> , Day Care Workers (DCW), <i>Barangay Health Workers (BHW)</i> , public elementary and high school teachers and national employees stationed in the municipality
MAMA	₱1,245,000.00	Regular officials and employees and casual employees
ACA	₱1,771,550.00	Regular officials and employees, casual employees and job order/contractual employees
MAME	₱824,500.00	Regular official and employees, casual employees, job order/contractual employees, BNSs, DCWs, and BHWs. ¹⁴

Notices of Disallowance

On post audit, the Audit Team Leader (ATL) and the Supervising Auditor (SA) of the Municipality issued a total of 11 Notices of Disallowance (NDs) dated February 20, 2014 for the grant of the ECA, MAMA, ACA and MAME (subject allowances) as specified below:

ND No.	Date	Nature	Amount	Paid under Check No.
14-004-101 (2013)	02/20/2014	ECA	₱406,000.00	1164301
14-005-101 (2013)	02/20/2014	ECA	358,000.00	1164302

¹² Id. at 37.

¹³ Id. at 19.

¹⁴ Id. at 19-20.

14-006-101 (2013)	02/20/2014	ECA	830,000.00	1164303
14-007-101 (2013)	02/20/2014	MAME	409,500.00	1164304
14-008-101 (2013)	02/20/2014	ACA	246,300.00	1164305
14-010-101 (2013)	02/20/2014	MAMA	1,245,000.00	1164296
14-011-101 (2013)	02/20/2014	ACA	1,525,250.00	1164297
14-012-101 (2013)	02/20/2014	MAME	415,000.00	1164298
14-013-101 (2013)	02/20/2014	ECA	219,000.00	1164300
14-014-101 (2013)	02/20/2014	ECA	44,500.00	1164306
14-015-101 (2013)	02/20/2014	ECA	2,007,703.10	1164307
TOTAL			₱7,706,253.10¹⁵	

The ATL and SA disallowed the subject allowances on the ground that the grants were in violation of the following:

- a) Section 12 of Republic Act No. (R.A.) 6758 or the Salary Standardization Law (SSL) as regards the consolidation of allowances and compensation;
- b) Item II of COA Circular No. 2013-003 dated January 30, 2013 which excluded the subject allowances among the list of authorized allowances, incentives, and benefits;
- c) Items 4 and 5 of Section 1.a of Civil Service Commission (CSC) Resolution No. 02-0790 dated June 5, 2002, which provides that employees under contract or job order do not enjoy the benefits enjoyed by the government employees (such as the Personnel Economic Relief Allowance or PERA, Additional Compensation Allowance or ACA, and Representation Allowance and Transportation Allowance or RATA), and that the services rendered thereunder are not considered as government service.¹⁶

The persons held liable under the NDs were as follows:

Name and Position	Participation in the Transaction
Mario M. Madera (Madera) - Municipal Mayor	For certifying in the Obligation Request that the appropriations/allotments are necessary, lawful and under his direct supervision, and for approving the payment;

¹⁵ Id. at 20.

¹⁶ Id.

Beverly C. Mananguite (Mananguite) - Municipal Accountant	For certifying in the voucher as to the completeness of the supporting documents;
Carissa D. Galing (Galing) - Municipal Treasurer	For certifying the availability of funds;
Josefina O. Pelo (Pelo) - Municipal Budget Officer	For certifying the existence of available appropriation;
All other payees as stated in the ND Nos. 14-004-101 (2013) to 14-008-101 (2013); and 14-010-101 (2013) to 14-015-101 (2013), all dated February 20, 2014	For being claimants/recipients of the allowances. ¹⁷

Notably, the records show that Madera, Mananguite, Galing and Pelo (petitioners) also received the benefits covered by ND Nos. 14-010-101(2013), 14-011-101(2013), 14-012-101(2013), and 14-015-101(2013).¹⁸

COA Regional Office

On January 8, 2015, petitioners filed their appeal with the COA Regional Director (RD). They argued that the grant of additional allowances to the employees is allowed by R.A. 7160 or the Local Government Code (LGC); hence, the LGC actually repealed Section 12 of R.A. 6758¹⁹ because the former law allows the municipality to grant additional allowances/financial assistance should its finances allow. Petitioners also claimed that the pronouncement of the Audit Team that the disallowed allowances were not among those listed under COA Circular No. 2013-003 is not correct considering that said Circular also stated that “other allowances not listed above, whether granted government-wide or specific to certain government agencies are likewise recognized provided there is sufficient legal basis thereof.”²⁰

Additionally, petitioners contended that the grant of additional allowances/financial assistance in the Municipality was a customary scheme

¹⁷ Id. at 21.

¹⁸ Id. at 84-88, 89-93, 94-98, 110-116.

¹⁹ **Section 12. Consolidation of Allowances and Compensation.** — All allowances, except for representation and transportation allowances; clothing and laundry allowances; subsistence allowance of marine officers and crew on board government vessels and hospital personnel; hazard pay; allowances of foreign service personnel stationed abroad; and such other additional compensation not otherwise specified herein as may be determined by the DBM, shall be deemed included in the standardized salary rates herein prescribed. Such other additional compensation, whether in cash or in kind, being received by incumbents only as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized.

Existing additional compensation of any national government official or employee paid from local funds of a local government unit shall be absorbed into the basic salary of said official or employee and shall be paid by the National Government.

²⁰ *Rollo*, p. 21.

over the years. They also claimed that the allowances were considered as financial assistance to the employees who suffered the effects of Typhoon *Yolanda*. Lastly, petitioners averred that the *Sangguniang Panlalawigan* (SP), the Department of Budget and Management (DBM) and the COA did not declare the appropriation ordinance as invalid; hence, they remain legal and valid.²¹

In a Decision²² dated July 14, 2015, the RD affirmed the NDs and ruled that government units are not exempt from the SSL and the grant and payment of the subject allowances were subject to Section 12 of R.A. 6758 which provides that all allowances such as the ECA, MAMA, ACA and MAME are deemed integrated in the standardized salary rates and only six enumerated allowances are considered excluded from the integration. According to the RD, while it may be true that the subject allowances were not among those included in the list of authorized allowances and they may be granted if there is sufficient legal basis, the appropriation ordinance is not sufficient to become the legal basis. Moreover, petitioners' assertion that R.A. 7160 repealed the provision of Section 12 of R.A. 6758 is not convincing since Section 534 of R.A. 7160 mentions the specific laws or parts thereof which are repealed, and R.A. 6758 is not one of them.²³

Moreover, the RD ruled that petitioners cannot hide behind the claim that the grant of such benefits was a customary scheme of the Municipality because practice, no matter how long continued, cannot give rise to any vested right if it is contrary to law.²⁴

As for petitioners' contention that no appropriation ordinance of the Municipality had been declared invalid, the RD gave scant consideration to the same on the position that the subject ordinance and resolutions showed no indication of their having been transmitted to the SP for review in accordance with Section 327²⁵ of R.A. 7160. Moreover, the subject ordinance and

²¹ Id. at 22.

²² Id. at 126-132.

²³ Id. at 22-23.

²⁴ Id. at 23.

²⁵ SECTION 327. Review of Appropriation Ordinances of Component Cities and Municipalities. — The sangguniang panlalawigan shall review the ordinance authorizing annual or supplemental appropriations of component cities and municipalities in the same manner and within the same period prescribed for the review of other ordinances.

If within ninety (90) days from receipt of copies of such ordinance, the sangguniang panlalawigan takes no action thereon, the same shall be deemed to have been reviewed in accordance with law and shall continue to be in full force and effect. If within the same period, the sangguniang panlalawigan shall have ascertained that the ordinance authorizing annual or supplemental appropriations has not complied with the requirements set forth in this Title, the sangguniang panlalawigan shall, within the ninety-day period hereinabove prescribed, declare such ordinance inoperative in its entirety or in part. Items of appropriation contrary to limitations prescribed in this Title or in excess of the amounts prescribed herein shall be disallowed or reduced accordingly.

The sangguniang panlalawigan shall, within the same period, advise the sangguniang panlungsod or sangguniang bayan concerned, through the local chief executive, of any action on the ordinance under review. Upon receipt of such advice, the city or municipal treasurer concerned shall not make further disbursements of funds from any of the items of appropriation declared inoperative, disallowed or reduced.

resolutions appropriated amounts for the disallowed benefits from the savings, unexpended allotment, and unappropriated balances for 2013 of the Municipality, in violation of Section 322²⁶ of R.A. 7160.²⁷

Lastly, petitioners cannot claim that the subject allowances were given as financial assistance to the employees because good intention, no matter how noble, cannot be made an excuse for not adhering to the rules.²⁸

Consequently, petitioners appealed to the COA.

COA Proper

In a Decision dated December 27, 2017, the COA affirmed the ruling of the COA Regional Office, with modification in that the officials and employees who unwittingly received the disallowed benefits or allowances are not held liable for their reimbursement since they are recipient-payees in good faith.

The COA opined that, following applicable rules, the approving officer and each employee who received the disallowed benefit or allowance are obligated, jointly and severally, to refund the amount received. However, it also recognized that the Court has ruled, by way of exception, that passive recipients of disallowed amounts need not refund if they received the same in good faith. Thus, while the COA itself observed that this results in an inequitable burden on the approving officers and that the same is inconsistent with the concept of *solutio indebiti*, it nevertheless applied the exception as to passive recipients in deference to the Court.²⁹ Thus, the COA ruled as follows:

WHEREFORE, premises considered, the Petition for Review of Mayor Mario M. Madera, et al., Municipality of Mondragon, Northern Samar, of Commission on Audit – Regional Office No. VIII Decision No. 2015-020 dated July 14, 2015 is DENIED. Accordingly, Notice of Disallowance Nos. 14-004-101(2013) to 14-008-101 (2013) and 14-010-101 (2013) to 14-015-101(2013), all dated February 20, 2014, on the grant of Economic Crisis Assistance, Agricultural Crisis Allowance, Monetary Augmentation of Municipal Agency, and Mitigation Allowance to the officials and employees of the municipality, including national government

²⁶ SECTION 322. Reversion of Unexpended Balances of Appropriations, Continuing Appropriations. — Unexpended balances of appropriations authorized in the annual appropriations ordinance shall revert to the unappropriated surplus of the general fund at the end of the fiscal year and shall not thereafter be available for the expenditure except by subsequent enactment. However, appropriations for capital outlays shall continue and remain valid until fully spent, reverted or the project is completed. Reversions of continuing appropriations shall not be allowed unless obligations therefor have been fully paid or otherwise settled.

The balances of continuing appropriations shall be reviewed as part of the annual budget preparation and the sanggunian concerned may approve, upon recommendation of the local chief executive, the reversion of funds no longer needed in connection with the activities funded by said continuing appropriations subject to the provisions of this section.

²⁷ *Rollo*, p. 23

²⁸ *Id.*

²⁹ *Id.* at 27.

employees assigned thereat, in the total amount of P7,706,253.10, are AFFIRMED with MODIFICATION.

