



Republic of the Philippines
Supreme Court
Bacolod City

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SUPREME COURT OF THE PHILIPPINES
PUBLIC INFORMATION OFFICE

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PETER B. FAVILA,

Petitioner,

G.R. No. 251824

Present:
GESMUNDO, *CJ.*,
LEONEN,
CAGUIOA,
HERNANDO,
LAZARO-JAVIER,
INTING,
ZALAMEDA,
LOPEZ, M.,
GAERLAN,
ROSARIO,
LOPEZ, J.,
DIMAAMPAO,*
MARQUEZ,**
KHO, JR., and
SINGH, *JJ.*

- versus -

COMMISSION ON AUDIT,

Respondent.

Promulgated:

November 29, 2022

X-----
Antonio G. Sison
-----X

DECISION

HERNANDO, J.:

Before the Court is a Petition for *Certiorari*¹ filed under Rule 64, in relation to Rule 65, of the Rules of Court assailing the January 30, 2019 Decision² and the January 29, 2020 Resolution³ of respondent Commission on Audit (COA).

* On official leave.

** On official business.

¹ *Rollo*, pp. 3-20.

² *Id.* at 21-24. Penned by Chairperson Michael G. Aguinaldo and Commissioners Jose A. Fabia and Roland C. Pondoc.

³ *Id.* at 25-31. Penned by Chairperson Michael G. Aguinaldo and Commissioners Jose A. Fabia and Roland C. Pondoc.

Factual Antecedents

During the period from 2008 to 2010, petitioner Peter B. Favila (Favila), who was then the Secretary of the Department of Trade and Industry (DTI), served as an *ex-officio* member of the Board of Directors (Board/BOD) of the Trade and Investment Development Corporation of the Philippines (TIDCORP),⁴ a government corporate entity created under Presidential Decree No. (PD) 1080,⁵ as amended by Republic Act No. (RA) 8494.⁶

On various occasions from 2005 to 2007, TIDCORP's BOD approved eight Board Resolutions approving the grant of productivity enhancement pay, developmental contribution bonuses, corporate guaranty, grocery subsidy, and anniversary bonuses to its board members and their alternates.⁷

On July 13, 2012, without a prior notice of suspension, COA Audit Team Leader Gloria O. Lacson (ATL Lacson) and Supervising Auditor Teodora M. Lacerna (SA Lacerna) issued Notice of Disallowance (ND) No. 2012-001,⁸ disallowing various disbursement vouchers and the corresponding checks in the total amount of PHP 4,539,835.02, pertaining to monetary benefits of TIDCORP's Board members for the period of January 1, 2005 to December 31, 2010, on the ground that the same were not in accordance with Section 8, Article IX-B of the 1987 Philippine Constitution,⁹ which pertinently reads:

8. No elective or appointive public officer or employee shall receive additional, double, or indirect compensation, unless specifically authorized by law, x x x.

It was opined that the disallowed amount constitutes double compensation since the Board members received the same in an *ex-officio* capacity. One of the members held liable under the ND was herein petitioner Favila who allegedly received a total of PHP 454,598.28 in benefits from October 2008 to May 2010.¹⁰

TIDCORP, on behalf of its implicated officers, appealed the disallowance to the Office of the Cluster Director arguing that Sec. 7¹¹ of RA 8494 expressly

⁴ Id. at 7.

⁵ Entitled "REVISING PRESIDENTIAL DECREE NO. 550 CREATING THE PHILIPPINE FOREIGN LOAN GUARANTEE CORPORATION SO IT WILL NOW BE ENTITLED THE PHILIPPINE EXPORT AND FOREIGN LOAN GUARANTEE CORPORATION." Approved on January 31, 1977.

⁶ Entitled "AN ACT FURTHER AMENDING PRESIDENTIAL DECREE NO. 1080, AS AMENDED, BY REORGANIZING AND RENAMING THE PHILIPPINE EXPORT AND FOREIGN LOAN GUARANTEE CORPORATION, EXPANDING ITS PRIMARY PURPOSES AND FOR OTHER PURPOSES." Approved: February 12, 1998.

⁷ *Rollo*, p. 97.