The municipal officials who passed and approved the *Sangguniang Bayan Ordinance and Resolutions* authorizing the grant of subject allowances, including those who approved/certified the payment thereof, are made to refund the entire disallowed benefits or allowances. However, the officials and employees who unwittingly received the disallowed benefits or allowances are not liable for their reimbursement, they, being recipient-payees in good faith.³⁰ (Emphasis supplied and emphasis in the original omitted)

On February 28, 2018, petitioners filed a Motion for Reconsideration (MR), which was denied in a Resolution dated August 16, 2018. Petitioners received a copy of the Resolution denying the MR on November 12, 2018.³¹ Aggrieved, petitioners filed the present petition.

Petition Before the Court

On January 11, 2019, petitioners filed a petition for *certiorari* under Rule 64 in relation to Rule 65 of the Rules of Court. While petitioners maintain that the allowances were legal, they also raise the defense of good faith in order to not be held liable for the disallowed amounts.

In its Comment,³² the COA, through the Office of the Solicitor General (OSG), contends that it did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in upholding the NDs. Likewise, it avers that the liability imposed on petitioners was grounded on jurisprudence.

ISSUE

The issue to be resolved is whether the COA committed grave abuse of discretion in issuing the assailed Decision and Resolution.

Specifically, the resolution of this case rests ultimately on whether the COA was correct in holding petitioners liable for the refund of the disallowed amounts.

RULING

The petition is partly meritorious.

I. Timeliness of the Petition

³⁰ Id. at 28.

³¹ Id. at 6.

³² Id. at 161-177.

At the outset, the Court notes that the petition was filed out of time. Petitioners confused Rules 64 and 65 of the Rules of Court when they erroneously claimed that their petition was timely filed within 60 days from notice of judgment.³³ Rule 64 provides:

SECTION 1. *Scope.* This Rule shall govern the review of judgments and final orders or resolutions of the Commission on Elections and the Commission on Audit.

SEC. 2. *Mode of review.* A judgment or final order or resolution of the Commission on Elections and the Commission on Audit may be brought by the aggrieved party to the Supreme Court on *certiorari* under Rule 65, except as hereinafter provided.

SEC. 3. *Time to file petition.* The petition shall be filed within thirty (30) days from notice of the judgment or final order or resolution sought to be reviewed. The filing of a motion for new trial or reconsideration of said judgment or final order or resolution, if allowed under the procedural rules of the Commission concerned, shall interrupt the period herein fixed. If the motion is denied, the aggrieved party may file the petition within the remaining period, but which shall not be less than five (5) days in any event, reckoned from notice of denial. (Underscoring supplied)

As gleaned from above, Rule 65 applies to petitions questioning the judgments, final orders, or resolutions of the COA only insofar as Rule 64 does not specifically provide the rules. Consequently, since Rule 64 explicitly provides the 30-day period for the filing of the petition, the same shall apply — not the 60-day period provided in Rule 65.

To recall, the COA Decision was promulgated on December 27, 2017 and petitioners received a copy of the Decision on February 23, 2018. Thus, the 30 day-period began to run from February 23, 2018. However, following Section 3, Rule 64 the period was interrupted when petitioners filed an MR on February 28, 2018. Petitioners received a copy of the Resolution denying their MR on November 12, 2018. Consequently, they had 25 days from November 12, or until December 7, 2018 to file their petition before the Court. However, petitioners only filed their petition on January 11, 2019 or 35 days after the last day of filing.

From the foregoing, there is no dispute that petitioners belatedly filed their petition before the Court. Nevertheless, the petition appears to be partly meritorious. Time and again, the Court has relaxed the observance of procedural rules to advance substantial justice.³⁴ Moreover, the present petition provides an appropriate avenue for the Court to settle the conflicting jurisprudence on the liability for the refund of disallowed allowances. Thus, the Court opts for a liberal application of the procedural rules considering that the substantial merits of the case warrant its review by the Court.

³³ Id. at 6.

³⁴ See *Barnes v. Padilla*, G.R. No. 160753, September 30, 2004, 439 SCRA 675, 686.



The Constitution vests the broadest latitude in the COA in discharging its role as the guardian of public funds and properties.³⁵ In recognition of such constitutional empowerment, the Court has generally sustained the COA's decisions or resolutions in deference to its expertise in the implementation of the laws it has been entrusted to enforce.³⁶ Thus, the Constitution and the Rules of Court provide the remedy of a petition for *certiorari* in order to restrict the scope of inquiry to errors of jurisdiction or to grave abuse of discretion amounting to lack or excess of jurisdiction committed by the COA.³⁷ For this purpose, grave abuse of discretion means that there is, on the part of the COA, an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law, such as when the assailed decision or resolution rendered is not based on law and the evidence but on caprice, whim and despotism.³⁸

In this case, petitioners failed to show that the COA gravely abused its discretion in affirming the subject NDs. Nevertheless, there is merit to their contention that they should not be held liable to refund the disallowed amounts.

II. *Propriety of the Disallowance*

As regards the propriety of the issuance of the NDs, the Court notes that while petitioners maintain that the subject allowances had sufficient legal basis, the petition fails to substantiate their claim. The petition principally tackles petitioners' liability for the disallowed amounts, insisting that they approved the subject allowances in good faith.³⁹ The petition offered no new argument as regards the legality of the subject allowances. Thus, as regards the validity of the disallowance, the Court is constrained to rely on petitioners' submissions before the COA.

After a careful review of the records of the case, the Court upholds the NDs against the subject allowances, finding no grave abuse of discretion on the part of the COA in affirming the disallowance. The Court quotes with approval the following pronouncements by the COA:

Section 447(a)(1)(viii) of RA No. 7160 provides:

SEC. 447. Powers, Duties, Functions and Compensation.
— (a) The sangguniang bayan, as the legislative body of the municipality, shall enact ordinances, approve resolutions and appropriate funds for the general welfare of the municipality and its inhabitants pursuant to Section 16 of

³⁵ *Miralles v. Commission on Audit*, G.R. No. 210571, September 19, 2017, 840 SCRA 108, 116.

³⁶ *Id.* at 116-117.

³⁷ *Estalilla v. Commission on Audit*, G.R. No. 217448, September 10, 2019, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65721>>.

³⁸ *Catu-Lopez v. Commission on Audit*, G.R. No. 217997, November 12, 2019, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65979>>.

³⁹ *Rollo*, p. 8.

this Code and in the proper exercise of the corporate powers of the municipality as provided for under Section 22 of this Code, and shall:

- (1) Approve ordinances and pass resolutions necessary for an efficient and effective municipal government, and in this connection shall: x x x

(viii) Determine the positions and salaries, wages, allowances and other emoluments and benefits of officials and employees paid wholly or mainly from municipal funds and provide for expenditures necessary for the proper conduct of programs, projects, services, and activities of the municipal government;

In addition, Section 12 of RA No. 6758, the SSL, states:

Consolidation of Allowances and Compensation. — All allowances, except for representation and transportation allowances; clothing and laundry allowances; subsistence allowance of marine officers and crew on board government vessels and hospital personnel; hazard pay; allowances of foreign service personnel stationed abroad; and such other additional compensation not otherwise specified herein as may be determined by the DBM, shall be deemed included in the standardized salary rates herein prescribed x x x.” (Underscoring supplied)

In this case, the municipality’s compensation-setting power in Section 447 of RA No. 7160 to grant ECA, ACA, MAME, and MAMA cannot prevail over Section 12 of RA No. 6758 or the SSL. No law or administrative issuance, much less the [SSL], authorizes the grant of [the] subject benefits.

Moreover, in the case of *Luciano Veloso, et al. vs. COA*, the Supreme Court ruled that:

[T]he disbursement of public funds, salaries and benefits of government officers and employees should be granted to compensate them for valuable public services rendered, and the salaries or benefits paid to such officers or employees must be commensurate with services rendered. In the same vein, additional allowances and benefits must be shown to be necessary or relevant to the fulfillment of the official duties and functions of the government officers and employees. Without this limitation, government officers and employees may be paid enormous sums without limit or without justification necessary other than that such sums are being paid to someone employed by the government. Public funds are the property of the people and must be used prudently at all times with a view to prevent dissipation and waste.



Thus, the grant of ECA, ACA, MAME, and MAMA to the officials and employees cannot be justified as a simple gesture of gratitude of the municipality to its employees for their great contribution to the delivery of public service. The grant of any benefit to them must be necessary or relevant to the performance of their official duties and functions, which is absent in this case.

The appellants' claim that the grant of additional allowances/financial assistance to the municipal and national employees assigned thereat is a customary scheme of the municipality anchored on a yearly appropriation ordinance is misplaced, as the grant thereof is illegal.
x x x⁴⁰

In view of the foregoing, the Court upholds the NDs against the ECA, ACA, MAME, and MAMA.

*III. Liability of the petitioners
for the return of the
disallowed allowances*

On their liability for the refund of the disallowed allowances, petitioners aver that they should not be held liable as they approved the disbursements in good faith. In support of this claim, petitioners cited various cases⁴¹ where the Court did not order a refund despite upholding the disallowance.⁴² Petitioners insist that since the COA failed to show that they were in bad faith in approving the allowances, the alleged refund should not be personally imposed on them especially considering that they merely relied on the yearly grant of additional allowances that were not previously disallowed by the COA.⁴³

To recall, the NDs, as issued, held the payees of the disallowed allowances liable for being claimants or recipients of said amounts. The payees' liability to return the amounts was likewise affirmed by the COA RD. It was only on appeal to the COA Proper that the petitioning officers were held liable for the refund of the entire disallowed amount while the recipient-payees in good faith were excused.

In its assailed Decision, the COA Proper cited the 2015 case of *Silang v. Commission on Audit*⁴⁴ (*Silang*) where the Court ruled that public officials who are directly responsible for, or participated in making the illegal expenditures, as well as those who actually received the amounts therefrom, shall be solidarily liable for their reimbursement. Consequently, the obligation

⁴⁰ Id. at 25-26.

⁴¹ *Blaquera v. Alcalá*, G.R. No. 109406, September 11, 1998, 295 SCRA 366; *De Jesus v. Commission on Audit*, G.R. No. 149154, 403 SCRA 666; *Home Development Mutual Fund v. Commission on Audit*, G.R. No. 157001, October 19, 2004, 440 SCRA 643; and *Lumayna v. Commission on Audit*, G.R. No. 185001, September 25, 2009, 601 SCRA 163.

⁴² *Rollo*, pp. 10-13.

⁴³ Id. at 13.

⁴⁴ G.R. No. 213189, September 8, 2015, 770 SCRA 110, 126.

to refund the payment received falls upon both those directly responsible, *i.e.*, the approving officers, and those who actually received the disallowed benefit.⁴⁵ According to the COA, this is consistent with Section 43, Chapter 5, Book VI of Executive Order No. (E.O.) 292 or the Administrative Code of 1987, which states in part:

SECTION 43. Liability for Illegal Expenditures. — Every expenditure or obligation authorized or incurred in violation of the provisions of this Code or of the general and special provisions contained in the annual General or other Appropriations Act shall be void. Every payment made in violation of said provisions shall be illegal and every official or employee authorizing or making such payment, or taking part therein, and every person receiving such payment shall be jointly and severally liable to the Government for the full amount so paid or received.

Consequently, the COA concluded that the approving officers and each employee who received the disallowed benefit are obligated, jointly and severally, to refund the amount so received. However, in the same breath, the COA also acknowledged the ruling of the Court in several cases as regards passive recipients or payees of disallowed amounts who received the same in good faith, to wit:

Clearly, the approving officer and each employee who received the disallowed benefit are obligated, jointly and severally, to refund the amount so received. The Supreme Court has ruled that by way of exception, however, passive recipients or payees of disallowed salaries, emoluments, benefits and other allowances need not refund such disallowed amounts if they received the same in good faith. Stated otherwise, government officials and employees who unwittingly received disallowed benefits or allowances are not liable for their reimbursement if there is no finding of bad faith.

The result of exempting recipients who are in good faith from refunding the amount received is that the approving officers are made to shoulder the entire amount paid to the employees. This is perhaps an inequitable burden on the approving officers, considering that they are or remain exposed to administrative and even criminal liability for their act in approving such benefits, and is not consistent with the concept of *solutio indebiti* and the principle of unjust enrichment.

Nevertheless, in deference to the Supreme Court ruling in *Silang v. COA*, the Commission rules that government officials and employees who unwittingly received disallowed benefits or allowances are not liable for their reimbursement if there is no finding of bad faith. Public officials who are directly responsible for or participated in making illegal expenditures shall be solidarily liable for their reimbursement.⁴⁶ (Emphasis and underscoring supplied)

Indeed, the Court recognizes that the jurisprudence regarding the refund of disallowed amounts by the COA is evolving, at times conflicting, and is

⁴⁵ *Rollo*, pp. 26-27.

⁴⁶ *Id.* at 26-28.

primarily dealt with on a case-to-case basis. The discussions made in this petition, however, have made it apparent that there is now a need to harmonize the various rulings of the Court. For this reason, the Court takes this opportunity to lay down the rules that would be applied henceforth in determining the liability to return disallowed amounts, guided by applicable laws and rules as well as the current state of jurisprudence.

In arriving at these new set of rules, the Court shall first delve into: a) the statutory bases for the liability of approving and certifying officers and payees for illegal expenditures; b) the badges of good faith in determining the liability of approving and certifying officers; c) the body of jurisprudence which inequitably absolve responsible persons from liability to return based on good faith; and d) the nature of the payees' participation and their liability for return and the acceptable exceptions as regards the liability to return disallowed amounts on the bases of unjust enrichment and *solutio indebiti*. The discussion on these matters will serve as the foundation of the rules of return that will be laid down in this decision.

A. *Bases for Responsibility/Liability*

The Budget Reform Decree of 1977⁴⁷ (PD 1177) provides:

SEC. 49. *Liability for Illegal Expenditures.* — Every expenditure or obligation authorized or incurred in violation of the provisions of this Decree or of the general and special provisions contained in the annual General or other Appropriations Act shall be void. Every payment made in violation of said provisions shall be illegal and every official or employee authorizing or making such payment, or taking part therein, and every person receiving such payment shall be jointly and severally liable to the Government for the full amount so paid or received.

Any official or employee of the Government knowingly incurring any obligation, or authorizing any expenditure in violation of the provisions herein, or taking part therein, shall be dismissed from the service, after due notice and hearing by the duly authorized appointing official. If the appointing official is other than the President and should he fail to remove such official or employee, the President may exercise the power of removal. (Underscoring supplied)

Parenthetically, the Government Auditing Code of the Philippines⁴⁸ (PD 1445), promulgated a year after PD 1177, provides:

SECTION 102. *Primary and secondary responsibility.* — (1) The head of any agency of the government is immediately and primarily responsible for all government funds and property pertaining to his agency.

⁴⁷ Presidential Decree No. 1177, July 30, 1977.

⁴⁸ Presidential Decree No. 1445, June 11, 1978.

(2) Persons entrusted with the possession or custody of the funds or property under the agency head shall be immediately responsible to him, without prejudice to the liability of either party to the government.

SECTION 103. *General liability for unlawful expenditures.* — Expenditures of government funds or uses of government property in violation of law or regulations shall be a personal liability of the official or employee found to be directly responsible therefor.

SECTION 104. *Records and reports required by primarily responsible officers.* — The head of any agency or instrumentality of the national government or any government-owned or controlled corporation and any other self-governing board or commission of the government shall exercise the diligence of a good father of a family in supervising accountable officers under his control to prevent the incurrence of loss of government funds or property, otherwise he shall be jointly and solidarily liable with the person primarily accountable therefore. The treasurer of the local government unit shall likewise exercise the same degree of supervision over accountable officers under his supervision otherwise, he shall be jointly and solidarily liable with them for the loss of government funds or property under their control.

SECTION 105. *Measure of liability of accountable officers.* — (1) Every officer accountable for government property shall be liable for its money value in case of improper or unauthorized use or misapplication thereof, by himself or any person for whose acts he may be responsible. He shall likewise be liable for all losses, damages, or deterioration occasioned by negligence in the keeping or use of the property whether or not it be at the time in his actual custody.

(2) Every officer accountable for government funds shall be liable for all losses resulting from the unlawful deposit, use, or application thereof and for all losses attributable to negligence in the keeping of the funds.

These provisions of PD 1177 and PD 1445 are substantially reiterated in the Administrative Code of 1987, thus:

SECTION 51. Primary and Secondary Responsibility.—(1) The head of any agency of the Government is immediately and primarily responsible for all government funds and property pertaining to his agency;

(2) Persons entrusted with the possession or custody of the funds or property under the agency head shall be immediately responsible to him, without prejudice to the liability of either party to the Government.

SECTION 52. General Liability for Unlawful Expenditures.— Expenditures of government funds or uses of government property in violation of law or regulations shall be a personal liability of the official or employee found to be directly responsible therefor.⁴⁹

⁴⁹ Chapter 9, Subtitle B, Title I, Book V.

X X X X

SECTION 40. Certification of Availability of Funds.—No funds shall be disbursed, and no expenditures or obligations chargeable against any authorized allotment shall be incurred or authorized in any department, office or agency without first securing the certification of its Chief Accountant or head of accounting unit as to the availability of funds and the allotment to which the expenditure or obligation may be properly charged.

No obligation shall be certified to accounts payable unless the obligation is founded on a valid claim that is properly supported by sufficient evidence and unless there is proper authority for its incurrence. Any certification for a non-existent or fictitious obligation and/or creditor shall be considered void. The certifying official shall be dismissed from the service, without prejudice to criminal prosecution under the provisions of the Revised Penal Code. Any payment made under such certification shall be illegal and every official authorizing or making such payment, or taking part therein or receiving such payment, shall be jointly and severally liable to the government for the full amount so paid or received.

X X X X

SECTION 43. Liability for Illegal Expenditures. — Every expenditure or obligation authorized or incurred in violation of the provisions of this Code or of the general and special provisions contained in the annual General or other Appropriations Act shall be void. Every payment made in violation of said provisions shall be illegal and every official or employee authorizing or making such payment, or taking part therein, and every person receiving such payment shall be jointly and severally liable to the Government for the full amount so paid or received.

Any official or employee of the Government knowingly incurring any obligation, or authorizing any expenditure in violation of the provisions herein, or taking part therein, shall be dismissed from the service, after due notice and hearing by the duly authorized appointing official. If the appointing official is other than the President and should he fail to remove such official or employee, the President may exercise the power of removal.⁵⁰ (Underscoring supplied)

It is well-settled that administrative, civil, or even criminal liability, as the case may be, may attach to persons responsible for unlawful expenditures, as a wrongful act or omission of a public officer.⁵¹ It is in recognition of these possible results that the Court is keenly mindful of the importance of approaching the question of personal liability of officers and payees to return the disallowed amounts through the lens of these different types of liability.

⁵⁰ Book VI, Chapter 5.

⁵¹ *Domingo v. Rayala*, G.R. Nos. 155831, 155840 & 158700, February 18, 2008, 546 SCRA 90, 112: “Basic in the law of public officers is the *three-fold liability rule*, which states that the wrongful acts or omissions of a public officer may give rise to civil, criminal and administrative liability. x x x”

Correspondingly, personal liability to return the disallowed amounts must be understood as civil liability⁵² based on the loss incurred by the government because of the transaction, while administrative or criminal liability may arise from irregular or unlawful acts attending the transaction. This should be the starting point of determining who must return. The existence and amount of the loss and the nature of the transaction must dictate upon whom the liability to return is imposed.

Sections 38 and 39, Chapter 9, Book I of the Administrative Code of 1987 cover the civil liability of officers for acts done in performance of official duties:

SECTION 38. Liability of Superior Officers. — (1) A public officer shall not be **civilly liable** for acts done in the performance of his official duties, unless there is a clear showing of **bad faith, malice or gross negligence.**

x x x x

(3) A head of a department or a superior officer shall not be civilly liable for the wrongful acts, omissions of duty, negligence, or misfeasance of his subordinates, unless he has actually authorized by written order the specific act or misconduct complained of.

SECTION 39. Liability of Subordinate Officers.—No subordinate officer or employee shall be **civilly liable** for acts done by him in **good faith** in the performance of his duties. However, he shall be liable for willful or negligent acts done by him which are contrary to law, morals, public policy and good customs even if he acted under orders or instructions of his superiors.⁵³ (Emphasis and underscoring supplied)

By the very language of these provisions, the liability for unlawful expenditures is civil. Nonetheless, since these provisions are situated in

⁵² See *Suarez v. Commission on Audit*, G.R. No. 131077, August 7, 1998, 294 SCRA 96, 108-109, which treats liability for disallowance as civil liability, *viz.*,

In holding petitioner liable for having failed to show good faith and diligence in properly performing her functions as a member of the PBAC, Respondent COA misconstrued Sec. 29.2 of the Revised CSB Manual. The aforesaid section requires a clear showing of bad faith, malice or gross negligence before a public officer may be held civilly liable for acts done in the performance of his or her official duties. The same principle is reiterated in Book I, Chapter 9, Section 38 of the 1987 Administrative Code. A public officer is presumed to have acted in the regular performance of his/her duty; therefore, he/she cannot be held civilly liable, unless contrary evidence is presented to overcome the presumption. There is no such evidence in this case. From the foregoing, it is as clear as day that Respondent COA committed grave abuse of discretion in including petitioner among those liable for the subject disallowance. (Underscoring supplied)

⁵³ See *Eslao v. Commission on Audit*, G.R. No. 89745, April 8, 1991, 195 SCRA 730 (procurement of plans and designs for extension of school building); *Andres v. Commission on Audit*, G.R. No. 94476, September 26, 1991, 201 SCRA 780 (overpricing in purchase of school desks); *Arriola v. Commission on Audit*, G.R. No. 90364, September 30, 1991, 202 SCRA 147 (overpricing of Batangas Water Well Project); *Orocio v. Commission on Audit*, G.R. No. 75959, August 31, 1992, 213 SCRA 109 (legal officer sought to be held liable for hospitalization costs advanced by National Power Corporation based on his legal opinion that the agency is liable under quasi-delict for the accident in Malaya Thermal Plant); *Suarez v. Commission on Audit*, *id.*

Chapter 9, Book I of the Administrative Code of 1987 entitled "General Principles Governing Public Officers," the liability is inextricably linked with the administrative law sphere. Thus, the civil liability provided under these provisions is hinged on the fact that the public officers performed his official duties with bad faith, malice, or gross negligence.