⁸ Id. at 32-33.

⁹ Id. at 32.

¹⁰ Id. at 38-39.

¹¹ Section 7. The Board of Directors shall provide for an organizational structure and staffing pattern for officers and employees of the Trade and Investment Development Corporation of the Philippines (TIDCORP) and upon recommendation of its President, appoint and fix their remuneration, emoluments and fringe benefits: Provided, That the Board shall have exclusive and final authority to appoint, promote,

grants to the Board the exclusive power to fix the remuneration, emoluments, and fringe benefits of TIDCORP officers and employees. By virtue of this, the Board passed the resolutions granting the questioned monetary benefits to its members in good faith. TIDCORP further averred that COA denied the Board members of their right to due process when it proceeded with the disallowance without first issuing a Notice of Suspension.¹²

In their Answer Memorandum, ATL Lacson and SA Lacerna argued that Sec. 7 of RA 8494 pertains to the authority of the Board to grant benefits/bonuses to the officers and employees of TIDCORP, and not to those given to the Board of Directors, much more to its *ex-officio* members. Sec. 13 of RA 8494 limits the benefits that may be accorded to the members of the Board to *per diem* allowances only.¹³

Ruling of the Corporate Government Sector

In a Decision¹⁴ dated October 8, 2015, the COA Corporate Government Sector (CGS) affirmed the ND and denied the appeal for lack of merit. Citing the Court's ruling in *Civil Liberties Union v. Executive Secretary (Civil Liberties Union)*,¹⁵ the COA-CGS held that the members of the TIDCORP's Board who held their positions in *ex-officio* capacity had no right to receive additional compensation since their compensation were already paid by their respective principal offices to which they were attached.¹⁶ According to the COA-CGS, Sec. 13 of PD 1080 merely authorizes the grant of a *per diem* of ₱500.00 only to TIDCORP's Board members for every Board meeting attended. There is nothing in the law that allows TIDCORP's BOD to receive other benefits besides the *per diem*.

The COA-CGS also found that the Board failed to comply with Memorandum Order No. (MO) 20, series of 2001, which requires the prior approval of the President before any increase in benefits could take effect.¹⁷ Since the benefits and allowances received by the members of the Board were contrary to law, the same should be returned to the government, otherwise, the payees thereof would be guilty of unjust enrichment. Finally, the COA-CGS

transfer, assign and re-assign personnel of the TIDCORP, any provision of existing law to the contrary notwithstanding.

All positions in TIDCORP shall be governed by a compensation and position classification system and qualification standards approved by TIDCORP's Board of Directors based on a comprehensive job analysis and audit of actual duties and responsibilities. The compensation plan shall be comparable with the prevailing compensation plans in the private sector and shall be subject to periodic review by the Board no more than once every four (4) years without prejudice to yearly merit reviews or increases based on productivity and profitability. TIDCORP shall be exempt from existing laws, rules and regulations on compensation, position classification and qualification standards. It shall, however, endeavor to make the system to conform as closely as possible to the principles and modes provided in Republic Act No. 6758.

¹² *Rollo*, p. 99.

¹³ *Id.* at 99-100.

¹⁴ *Id.* at 96-107.

¹⁵ 272 Phil. 147 (1991).

¹⁶ *Rollo*, p. 101.

¹⁷ *Id.* at 103.

rejected TIDCORP's claim that the Board members were denied due process of law holding that they were afforded an opportunity to be heard through their Appeal Memorandum.¹⁸

The decretal portion of the COA-CGS Decision reads:

WHEREFORE, premises considered, this Office **DENIES** the instant appeal for lack of merit. Accordingly, the Notice of Disallowance No. 2012-001 dated 13 July 2012, issued by the Office of the Supervising Auditor of TIDCORP is hereby **AFFIRMED**.

So ordered.¹⁹

Ruling of the Commission on Audit Proper

Not satisfied with the COA-CGS' disposition, TIDCORP instituted a Petition for Review²⁰ before the Commission proper but the same was denied in its assailed Decision No. 2019-001²¹ dated January 13, 2019. The COA upheld the finding of the COA-CGS that members of the Board who were sitting in their *ex-officio* capacity and their alternates were not entitled to receive any additional compensation since their compensation were already paid by their respective offices to which they were attached.