The participation of these public officers, such as those who approve or certify unlawful expenditures, *vis-à-vis* the incurrance of civil liability is recognized by the COA in its issuances, beginning from COA Circular No. 81-156⁵⁴ dated January 19, 1981 (Old CSB Manual):

- C. Liability of Head of Agency, Accountable Officer and Other Officials and Employees
1. The liability of an official or employee for disallowances or discrepancies in accounts audited shall depend upon his participation in the transaction involved. **The accountability and responsibility of officials and employees for government funds and property** as provided in Sections 101 and 102 of P.D.1445 **do not necessarily give rise to liability for loss or government funds or damage to property.**

x x x x

III. GENERAL INSTRUCTIONS:

x x x x

5. The Head of Agency, who is immediately and primarily responsible for all government funds and property pertaining to his agency, shall see that the audit suspensions/disallowances are immediately settled. (Emphasis and underscoring supplied)

Subsequent to the Old CSB Manual, COA Circular No. 94-001⁵⁵ dated January 20, 1994 (MCSB) distinguished liability from responsibility and accountability, and provided the parameters for enforcing the civil liability to refund disallowed amounts:

SECTION 3, DEFINITION OF TERMS

The following terms shall be understood in the sense herein defined, unless the context otherwise indicates:

x x x x

3.10 LIABILITY. – **A personal obligation arising from an audit disallowance/charge which may be satisfied through**

⁵⁴ Restating the Requirements for the Use of the Certificate of Settlement and Balances and Providing Guidelines on Its Issuance Including the Accounting Treatment Thereof.

⁵⁵ Prescribing the Use of the Manual on Certificate of Settlement and Balances (Revised 1993).

payment or restitution as determined by competent authority and in accordance with law.

X X X X

3.12 **PECUNIARY LIABILITY.** – the amount of **consequential loss or damage** arising from an act or omission and for which restitution, reparation, or indemnification is required.

X X X X

SECTION 18. SETTLEMENT OF DISALLOWANCES AND CHARGES

Disallowances and charges shall be settled through submission of the required explanation/justification and/or documentations by the person or persons determined by the auditor to be liable therefor, or **by payment of the amount disallowed in audit; or by such other applicable modes of extinguishment of obligation** as provided by law.

X X X X

SECTION 34. ENFORCEMENT OF CIVIL LIABILITY.

To enforce civil liability, the auditor shall submit a report on the disallowances and charges to the COA Chairman (Thru: The Director concerned), requesting that the matter be referred to the Office of the Solicitor General (National Government agencies), or to the Office of the Government Corporate Counsel (for government-owned or controlled corporations) or to the appropriate Provincial or City Attorney (in the case of local government units). The report shall be duly supported with certified copies of the subsidiary records, the CSB, and the payrolls/vouchers/collections disallowed and charged together with all necessary documents, official receipts for the filing of the appropriate civil suit. (Emphasis and underscoring supplied)

These provisions are also substantially reproduced in COA Circular No. 2009-006⁵⁶ dated September 15, 2009 (RRSA) and the 2009 Revised Rules of Procedure of the Commission on Audit (RRPCOA). Under Section 4 of the RRSA:

4.17 **Liability** – a **personal obligation** arising from an audit disallowance or charge which may be **satisfied through payment or restitution** as determined by competent authority **or by other modes of extinguishment of obligation** as provided by law.

X X X X

⁵⁶ Prescribing the Use of the Rules and Regulations on Settlement of Accounts.

- 4.24 **Settlement** – refers to the payment/restitution or other act of extinguishing an obligation as provided by law in satisfaction of the liability under an ND/NC, or in compliance with the requirements of an NS, as defined in these Rules. (Emphasis and underscoring supplied)

The procedure for the enforcement of civil liability through the withholding of payment of money due to persons liable and through referral to the OSG is found in Rule XIII of the RRPCOA, particularly, Section 3 and Section 6.

B. Badges of good faith in the determination of approving/certifying officers' liability

As mentioned, the civil liability under Sections 38 and 39 of the Administrative Code of 1987, including the treatment of their liability as solidary under Section 43, arises only upon a showing that the approving or certifying officers performed their official duties with bad faith, malice or gross negligence. For errant approving and certifying officers, the law justifies holding them solidarily liable for amounts they may or may not have received considering that the payees would not have received the disallowed amounts if it were not for the officers' irregular discharge of their duties, as further emphasized by Senior Associate Justice Estela M. Perlas-Bernabe (Justice Bernabe). This treatment contrasts with that of individual payees who, as will be discussed below, can only be liable to return the full amount they were paid, or they received pursuant to the principles of *solutio indebiti* and unjust enrichment.

Notably, the COA's regulations relating to the settlement of accounts and balances⁵⁷ illustrate when different actors in an audit disallowance can be held liable either based on their having custody of the funds, and having approved or certified the expenditure. The Court notes that officers referred to under Sections 19.1.1 and 19.1.3 of the MCSB, and Sections 16.1.1 and 16.1.3 of the RRSA, may nevertheless be held liable based on the extent of their certifications contained in the forms required by the COA under Section 19.1.2 of MCSB, and Sections 16.1.2 of the RRSA. To ensure that public officers who have in their favor the unrebutted presumption of good faith and regularity in the performance of official duty, or those who can show that the circumstances of their case prove that they acted in good faith and with diligence, the Court adopts Associate Justice Marvic M.V.F. Leonen's (Justice Leonen) proposed circumstances or badges⁵⁸ for the determination of whether an authorizing officer exercised the diligence of a good father of a family:

⁵⁷ See Section 19 of the MCSB and Section 16 of the RRSA.

⁵⁸ Separate Concurring Opinion of Justice Leonen, pp. 8, 13.



x x x For one to be absolved of liability the following requisites [may be considered] : (1) Certificates of Availability of Funds pursuant to Section 40 of the Administrative Code, (2) In-house or Department of Justice legal opinion, (3) that there is no precedent disallowing a similar case in jurisprudence, (4) that it is traditionally practiced within the agency and no prior disallowance has been issued, [or] (5) with regard the question of law, that there is a reasonable textual interpretation on its legality.⁵⁹

Thus, to the extent that these badges of good faith and diligence are applicable to both approving and certifying officers, these should be considered before holding these officers, whose participation in the disallowed transaction was in the performance of their official duties, liable. The presence of any of these factors in a case may tend to uphold the presumption of good faith in the performance of official functions accorded to the officers involved, which must always be examined relative to the circumstances attending therein.

C. Cases absolving recipients' liability to return based on good faith

As for the civil liability of payees, certain jurisprudence provides that passive recipients or payees in good faith are excused from returning the amounts they received.

In the 1998 case of *Blaquera v. Alcala*,⁶⁰ (*Blaquera*), the Court relied on good faith to excuse the return of the disallowed amounts. The petition was brought by officials and employees of several government agencies assailing the disallowance of the excess productivity incentive benefits given in 1992, as rationalized by Administrative Orders Nos. 29 and 268. In excusing both the officers and the payees from the liability to return the benefits already received, the Court held:

Untenable is petitioners' [payees'] contention that the herein respondents be held personally liable for the refund in question. Absent a showing of bad faith or malice, public officers are not personally liable for damages resulting from the performance of official duties.

Every public official is entitled to the presumption of good faith in the discharge of official duties. Absent any showing of bad faith or malice, there is likewise a presumption of regularity in the performance of official duties.

In upholding the constitutionality of AO 268 and AO 29, the Court reiterates the well-entrenched doctrine that "in interpreting statutes, that which will avoid a finding of unconstitutionality is to be preferred."

⁵⁹ Id. at 8.

⁶⁰ Supra note 41.

Considering, however, that all the parties here acted in good faith, we cannot countenance the refund of subject incentive benefits for the year 1992, which amounts the petitioners have already received. **Indeed, no indicia of bad faith can be detected under the attendant facts and circumstances. The officials and chiefs of offices concerned disbursed such incentive benefits in the honest belief that the amounts given were due to the recipients and the latter accepted the same with gratitude, confident that they richly deserve such benefits.** (Emphasis, underscoring supplied and citations omitted)⁶¹

The decision refused to shift the economic burden of returning the amounts the payees received to the officers who authorized or approved the grant of the benefits. Instead, the decision opted to excuse the return altogether. While the discussion on the presumption of good faith and regularity in the performance of official duties can easily be inferred as anchored on Section 38 of the Administrative Code of 1987, no statutory basis was provided for the excuse of payees from the obligation to return, leading to the conclusion that it is merely a judge made rule.

The ruling in *Blaquera* was subsequently relied upon by the Court in the cases of *De Jesus v. Commission on Audit*⁶² (*De Jesus*), *Kapisanan ng mga Manggagawa sa Government Service Insurance System (KMG) v. Commission on Audit*⁶³ and *Home Development Mutual Fund v. COA*⁶⁴ (*HDFM*), to excuse the return from all persons responsible. *De Jesus*, specifically dealing with the payment of allowances and bonuses authorized under a 1995 Local Water Utilities Administration Resolution to members of an *interim* Board of Directors (BOD) of a water district, is still cited as authority in benefits disallowances of water district employees. *De Jesus* and *HDFM* were also cited by petitioners herein in support of their argument.⁶⁵

However, in the 2002 case of *National Electrification Administration v. Commission on Audit*⁶⁶ (*NEA*) involving the accelerated implementation of the salary increase in the Salary Standardization II in violation of law and executive issuances, the Court held both the approving officers and the payees as solidarily liable on the following explanation:

This case would not have arisen had N[E]A complied in good faith with the directives and orders of the President in the implementation of the last phase of the Salary Standardization Law II. The directives and orders are clearly and manifestly in accordance with all relevant laws. The reasons advanced by NEA in disregarding the President's directives and orders are patently flimsy, even ill[-]conceived. This cannot be countenanced as it will

⁶¹ *Rotaras v. Commission on Audit*, G.R. No. 211999, August 20, 2019, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65585>>.

⁶² *Supra* note 41.

⁶³ G.R. No. 150769, August 31, 2004, 437 SCRA 371.

⁶⁴ *Supra* note 41.

⁶⁵ *Rollo*, p. 12.

⁶⁶ G.R. No. 143481, February 15, 2002, 377 SCRA 223.

result in chaos and disorder in the executive branch to the detriment of public service.⁶⁷

Thus, the petition filed by the NEA was denied, and the Decision of the COA⁶⁸ was affirmed by the Court. The affirmed decision directed “all NEA officials and employees who received compensation and allowances in violation of the provisions of Executive Order No. 389 and National Budget Circular No. 458 x x x to refund.”⁶⁹

In the 2006 case of *Casal v. Commission on Audit*⁷⁰ (*Casal*), the Court’s decisions in *Blaquera* and *NEA* were both relied upon, but the Court reached an outcome different from those reached in both cases. Finding that the non-compliance by the officers with relevant Presidential issuances amounted to gross negligence which could not be deemed a mere lapse consistent with the presumption of good faith, the ruling in *NEA* was applied as to the petitioners-approving officers, while the ruling in *Blaquera* was applied to excuse the payees. Thus, it was *Casal* that originated the peculiar outcome in disallowance cases where payees were excused from liability, while the solidary co-debtors, National Museum officials, were made solely liable for the entire amount of the disallowance.

This pronouncement in *Casal* further evolved in jurisprudence when the Court nuanced the same in the 2012 case of *Manila International Airport Authority v. Commission on Audit*⁷¹ (*MIAA*) and the 2014 case of *Technical Education and Skills Development Authority v. Commission on Audit*⁷² (*TESDA*). In these cases, the Court also considered the good faith of both payees and officers in determining who must return AND the extent of what must be returned. As ruled therein, a payee in good faith may retain what has been paid. In this regard, the government effectively absorbs the excess paid to good faith payees, and approving and/or certifying officers in bad faith were required to return only to the extent of the amounts they received.

In *MIAA*, the Court found that the amounts involved were properly disallowed signing bonus. Good faith payees were excused but responsible officers and members of the BOD were made to refund, but only the amounts they received, thus:

Clearly, good faith is anchored on an honest belief that one is legally entitled to the benefit. In this case, the MIAA employees who had no

⁶⁷ Id. at 240.

⁶⁸ The COA in its Decision stated: “Thus, when the NEA effected full implementation of the new salary schedule on January 1, 1997, instead of November 1, 1997, NEA was, then, clearly acting in violation of the mandates of the law. Consequently, said wrongful implementation must be struck down for being baseless and unlawful, and **all its employees who received the undue increases must necessarily return the amount thus received.**” id. at 227-228; emphasis and underscoring supplied.

⁶⁹ Id. at 224.

⁷⁰ G.R. No. 149633, November 30, 2006, 509 SCRA 138.

⁷¹ G.R. No. 194710, February 14, 2012, 665 SCRA 653.

⁷² G.R. No. 204869, March 11, 2014, 718 SCRA 402.

participation in the approval and release of the disallowed benefit accepted the same on the assumption that Resolution No. 2003-067 was issued in the valid exercise of the power vested in the Board of Directors under the MIAA charter. As they were not privy as to reason and motivation of the Board of Directors, they can properly rely on the presumption that the former acted regularly in the performance of their official duties in accepting the subject benefit. Furthermore, their acceptance of the disallowed grant, in the absence of any competent proof of bad faith on their part, will not suffice to render liable for a refund.

The same is not true as far as the Board of Directors. Their authority under Section 8 of the MIAA charter is not absolute as their exercise thereof is "subject to existing laws, rules and regulations" and they cannot deny knowledge of *SSS v. COA* and the various issuances of the Executive Department prohibiting the grant of the signing bonus. In fact, they are duty-bound to understand and know the law that they are tasked to implement and their unexplained failure to do so barred them from claiming that they were acting in good faith in the performance of their duty. The presumptions of "good faith" or "regular performance of official duty" are disputable and may be contradicted and overcome by other evidence.

Granting that the benefit in question is a CNA Incentive, MIAA's Board of Directors has no authority to include its members, the members of the Board Secretariat, ExeCom and other employees not occupying rank-and-file positions in the grant. Indeed, this is an open and contumacious violation of PSLMC Resolution No. 2 and A.O. No. 135, which were unequivocal in stating that only rank-and-file employees are entitled to the CNA Incentive. Given their repeated invocation of these rules to justify the disallowed benefit, they cannot feign ignorance of these rules. That they deliberately ignored provisions of PSLMC Resolution No. 2 and A.O. No. 135 that they failed to observe bolsters the finding of bad faith against them.

The same is true as far as the concerned officers of MIAA are concerned. They cannot approve the release of funds and certify as to the legality of the subject disbursement knowing that it is a signing bonus. Alternatively, if they acted on the belief that the benefit is a CNA Incentive, they were in no position to approve its funding without assuring themselves that the conditions imposed by PSLMC Resolution No. 2 are complied with. They were also not in the position to release payment to the members of the Board of Directors, ExeCom and employees who do not occupy rank-and-file positions considering the express language of PSLMC Resolution No. 2.

Simply put, these individuals cannot honestly claim that they have no knowledge of the illegality of their acts. Thus, this Court finds that a refund of the amount of ₱30,000.00 received by each of the responsible officers and members of MIAA's Board of Directors is in order.⁷³ (Underscoring supplied and citations omitted)

In 2015, the Court promulgated the decision in *Silang*⁷⁴ which followed the rule in *Casal*. Parenthetically, the COA rationalizes the inequitable

⁷³ Supra note 71, at 678-679.

⁷⁴ Supra note 44.

outcome it reached in this case as being in deference to *Silang*.⁷⁵ *Silang* involves the disallowance of CNA incentives granted to the employees of the Local Government Unit of Tayabas, Quezon. The case distinguished the liability to return based on the good faith of the persons held liable in the ND. The Court held that Mayor Silang, the *Sanggunian*, and the officers of the employee's organization cannot be deemed to have acted in good faith. Therefore, only passive recipients of the disallowed benefits were excused from the responsibility to return on the basis of their good faith "anchored on an honest belief that one is legally entitled to the benefit, as said employees did so believe in this case."⁷⁶ The Court stated that the payees "should not be held liable to refund what they had unwittingly received."⁷⁷

As *Silang* held that "passive recipients or payees of disallowed salaries, emoluments, benefits, and other allowances need not refund such disallowed amounts **if they received the same in good faith**," it relies upon the cases of *Lumayna v. COA*⁷⁸ (*Lumayna*) and *Querubin v. The Regional Cluster Director Legal and Adjudication Office, COA Regional Office VI, Pavia, Iloilo City*⁷⁹ (*Querubin*). Petitioners herein also cite *Lumayna* to support their claim.⁸⁰

Examining *Lumayna*, the Court excused all petitioners (including the petitioning approving and certifying officers — Municipal Mayor, Municipal Accountant, and Budget Officer) from liability to return the disallowed amounts despite the affirmance of the disallowance.

The same outcome was reached in *Querubin* where the members of the BOD of the Bacolod City Water District were excused from returning the benefits they themselves approved and received for having been received in good faith. Both these cases also rely upon *Blaquera* as jurisprudential support to excuse the return.

In sum, the evolution of the "good faith rule" that excused the passive recipients in good faith from return began in *Blaquera* (1998) and *NEA* (2002), where the good faith of both officers and payees were determinative of their liability to return the disallowed benefits — the good faith of all

⁷⁵ *Rollo*, pp. 27-28.

⁷⁶ *Silang v. Commission on Audit*, supra note 44, at 129.

⁷⁷ *Id.*

⁷⁸ Supra note 41, at 182-183. The relevant portion reads:

Furthermore, granting *arguendo* that the municipality's budget adopted the incorrect salary rates, this error or mistake was not in any way indicative of bad faith. Under prevailing jurisprudence, mistakes committed by a public officer are not actionable, absent a clear showing that he was motivated by malice or gross negligence amounting to bad faith. It does not simply connote bad moral judgment or negligence. Rather, there must be some dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of a sworn duty through some motive or intent, or ill will. It partakes of the nature of fraud and contemplates a state of mind affirmatively operating with furtive design or some motive of self-interest or ill will for ulterior purposes. As we see it, the disbursement of the 5% salary increase was done in good faith. Accordingly, petitioners need not refund the disallowed disbursement in the amount of P895,891.50. (Citations omitted and underscoring supplied)

⁷⁹ G.R. No. 159299, July 7, 2004, 433 SCRA 769.

⁸⁰ *Rollo*, pp. 12-13.

parties resulted in excusing the return altogether in *Blaquera*, and the bad faith of officers resulted in the return by all recipients in *NEA*. The rule morphed in *Casal* (2006) to distinguish the liability of the payees and the approving and/or certifying officers for the return of the disallowed amounts. In *MIAA* (2012) and *TESDA* (2014), the rule was further nuanced to determine the extent of what must be returned by the approving and/or certifying officers as the government absorbs what has been paid to payees in good faith. This was the state of jurisprudence then which led to the ruling in *Silang* (2015) which followed the rule in *Casal* that payees, as passive recipients, should not be held liable to refund what they had unwittingly received in good faith, while relying on the cases of *Lumayna* and *Querubin*.

The history of the rule as shown evinces that the original formulation of the “good faith rule” excusing the return by payees based on good faith was not intended to be at the expense of approving and/or certifying officers. The application of this judge made rule of excusing the payees and then placing upon the officers the responsibility to refund amounts they did not personally receive, commits an inadvertent injustice.

D. Nature of payee participation

Verily, excusing payees from return on the basis of good faith has been previously recognized as an exception to the laws on liability for unlawful expenditures. However, being civil in nature, the liability of officers and payees for unlawful expenditures provided in the Administrative Code of 1987 will have to be consistent with civil law principles such as *solutio indebiti* and unjust enrichment. These civil law principles support the propositions that (1) the good faith of payees is not determinative of their liability to return; and (2) when the Court excuses payees on the basis of good faith or lack of participation, it amounts to a remission of an obligation at the expense of the government.

To be sure, the application of the principles of unjust enrichment and *solutio indebiti* in disallowed benefits cases does not contravene the law on the general liability for unlawful expenditures. In fact, these principles are consistently applied in government infrastructure or procurement cases which recognize that a payee contractor or approving and/or certifying officers cannot be made to shoulder the cost of a correctly disallowed transaction when it will unjustly enrich the government and the public who accepted the benefits of the project.⁸¹

These principles are also applied by the Court with respect to disallowed benefits given to government employees. In characterizing the obligation of retirees-payees who received benefits properly disallowed by the

⁸¹ See *Melchor v. Commission on Audit*, G.R. No. 95398, August 16, 1991, 200 SCRA 704, 714, citing *Eslao v. Commission on Audit*, supra note 53, at 739. This case applies the same principle of unjust enrichment in cases where the contractor seeks payment to this case where reimbursement is sought from the official concerned; see also *Andres v. Commission on Audit*, supra note 53.

COA, the Resolution in the 2004 case of *Government Service Insurance System v. Commission on Audit*⁸² stated:

Anent the benefits which were improperly disallowed, the same rightfully belong to respondents without qualification. As for benefits which were justifiably disallowed by the COA, the same were erroneously granted to and received by respondents who now have the obligation to return the same to the System.

It cannot be denied that respondents were recipients of benefits that were properly disallowed by the COA. These COA disallowances would otherwise have been deducted from their salaries, were it not for the fact that respondents retired before such deductions could be effected. The GSIS can no longer recover these amounts by any administrative means due to the specific exemption of retirement benefits from COA disallowances. Respondents resultantly retained benefits to which they were not legally entitled which, in turn, gave rise to an obligation on their part to return the amounts under the principle of *solutio indebiti*.