It further noted that the petition was filed beyond the 180-day period to file an appeal under Sec. 48²² of PD 1445²³ and Sec. 3,²⁴ Rule VII of the 2009 Revised Rules of Procedure of the COA. Consequently, the assailed COA-CGS Decision has already become final and executory pursuant to Sec. 51²⁵ of PD 1445.²⁶ The dispositive portion thereof reads:

WHEREFORE, premises considered, the Petition for Review of the Trade and Investment Development Corporation of the Philippines is hereby **DENIED** for lack of merit. Accordingly, Commission on Audit Corporate Government Sector-Cluster 2 Decision No. 2015-021 dated October 7, 2015, which affirmed Notice of Disallowance No. 2012-001 dated July 13, 2012, relative to the grant of benefits to *ex-officio* members of the Board of Directors

¹⁸ Id. at 106.

¹⁹ Id. at 106-107.

²⁰ Id. at 108-123.

²¹ Id. at 21-24.

²² Section 48. *Appeal from decision of auditors*. Any person aggrieved by the decision of an auditor of any government agency in the settlement of an account or claim may within six months from receipt of a copy of the decision appeal in writing to the Commission.

²³ Entitled "ORDAINING AND INSTITUTING A GOVERNMENT AUDITING CODE OF THE PHILIPPINES." Approved: June 11, 1978.

²⁴ Section 3. *Period of Appeal*. - The appeal shall be taken within the time remaining of the six (6) months period under Section 4, Rule V, taking into account the suspension of the running thereof under Section 5 of the same Rule in case of appeals from the Director's decision, or under Sections 9 and 10 of Rule VI in case of decision of the Adjudication and Settlement Board.

²⁵ Section 51. *Finality of decisions of the Commission or any auditor*. A decision of the Commission or of any auditor upon any matter within its or his jurisdiction, if not appealed as herein provided, shall be final and executory.

²⁶ *Rollo*, p. 22.

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and their alternates, for the period of January 1, 2005 to December 31, 2010, in the aggregate amount of P4,539,835.02, is **AFFIRMED**.²⁷

The separate Motions for Reconsideration filed by herein petitioner Favila and his co-respondents, Armando Suratos, *et. al.*, were likewise denied by the COA in its Resolution No. 2020-177²⁸ dated January 29, 2020.

Hence, this petition.

At the outset, it is apt to mention that Favila's co-respondents, Armando Suratos, *et. al.* have already challenged COA Decision No. 2019-001 and Resolution No. 2020-177 in a Petition for Review filed with this Court, docketed as G.R. No. 253584, entitled "*Armando L. Suratos, Amando M. Tetangco, Jr., Alberto V. Reyes, and Nestor A. Espenilla, Jr., as represented by his estate vs. Commission on Audit,*" (*Suratos*).²⁹ The petition was, however, dismissed by the Court *en banc* in a Resolution dated March 1, 2022. The Court affirmed the assailed COA Decision and Resolution and accordingly held Suratos, *et. al.* solidarily liable as approving officers and recipients of the disallowed amount. Consequently, they were ordered to retribute to the government the amount of PHP 4,539,835.02 immediately.

Here, We point out that Favila similarly anchors his petition on the same grounds and arguments relied upon by Suratos, *et. al.* which were already judiciously passed upon by the Court in *Suratos*. Favila maintains that: 1) he is entitled to the benefits given to him as the same were granted pursuant to duly issued Board Resolutions and in accordance with the TIDCORP Charter; 2) he received the disallowed amount in good faith, as such he cannot be ordered to refund the same and; 3) the disputed ND was issued in violation of his right to procedural due process.³⁰

In its Comment³¹ dated November 26, 2020, COA avers that: 1) it did not commit grave abuse of discretion when it dismissed Favila's appeal for having been filed out of time; 2) it did not violate Favila's right to procedural due process; 3) the assailed Decision is in consonance with prevailing laws and jurisprudence; and 4) Favila benefited from the unlawful grant of the disallowed allowance, and should therefore, refund the amount he received.³²

Issue

Whether the COA acted with grave abuse of discretion in denying Favila's petition for review and affirming ND No. 2012-001.