Under Article 2154 of the Civil Code, if something is received and unduly delivered through mistake when there is no right to demand it, the obligation to return the thing arises. Payment by reason of mistake in the construction or application of a doubtful or difficult question of law also comes within the scope of *solutio indebiti*.

X X X X

While the GSIS cannot directly proceed against respondents' retirement benefits, it can nonetheless seek restoration of the amounts by means of a proper court action for its recovery. Respondents themselves submit that this should be the case, although any judgment rendered therein cannot be enforced against retirement benefits due to the exemption provided in Section 39 of RA 8291. However, there is no prohibition against enforcing a final monetary judgment against respondents' other assets and properties. This is only fair and consistent with basic principles of due process.⁸³ (Citations omitted)

The COA similarly applies the principle of *solutio indebiti* to require the return from payees regardless of good faith. The COA Decisions in the cases of *Jalbuena v. COA*,⁸⁴ *DBP v. COA*,⁸⁵ and *Montejo v. COA*,⁸⁶ are examples to that effect. In the instant case, the COA Decision expressly articulated this predicament of exempting recipients who are in good faith and expressed that the same is not consistent with the concept of *solutio indebiti* and the principle of unjust enrichment:

⁸² G.R. Nos. 138381 & 141625, November 10, 2004, 441 SCRA 532.

⁸³ Id. at 548-550.

⁸⁴ G.R. No. 218478, June 19, 2018, p. 2, (Unsigned Resolution), [*En Banc*].

⁸⁵ G.R. No. 210838, July 3, 2018, accessed at <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64358>>.

⁸⁶ G.R. No. 232272, July 24, 2018, accessed at <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64480>>.



Clearly, the approving officer and each employee who received the disallowed benefit are obligated, jointly and severally, to refund the amount so received. The Supreme Court has ruled that by way of exception, however, passive recipients or payees of disallowed salaries, emoluments, benefits and other allowances need not refund such disallowed amounts if they received the same in good faith. Stated otherwise, government officials and employees who unwittingly received disallowed benefits or allowances are not liable for their reimbursement if there is no finding of bad faith.

The result of exempting recipients who are in good faith from refunding the amount received is that the approving officers are made to shoulder the entire amount paid to the employees. This is perhaps an inequitable burden on the approving officers, considering that they are or remain exposed to administrative and even criminal liability for their act in approving such benefits, and is not consistent with the concept of *solutio indebiti* and the principle of unjust enrichment.

Nevertheless, in deference to the Supreme Court ruling in *Silang v. COA*, the Commission rules that government officials and employees who unwittingly received disallowed benefits or allowances are not liable for their reimbursement if there is no finding of bad faith. Public officials who are directly responsible for or participated in making illegal expenditures shall be solidarily liable for their reimbursement.⁸⁷ (Emphasis and underscoring supplied)

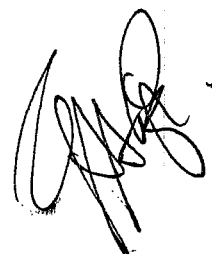
With the liability for unlawful expenditures properly understood, payees who receive undue payment, regardless of good faith, are liable for the return of the amounts they received. Notably, in situations where officers are covered by Section 38 of the Administrative Code of 1987 either by presumption or by proof of having acted in good faith, in the regular performance of their official duties, and with the diligence of a good father of a family, payees remain liable for the disallowed amount unless the Court excuses the return. For the same reason, any amounts allowed to be retained by payees shall reduce the solidary liability of officers found to have acted in bad faith, malice, and gross negligence. In this regard, Justice Bernabe coins the term “net disallowed amount” to refer to the total disallowed amount minus the amounts excused to be returned by the payees.⁸⁸ Likewise, Justice Leonen is of the same view that the officers held liable have a solidary obligation only to the extent of what should be refunded and this does not include the amounts received by those absolved of liability.⁸⁹ In short, the net disallowed amount shall be solidarily shared by the approving/authorizing officers who were clearly shown to have acted in bad faith, with malice, or were grossly negligent.

Consistent with the foregoing, the Court shares the keen observation of Associate Justice Henri Jean Paul B. Inting (Justice Inting) that payees generally have no participation in the grant and disbursement of employee

⁸⁷ *Rollo*, pp. 27-28.

⁸⁸ Separate Concurring Opinion of Justice Bernabe, p. 13.

⁸⁹ Separate Concurring Opinion of Justice Leonen, p. 12.



benefits, but their liability to return is based on *solutio indebiti* as a result of the mistake in payment. Save for collective negotiation agreement incentives carved out in the sense that the employees are not considered passive recipients on account of their participation in the negotiated incentives as in *Dubongco v. COA*⁹⁰ (*Dubongco*), payees are generally held in good faith for lack of participation, with their participation limited to “accept[ing] the same with gratitude, confident that they richly deserve such benefits.”⁹¹

On the other hand, the RRSA provides:

SECTION 16. DETERMINATION OF PERSONS RESPONSIBLE/LIABLE

16.1 The liability of public officers and other persons for audit disallowances/charges shall be determined on the basis of (a) the nature of the disallowance/charge; (b) the duties and responsibilities or obligations of officers/employees concerned; (c) the extent of their participation in the disallowed/charged transaction; and (d) the amount of damage or loss to the government, thus:

x x x x

16.1.5 The **payee** of an expenditure shall be personally liable for a disallowance where the ground thereof is his failure to submit the required documents, and the Auditor is convinced that the disallowed transaction did not occur or has no basis in fact.

16.3 The liability of persons determined to be liable under an ND/NC shall be **solidary** and the Commission may go against any person liable without prejudice to the latter’s claim against the rest of the persons liable.

To recount, as noted from the cases earlier mentioned, retention by passive payees of disallowed amounts received in good faith has been justified on said payee’s “lack of participation in the disbursement.” However, this justification is unwarranted because a payee’s mere receipt of funds not being part of the performance of his official functions still equates to him unduly benefiting from the disallowed transaction; this gives rise to his liability to return.

As may be gleaned from Section 16 of the RRSA, “the extent of their participation [or involvement] in the disallowed/charged transaction” is one of the determinants for liability. The Court has, in the past, taken this to mean that payees should be absolved from liability for lack of participation in the approval and disbursement process. However, under the MCSB and the RRSA, a “transaction” is defined as “[a]n event or condition the recognition

⁹⁰ G.R. No. 237813, March 5, 2019, accessed at <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65051>>.

⁹¹ *Blaquera v. Alcala*, supra note 41, at 448.



of which gives rise to an entry in the accounting records.”⁹² To a certain extent, therefore, payees always do have an indirect “involvement” and “participation” in the transaction where the benefits they received are disallowed because the accounting recognition of the release of funds and their mere receipt thereof results in the debit against government funds in the agency’s account and a credit in the payees’ favor. Notably, when the COA includes payees as persons liable in an ND, the nature of their participation is stated as “received payment.”

Consistent with this, “the amount of damage or loss [suffered by] the government [in the disallowed transaction],”⁹³ another determinant of liability, is also indirectly attributable to payees by their mere receipt of the disallowed funds. This is because the loss incurred by the government stated in the ND as the disallowed amount corresponds to the amounts received by the payees. Thus, cogent with the application of civil law principles on unjust enrichment and *solutio indebiti*, the return by payees primarily rests upon this conception of a payee’s undue receipt of amounts as recognized **within the government auditing framework.** In this regard, it bears repeating that the extent of liability of a payee who is a passive recipient is only with respect to the transaction where he participated or was involved in, *i.e.*, only to the extent of the amount that he unduly received. This limitation on the scope of a payee’s participation as only corresponding to the amount he received therefore forecloses the possibility that a passive recipient may be held solidarily liable with approving/certifying officers beyond the amount that he individually received.

The exception to payee liability is when he shows that he is, as a matter of fact or law, actually entitled to what he received, thus removing his situation from Section 16.1.5 of the RRSA above and the application of the principle of *solutio indebiti*. This includes payees who can show that the amounts received were granted in consideration for services actually rendered. In such situations, it cannot be said that any undue payment was made. Thus, the government incurs no loss in making the payment that would warrant the issuance of a disallowance. Neither payees nor approving and certifying officers can be held civilly liable for the amounts so paid, despite any irregularity or procedural mistakes that may have attended the grant and disbursement.

Returning to the earlier cases of *Blaquera*, *Lumayna*, and *Querubin*, the good faith of all parties was basis to excuse the return of the entire obligation from any of the debtors in the case. Thus, either the COA or the Court through their respective decisions exercised an act of liberality by renouncing the enforcement of the obligation as against payees — persons who received the moneys corresponding to the disallowance, a determinate “respective share” in the resulting solidary obligation. This redounds to the benefit of officers.

⁹² Sections 3.19 and 4.28 of the MCSB and the RRSA, respectively.

⁹³ The RRSA, Section 16.1.

Clearly, therefore, cases which result in a clear transfer of economic burden cannot have been the intention of the law in exacting civil liability from payees in disallowance cases. Where the ultimate beneficiaries are excused, what can only be assumed as the legislative policy of achieving the highest possibility of recovery for the government unwittingly sanctions unjust enrichment.

In *Dubongco*,⁹⁴ the Court affirmed the disallowance of CNA incentives sourced out of CARP funds. Even as it recognized that the payees therein committed no fraud, the Court ordered the return, thus:

Finally, the payees received the disallowed benefits with the mistaken belief that they were entitled to the same. If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes. A constructive trust is substantially an appropriate remedy against unjust enrichment. It is raised by equity in respect of property, which has been acquired by fraud, *or where, although acquired originally without fraud*, it is against equity that it should be retained by the person holding it. In fine, payees are considered trustees of the disallowed amounts, as although they committed no fraud in obtaining these benefits, it is against equity and good conscience for them to continue holding on to them.⁹⁵ (Italics in the original and citations omitted)

Similarly, in *DPWH v. COA*,⁹⁶ the disallowance of CNA incentives sourced out of the Engineering Administrative Overhead (EAO) was upheld, and the recipients of the disallowed benefits were held liable to return. In finding that the payees are obliged to return the amounts they received, the Court stated:

Jurisprudence holds that there is unjust enrichment when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience. The statutory basis for the principle of unjust enrichment is Article 22 of the Civil Code which provides that “[e]very person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him.”

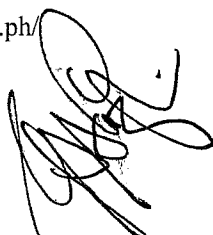
The principle of unjust enrichment under Article 22 requires two conditions: (1) that a person is benefited without a valid basis or justification, and (2) that such benefit is derived at another’s expense or damage. There is no unjust enrichment when the person who will benefit has a valid claim to such benefit.

The conditions set forth under Article 22 of the Civil Code are present in this case.

⁹⁴ Supra note 90.

⁹⁵ Id.

⁹⁶ G.R. No. 237987, March 19, 2019, accessed at <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65047>>.



It is settled that the subject CNA Incentive was invalidly released by the DPWH IV-A to its employees as a consequence of the erroneous application by its certifying and approving officers of the provisions of DBM Budget Circular No. 2006-1. As such, it only follows that the DPWH IV-A employees received the CNA Incentive without valid basis or justification; and that the DPWH IV-A employees have no valid claim to the benefit. Moreover, it is clear that the DPWH IV-A employees received the subject benefit at the expense of another, specifically, the government. Thus, applying the principle of unjust enrichment, the DPWH IV-A employees must return the benefit they unduly received.⁹⁷ (Underscoring supplied and citations omitted)

That the incentives were negotiated and approved by the employees was only one of several reasons for the return in the said case. The excerpt cited above sufficiently signals that the elements of unjust enrichment are completed as soon as a payee receives public funds without valid basis or justification — without necessarily requiring participation in the grant and disbursement.

For other incentives not negotiated by the recipients, the Court promulgated its decision in *Chozas v. COA*⁹⁸ which dealt with the accomplishment incentive sourced out of Bulacan State University Special Trust Fund. Notably, this case relied upon the Court's ratiocination in *Dubongco* on the question of liability to return, without any showing of participation on the part of the payees as to the grant and disbursement. This is jurisprudential recognition that the judge made rule of absolving good faith payees is the exception, and not the rule.

In *Rotoras v. COA*,⁹⁹ the Court held that it will be unjust enrichment to allow the members of the governing boards to retain additional honoraria that they themselves approved and received. Here, the Court ruled that the nature of the obligation of approving officials to return “depends on the circumstances,”¹⁰⁰ with the officers' obligation to return expressly determined to not be solidary.¹⁰¹ This case illustrates how approving officers may still be held liable to return in their capacity as payees, notwithstanding their good faith or bad faith.

In the ultimate analysis, the Court, through these new precedents, has returned to the basic premise that the responsibility to return is a civil obligation to which fundamental civil law principles, such as unjust enrichment and *solutio indebiti* apply regardless of the good faith of passive

⁹⁷ Id.

⁹⁸ G.R. Nos. 226319 & 235031, October 8, 2019.

⁹⁹ Supra note 61.

¹⁰⁰ Separate Concurring Opinion of Justice Leonen, p. 12.

¹⁰¹ Supra note 61. The dispositive portion of *Rotoras* reads:

WHEREFORE, the Petition for Certiorari is **DISMISSED**. The November 3, 2011 Decision and February 14, 2014 Resolution of the Commission on Audit in COA CP Case No. 2010-341 are **AFFIRMED**. The members of the governing boards of the state universities and colleges shall return the disallowed benefits. Their obligation to return shall not be solidary.
SO ORDERED.

recipients. **This, as well, is the foundation of the rules of return that the Court now promulgates.**

Moreover, *solutio indebiti* is an equitable principle applicable to cases involving disallowed benefits which prevents undue fiscal leakage that may take place if the government is unable to recover from passive recipients amounts corresponding to a properly disallowed transaction.

Nevertheless, while the principle of *solutio indebiti* is henceforth to be consistently applied in determining the liability of payees to return, the Court, as earlier intimated, is not foreclosing the possibility of situations which may constitute *bona fide* exceptions to the application of *solutio indebiti*. As Justice Bernabe proposes, and which the Court herein accepts, the jurisprudential standard for the exception to apply is that the amounts received by the payees constitute disallowed benefits that were genuinely given in consideration of services rendered (or to be rendered)¹⁰² negating the application of unjust enrichment and the *solutio indebiti* principle.¹⁰³ As examples, Justice Bernabe explains that these disallowed benefits may be in the nature of performance incentives, productivity pay, or merit increases that have not been authorized by the Department of Budget and Management as an exception to the rule on standardized salaries.¹⁰⁴ In addition to this proposed exception standard, Justice Bernabe states that the Court may also determine in the proper case *bona fide* exceptions, depending on the purpose and nature of the amount disallowed.¹⁰⁵ These proposals are well-taken.

Moreover, the Court may also determine in a proper case other circumstances that warrant excusing the return despite the application of *solutio indebiti*, such as when undue prejudice will result from requiring payees to return or where social justice or humanitarian considerations are attendant. Verily, the Court has applied the principles of social justice in COA disallowances. Specifically, in the 2000 case of *Uy v. Commission on Audit*¹⁰⁶ (*Uy*), the Court made the following pronouncements in overturning the COA's decision:

x x x Under the policy of social justice, the law bends over backward to accommodate the interests of the working class on the humane justification that those with less privilege in life should have more in law.

¹⁰² Separate Concurring Opinion of Justice Bernabe, p. 12.

¹⁰³ *Id.* at 11-12.

¹⁰⁴ *Id.* at 11. Justice Bernabe further explains:

x x x To be sure, Republic Act No. 6758, otherwise known as the 'Compensation and Position Classification Act of 1989,' "standardize[s] salary rates among government personnel and do[es] away with multiple allowances and other incentive packages and the resulting differences in compensation among them." Section 12 lays down the general rule that all allowances of state workers are to be included in their standardized salary rates, with the exception of the following allowances: *x x x*

The said allowances are the "only allowances which government employees can continue to receive in addition to their standardized salary rates." Conversely, "all allowances not covered by the [above] exceptions *x x x* are presumed to have been integrated into the basic standardized pay" and hence, subject to disallowance. *Id.* at 11-12.

¹⁰⁵ *Id.* at 12.

¹⁰⁶ G.R. No. 130685, March 21, 2000, 328 SCRA 607.

*Rightly, we have stressed that social justice legislation, to be truly meaningful and rewarding to our workers, must not be hampered in its application by long-winded arbitration and litigation. Rights must be asserted and benefits received with the least inconvenience. And the obligation to afford protection to labor is incumbent not only on the legislative and executive branches but also on the judiciary to translate this pledge into a living reality. Social justice would be a meaningless term if an element of rigidity would be affixed to the procedural precepts. Flexibility should not be ruled out. Precisely, what is sought to be accomplished by such a fundamental principle expressly so declared by the Constitution is the effectiveness of the community's effort to assist the economically underprivileged. For under existing conditions, without such succor and support, they might not, unaided, be able to secure justice for themselves. To make them suffer, even inadvertently, from the effect of a judicial ruling, which perhaps they could not have anticipated when such deplorable result could be avoided, would be to disregard what the social justice concept stands for.*¹⁰⁷ (Italics in the original)

The pronouncements in *Uy*¹⁰⁸ illustrate the Court's willingness to consider social justice in disallowance cases. These considerations may be utilized in assessing whether there may be an exception to the rule on *solutio indebiti* so that the return may be excused altogether. As Justice Inting correctly pointed out, "each disallowance case is unique, inasmuch as the *facts* behind, *nature of the amounts* involved, and *individuals* so charged in one notice of disallowance are hardly ever the same with any other."¹⁰⁹

E. The Rules on Return

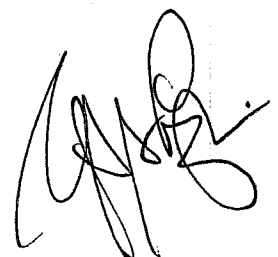
In view of the foregoing discussion, the Court pronounces:

1. If a Notice of Disallowance is set aside by the Court, no return shall be required from any of the persons held liable therein.
2. If a Notice of Disallowance is upheld, the rules on return are as follows:
 - a. Approving and certifying officers who acted in good faith, in regular performance of official functions, and with the diligence of a good father of the family are not civilly liable to return consistent with Section 38 of the Administrative Code of 1987.
 - b. Approving and certifying officers who are clearly shown to have acted in bad faith, malice, or gross negligence are, pursuant to Section 43 of the Administrative Code of 1987, solidarily liable to return only the net disallowed amount which, as discussed herein, excludes amounts excused under the following sections 2c and 2d.

¹⁰⁷ Id. at 619.

¹⁰⁸ Id.

¹⁰⁹ Concurring Opinion, p. 1.



- c. Recipients — whether approving or certifying officers or mere passive recipients — are liable to return the disallowed amounts respectively received by them, unless they are able to show that the amounts they received were genuinely given in consideration of services rendered.
- d. The Court may likewise excuse the return of recipients based on undue prejudice, social justice considerations, and other *bona fide* exceptions as it may determine on a case to case basis.

Undoubtedly, consistent with the statements made by Justice Inting, the ultimate analysis of each case would still depend on the facts presented, and these rules are meant only to harmonize the previous conflicting rulings by the Court as regards the return of disallowed amounts — after the determination of the good faith of the parties based on the unique facts obtaining in a specific case has been made.

To reiterate, the assessment of the presumptions of good faith and regularity in the performance of official functions and proof thereof will be done by the Court on a case-to-case basis. Moreover, the additional guidelines eloquently presented by Justice Leonen will greatly aid the Court in determining the good faith of officers and resultantly, whether or not they should be held solidarily liable in disallowed transactions.¹¹⁰

F. As applied to the instant case

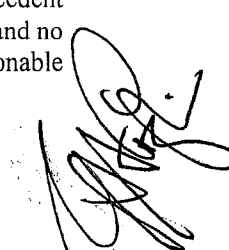
Examined under the rubric of the rules above, the Court holds that petitioners approving and certifying officers need not refund the disallowed amounts inasmuch as they had acted in good faith.

In support of their good faith, petitioners aver:

It has been a customary scheme of the municipality to grant additional allowances during year-end period and which act is legally anchored on yearly appropriation ordinance by the sanggunian. Similar scheme is also practiced in all government agencies, local or national.

On such previous disbursement[s] of the municipality, there were no disallowance[s] issued by the COA or DBM, hence, the municipal officials [believed] in good faith that such grant of additional allowances were legal and allowed.

¹¹⁰ Separate Concurring Opinion of Justice Leonen, p. 8. To reiterate, Justice Leonen proposes the following circumstances or badges for the determination of whether an authorizing officer exercised the diligence of a good father of a family: “(1) Certificate of Availability of Funds pursuant to Section 40 of the Administrative Code, (2) In-house or Department of Justice legal opinion, (3) that there is no precedent disallowing a similar case in jurisprudence, (4) that it is traditionally practiced within the agency and no prior disallowance has been issued, and (5) with regard the question of law, that there is a reasonable textual interpretation on its legality.”



It was only on June 26, 2014 when [the NDs herein were] issued and [the Municipality was informed]. That is why, since 2014, petitioners never grant[ed] additional allowances anymore to its employees.

x x x x

On [a] final note, since the COA failed to show bad faith on the approving officers, the alleged refund should not be personally imposed on them, they being in good faith that recipients richly deserved such benefits and the officers relied merely on the yearly basis of granting additional allowances, without them being informed by [the] COA or DBM that such disbursements were illegal.¹¹¹

All in all, petitioners' averments are well-taken. In evaluating the presence of good faith in cases involving disallowances, the Court's pronouncement in *Lumayna* is still instructive and remains true even under the foregoing guidelines:

Furthermore, granting *arguendo* that the municipality's budget adopted the incorrect salary rates, this error or mistake was not in any way indicative of bad faith. Under prevailing jurisprudence, **mistakes committed by a public officer are not actionable, absent a clear showing that he was motivated by malice or gross negligence amounting to bad faith. It does not simply connote bad moral judgment or negligence.** Rather, there must be some **dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of a sworn duty through some motive or intent, or ill will.** It partakes of the nature of **fraud** and contemplates a state of mind affirmatively operating with **furtive design or some motive of self-interest or ill will for ulterior purposes.** x x x¹¹²
(Emphasis supplied)

Applying the foregoing, the Court accepts the arguments raised by the petitioners as badges of good faith.