²⁷ Id. at 22-23.

²⁸ Id. at 25-31.

²⁹ G.R. No. 253584, March 1, 2022.

³⁰ *Rollo*, pp. 9-10.

³¹ Id. at 134-160.

³² Id. at 137-138.

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Our Ruling

The petition lacks merit.

Given the Court's disposition in *Suratos*, the appropriate course of action is to dismiss the instant petition of Favila conformably with the *Suratos* ruling.

The petition offered no new argument as regards the legality of the subject allowances. In *Suratos*, We held that *Suratos, et. al.* were not entitled to the disallowed benefits since PD 1080 only specifically authorized the payment of *per diem* to TIDCORP's Board members. Further, *Suratos, et. al.* had no right to receive additional compensation or benefits as mere *ex-officio* members of the Board considering that their services were already paid for and covered by the compensation attached to their principal office.

Applying Our ruling in *Suratos* here, the Court upholds the finding of COA that Favila's right to compensation as member of the TIDCORP Board in an *ex-officio* capacity is limited only to *per diem* authorized by law and no other. This is in line with the Court's ruling in *Land Bank of the Philippines v. Commission on Audit*,³³ where We similarly dismissed Land Bank's Board of Directors' claim for additional compensation, holding that they were not entitled thereto since their *ex-officio* position is in legal contemplation part of their principal office. Further, the Court found that the Land Bank Charter does not authorize the grant of additional allowances to the Board members, *viz.*:

The LBP Charter – R.A. No. 3844, as amended by R.A. No. 7907, does not authorize the grant of additional allowances to the Board of Directors beyond *per diems*. Specifically, Section 86 of R.A. No. 3844, as amended, provides for the entitlement of the Chairman and the Members of the Board of Directors to a *per diem* of ₱1,500.00 for each Board meeting attended, but the same must not exceed ₱7,500.00 every month. Significantly, the LBP Charter provides for nothing more than *per diems*, to which regular/appointive Members of the Board of Directors are entitled to for each Board session.³⁴

In the same vein, there is nothing in the TIDCORP's Charter – PD 1080 that permits the grant of extra compensation to its BOD and their respective alternates besides a *per diem* of PHP 500.00 for every board meeting attended. As such, any form of compensation beyond what is provided in Sec. 13³⁵ of PD 1080 is considered illegal, and in contravention of the constitutional prohibitions against holding multiple positions in the government and receiving additional or double compensation.

³³ G.R. No. 224288, September 15, 2020. See also *Tetangco, Jr. v. Commission on Audit*, 810 Phil. 459, 464 (2017).

³⁴ *Land Bank of the Philippines v. Commission on Audit*, supra. See also *Tetangco, Jr. v. Commission on Audit*, supra.

³⁵ Section 13. *Remuneration of Members for Attending Meetings of the Board.* The members of the Board or their respective alternates, except the President of the Corporation, shall receive a per diem of FIVE HUNDRED PESOS (P500.00) for every Board meeting attended.

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Anent Favila's contention that his right to due process was violated, the Court has already declared in *Suratos* that the repeated opportunity given to *Suratos, et. al.* to argue their case before the COA and this Court has sufficiently satisfied the essence of due process which is the fair and reasonable opportunity to be heard or to explain one's side. In *Saligumba v. Commission on Audit*,³⁶ We held that "[d]ue process is satisfied when a person is notified of the charge against him and given an opportunity to explain or defend himself." Here, it is undisputed that Favila actively participated in the proceedings before the COA. In fact, he even sought a reconsideration of the adverse ruling against him. Verily, the requirements of administrative due process were satisfied in the proceedings before the COA, and finally, in this Court.

Lastly, We reject Favila's good faith defense as an excuse from returning the disallowed amount. As early as 1991 in the case of *Civil Liberties Union*,³⁷ the Court has already settled that *ex-officio* members in government agencies are prohibited from receiving additional compensation. In this case, Favila cannot claim that he was not properly informed of the illegality of the disallowed benefits because there were already prevailing jurisprudence disallowing allowances of the same nature. Thus, the existence of the Court's rulings on the matter militates against his claim of good faith.