First, a review of the SB Resolutions and Ordinance used as basis for the grant of the subject allowances shows that these were primarily intended as financial assistance to municipal employees in view of the increase of cost on prime commodities,¹¹³ shortage of agricultural products,¹¹⁴ and the vulnerability of their municipality to calamities and disasters.¹¹⁵ Notably, these subject allowances were granted after the onslaught of typhoon *Yolanda* which greatly affected the Municipality. While noble intention is not enough to declare the allowances as valid, it nevertheless supports petitioners' claim of good faith. As held in *Escarez v. COA*:

The grant of the FGI to petitioners has a lofty purpose behind it: the alleviation, to any extent possible, of the difficulty in keeping up with the

¹¹¹ *Rollo*, pp. 9-13,

¹¹² *Supra* note 41, at 182.

¹¹³ *Rollo*, p. 31.

¹¹⁴ *Id.* at 35.

¹¹⁵ *Id.* at 37.

rising cost of living. Indeed, under the circumstances, We find that the FGI was given and received in good faith. The NFA Council approved the grant under the belief, albeit mistaken, that the presidential issuances and the OGCC Opinion provided enough bases to support it; and the NFA officials and employees received the grant with utmost gratefulness.¹¹⁶

Second, that these additional allowances had been customarily granted over the years and there was no previous disallowance issued by the COA against these allowances further bolster petitioners' claim of good faith. Indeed, while it is true that this customary scheme does not ripen into valid allowances, it is equally true that in all those years that the additional allowances had been granted, the COA did not issue any ND against these grants, thereby leading petitioners to believe that these allowances were lawful.

Notably, since the issuance of the NDs in 2014, the Municipality has stopped giving these allowances to their employees.¹¹⁷ However, this is not to say that the presumption of good faith would be *ipso facto* negated if the Municipality had otherwise continued to grant the allowances despite the issuance of NDs. After all, an ND is not immediately final as it may still be reversed by the COA or even the Court. Unless and until an ND becomes final, the continued grant of a benefit or allowance should not *automatically* destroy the presumption of good faith on the part of the approving/certifying officers, especially when there is sufficient or, at the very least, colorable legal basis for such grant.

Third, petitioners relied on the Resolutions and Ordinance of the *Sangguniang Bayan* which have not been invalidated; hence, it was within their duty to execute these issuances in the absence of any contrary holding by the *Sangguniang Panlalawigan* or the COA. They were of the belief, albeit mistakenly, that these Resolutions and Ordinance were sufficient legal bases for the grant of the allowances especially since the LGC¹¹⁸ empowers the *Sangguniang Bayan* to approve ordinances and pass resolutions concerning allowances. Similar to the ruling in *Veloso v. Commission on Audit*¹¹⁹ where the Court accepted as a badge of good faith the fact that the questioned disbursements were made pursuant to ordinances, petitioners' reliance on the SB Resolutions and Ordinance should likewise be considered in their favor.

As can be deduced above, petitioners disbursed the subject allowances in the honest belief that the amounts given were due to the recipients and the latter accepted the same with gratitude, confident that they richly deserve such reward. Otherwise stated, and to borrow the language of *Lumayna*, these mistakes committed are not actionable, absent a clear showing that such actions were motivated by malice or gross negligence amounting to bad faith.

¹¹⁶ G.R. Nos. 217818, 218334, 219979, 220201, & 222118, May 31, 2016, p. 8 (Unsigned Resolution).

¹¹⁷ *Rollo*, p. 9.

¹¹⁸ R.A. 7160, Section 447(a)(1)(viii).

¹¹⁹ G.R. No. 193677, September 6, 2011, 656 SCRA 767.

There was no showing of some dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of a sworn duty through some motive or intent, or ill will in the grant of these benefits. There was no fraud nor was there a state of mind affirmatively operating with furtive design or some motive of self-interest or ill will for ulterior purposes.

Thus, petitioners-approving and certifying officers are shielded from civil liability for the disallowance under Section 38 of the Administrative Code of 1987.

As for the payees, the Court notes that the COA Proper already excused their return; hence, they no longer appealed. In any case, while they are ordinarily liable to return for having unduly received the amounts validly disallowed by COA, the return was properly excused not because of their good faith but because it will cause undue prejudice to require them to return amounts that were given as financial assistance and meant to tide them over during a natural disaster.

In view of the foregoing, the return is excused in its entirety in favor of all persons held liable in the ND.

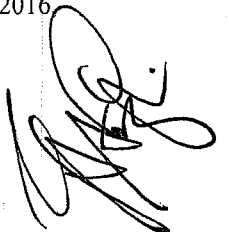
A Final Note

In interpreting and applying the law, the Court is very sensitive to the need to balance competing interests and considerations amongst various stakeholders. Here, the Court is given the opportunity to set a workable rule that exacts accountability for disallowances and ensures that unjust enrichment and inadvertent unfairness do not result. This has been brought about by an acknowledgment that previous attempts by this Court to excuse payees who unwittingly received the disallowed amounts may have resulted in undue prejudice to the government. Further, if such rule would continue to be the norm in deciding these cases, then the Court may be unsuspectingly playing a role in the chilling effect on current and aspiring government officials, who were previously left to shoulder the entire disallowed amounts to the benefit of recipients. A chilling effect that ultimately hampers and suffocates urgent public need — which the Government, through the Executive Branch, is mandated to serve at the soonest time.

As the Court has previously held,¹²⁰ government employment should be seen as an opportunity for individuals of good will to render honest-to-goodness public service, and not a trap for the unwary. It should be an attractive alternative to private employment, not an undesirable undertaking grudgingly accepted, to therefore regret.¹²¹ While the Court supports the mandate of the COA in ensuring that the funds of the government are properly

¹²⁰ *Philippine Economic Zone Authority (PEZA) v. Commission on Audit*, G.R. 210903, October 11, 2016 805 SCRA 618.

¹²¹ *Id.* at 621.



utilized and the return to the government of funds unduly spent, the same must not be at the expense of public officials and employees who are directly tasked to discharge and render public service – especially when the presumptions of good faith and regularity in the performance of their duties have not been rebutted or overturned. Otherwise, the Court would unintentionally sanction the discouragement of competent and well-meaning individuals from joining the government. When service in the government is seen as unattractive and unappealing, it is the public that suffers.

Taking all this into consideration, the Court has laid down the rules that it deems equitable to the government whose interest is safeguarded by the COA, on the one hand, and to the government employees who approved, certified, and received the disallowed benefits, on the other.

Finally, the Court exhorts the COA to take into consideration the pronouncements made herein to prevent future decisions that “result [in] exempting recipients who are in good faith from refunding the amount received x x x [while] approving officers are made to shoulder the entire amount paid to the employees”¹²² and impose, in the very words of the COA itself, “an inequitable burden on the approving officers, considering that they are or remain exposed to administrative and even criminal liability for their act in approving such benefits, and is not consistent with the concept of *solutio indebiti* and the principle of unjust enrichment.”¹²³

WHEREFORE, the instant petition is **PARTIALLY GRANTED**. The Commission on Audit Decision No. 2017-454 dated December 27, 2017 affirming the Notice of Disallowance Nos. 14-004-101(2013) to 14-008-101(2013) and 14-010-101(2013) to 14-015-101(2013) in the total amount of ₱7,706,253.10 is **AFFIRMED with MODIFICATION** that petitioners need not refund the said disallowed amount.

SO ORDERED.

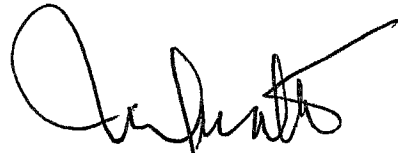


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

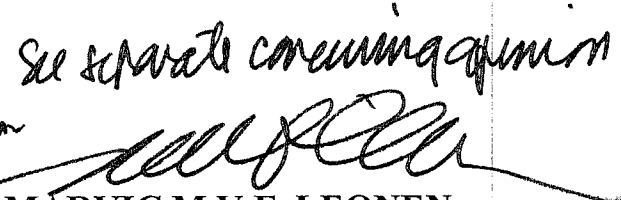
¹²² *Rollo*, p. 27.


¹²³ *Id.*


WE CONCUR:

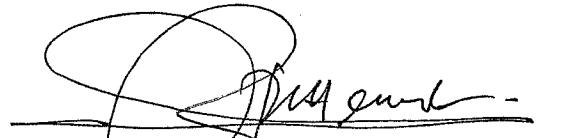

DIOSDADO M. PERALTA
 Chief Justice

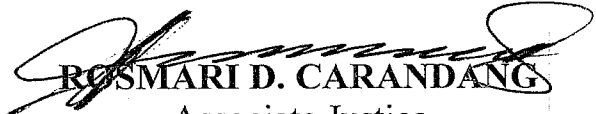
Please see Separate Concurring Opinion
M. Bernabe
ESTELA M. PERLAS-BERNABE
 Associate Justice

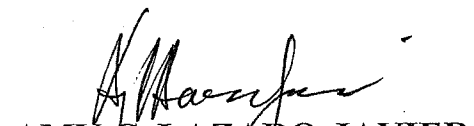
See separate concurring opinion

MARVIC M.V.F. LEONEN
 Associate Justice



ALEXANDER G. GESMUNDO
 Associate Justice


JOSE C. REYES, JR.
 Associate Justice



RAMON PAUL L. HERNANDO
 Associate Justice



ROSMARI D. CARANDANG
 Associate Justice

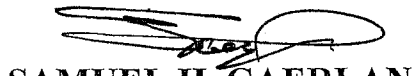

AMY C. LAZARO-JAVIER
 Associate Justice

See concurring opinion

HENRI JEAN PAUL B. INTING
 Associate Justice


RODIL V. ZALAMEDA
 Associate Justice


MARIO V. LOPEZ
 Associate Justice

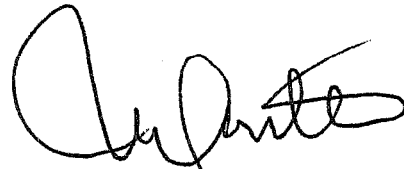

EDGARDO L. DELOS SANTOS
 Associate Justice


SAMUEL H. GAERLAN
 Associate Justice

(On leave)
PRISCILLA BALTAZAR-PADILLA
Associate Justice

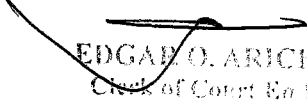
CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.



DIOSDADO M. PERALTA
Chief Justice

CERTIFIED TRUE COPY



EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court