Further, as held by the Court in *Suratos, Suratos, et. al.* were not mere passive recipients of the disallowed amount considering that they participated in the approval thereof through resolutions passed by the TIDCORP Board. Worse, the said Board resolutions were passed without the President's approval contrary to Sec. 3³⁸ of MO 20.³⁹

In fine, without the prior approval of the President and being in clear circumvention of law and the Constitution, the questioned allowances are deemed illegal.

WHEREFORE, the petition is **DISMISSED**. The Decision No. 2019-001 dated January 30, 2019 and the Resolution No. 2020-177 dated January 29, 2020 of the Commission on Audit are hereby **AFFIRMED**. Peter B. Favila is held solidarily liable as approving officer and recipient of the disallowed amount, and is directed to settle the said amount of PHP 4,539,835.02 immediately.

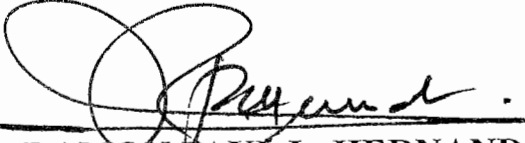
³⁶ G.R. No. 238643, September 8, 2020.

³⁷ Supra note 15.


³⁸ Section 3. Any increase in salary or compensation of GOCCs/GFIs that are not in accordance with the SSL shall be subject to the approval of the President.

³⁹ Entitled "DIRECTING HEADS OF GOVERNMENT-OWNED AND CONTROLLED CORPORATIONS (GOCCS), GOVERNMENT FINANCIAL INSTITUTIONS (GFIS) AND SUBSIDIARIES EXEMPTED FROM OR NOT FOLLOWING THE SALARY STANDARDIZATION LAW (SSL) TO IMPLEMENT PAY RATIONALIZATION IN ALL SENIOR OFFICER POSITIONS." Approved on June 25, 2001.

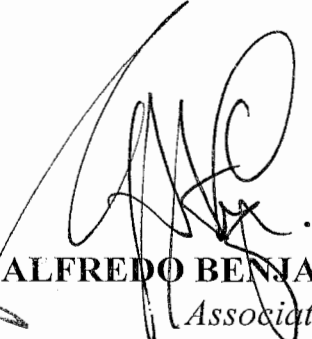
SO ORDERED.


RAMON PAUL L. HERNANDO
Associate Justice

WE CONCUR:



ALEXANDER G. GESMUNDO
Chief Justice


MARVIC M. V. F. LEONEN
Associate Justice


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice


AMY C. LAZARO-JAVIER
Associate Justice

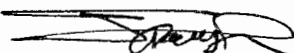

HENRI JEAN PAUL B. INTING
Associate Justice



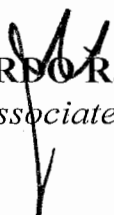
RODIL V. ZALAMEDA
Associate Justice



MARIO N. LOPEZ
Associate Justice



SAMUEL H. GAERLAN
Associate Justice



RICARDO R. ROSARIO
Associate Justice



JHOSEP Y. LOPEZ
Associate Justice

On official leave.
JAPAR B. DIMAAMPAO
Associate Justice

On official business.
JOSE MIDAS P. MARQUEZ
Associate Justice



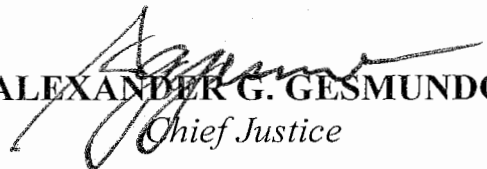
ANTONIO T. KHO, JR.
Associate Justice




MARIA FILOMENA D. SINGH
Associate Justice

CERTIFICATION

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


ALEXANDER G. GESMUNDO
Chief Justice

CERTIFIED TRUE COPY


MARIA LUISA M. SANTILLA
Deputy Clerk of Court and
Executive Officer
OCC-En Banc, Supreme Court