

Republic of the Philippines  
Supreme Court  
Manila

EN BANC

**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court en banc issued a Resolution dated JANUARY 31, 2023, which reads as follows:*

**“G.R. No. 262968 – SOCIAL SECURITY SYSTEM, *Petitioner*, v. THE COMMISSION ON AUDIT AND MARY S. ADELINO, DIRECTOR III, CORPORATE GOVERNMENT SECTOR, CLUSTER II, COA, *Respondents*.**

X-----X

**RESOLUTION**

This is a Petition for *Certiorari*<sup>1</sup> filed under Rule 64 in relation to Rule 65 of the Rules of Court, assailing Decision No. 2018-116,<sup>2</sup> dated January 26, 2018, and Decision No. 2022-098,<sup>3</sup> dated January 24, 2022, of the Commission on Audit Commission Proper (COA-CP). The assailed Decisions affirmed Notice of Disallowance (ND) No. 2012-012 (2011),<sup>4</sup> dated October 23, 2012, which disallowed the payment of the Special Counsel Allowance (SCA) for the Calendar Year (CY) 2011.

***The Facts***

On February 16, 2011, Social Security Commission (SSC) Resolution No. 235<sup>5</sup> was passed, which approved the 2011 Corporate Operating Budget (COB) for CY 2011, amounting to PHP 9,204,351,000.00.<sup>6</sup>

Pursuant thereto, the Social Security System (SSS) disbursed a total amount of PHP 2,544,000.00 for the payment of the SCA for all regular SSS

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<sup>1</sup> *Rollo*, pp. 3-203.  
<sup>2</sup> *Id.* at 41-46.  
<sup>3</sup> *Id.* at 54-59.  
<sup>4</sup> *Id.* at 112-120.  
<sup>5</sup> *Id.* at 108.  
<sup>6</sup> *Id.* at 6.

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lawyers who attended court hearings on behalf of the SSS in CY 2011.<sup>7</sup>

On March 19, 2012, more than a year later, the SSS, through its Budget Department, received from the Department of Budget and Management (DBM) its confirmed COB for CY 2011,<sup>8</sup> which was reduced from PHP 9,204,351,000.00 to PHP 7,926,065,000.00.<sup>9</sup> The pertinent portion of the confirmed COB states:

In view of the foregoing, the increase in PS level from the FY 2010 actual PS level is only to accommodate the cost of 741 positions for promotion. It should not be construed as allowing the increase in salary rates and the grant of new or an increase in rates of allowances/benefits. **The variance of P558,898,000 represents over-provision of the following items:**

....

**Special Counsel Allowance 4,752,000      Chargeable      against savings<sup>10</sup>**

Upon audit, the COA issued ND No. 2012-012 (2011), on the ground that the budget of the SSS for the SCA in its CY 2011 COB was disapproved by the DBM, noting thus:

The total amount of P2,544,000.00 covering payment of Special Counsel Allowance to SSS officers and lawyers is disallowed in audit because the entire amount of budget for the Special Counsel Allowance as contained in the CY 2011 Corporate Operating Budget (COB) was disapproved by the Department of Budget and Management (DBM).

In addition, the DBM stressed that the approval of the COB should not be construed as an authorization for specific expenditure items under PS and that all other allowances/benefits not covered by the Salary Standardization Law (SSL), one of which is the Special Counsel Allowance, shall be subject to the approval of the President of the Philippines, pursuant to the provisions of Presidential Decree No. 1597, Joint Resolution No. 4, s. 2009, Executive Order No. 7, s. 2010, and Executive Order No. 24, s. 2011.

Moreover, the statement of the Undersecretary of the Department of Budget and Management (DBM) in his letter dated July 27, 2012 bolstered our disallowance, we quote:

<sup>7</sup> Id.  
<sup>8</sup> Id. at 109-111.  
<sup>9</sup> Id. at 109.  
<sup>10</sup> Id. at 110. Emphasis and underscoring supplied.

“[x] x x, the following items could not be given favorable consideration, to wit:

PS Item	Reason
Special Counsel Allowance	Provided already. Inclusive in the Representation and Transportation Allowance account. [x] x x

In view hereof, the total amount of P2,544,000.00 is disallowed in audit since the disbursements are considered without legal basis.<sup>11</sup>

Aggrieved, the SSS filed its Appeal Memorandum,<sup>12</sup> dated April 2, 2013, with the Office of the Cluster Director, Corporate Government Sector, Cluster 2 (COA CGS-2), which prayed that a decision be rendered annulling ND No. 2012-012 (2011) and that the disbursement made on the SCA pass in audit.

***The Ruling of the COA CGS-2***

The COA CGS-2 issued Decision No. 2013-0006,<sup>13</sup> dated October 23, 2013, denying the SSS’ appeal and affirming ND No. 2012-012 (2011). The COA-CGS 2 ruled that “review by the Office of the President through the DBM is a necessary condition *sine qua non*,”<sup>14</sup> and that “the statutory powers of the SSS to fix their allowances and benefits is not absolute.”<sup>15</sup> The COA-CGS 2 reiterated that the budget for the SCA was not approved by the DBM because it should be charged against the savings from the Representation and Transportation Allowance (RATA) Account, which is under the Personal Services item, and that there is no need to provide additional budget for it.<sup>16</sup> Considering that, for CY 2011, there was no savings in the said item of expenditure, the payment of SCA was incurred in violation of Section 15, Executive Order No. 518.<sup>17</sup> Thus, the agency officials responsible for the incurrence of SCA without the necessary budget shall be held personally liable therefor.<sup>18</sup>

The SSS filed a Petition for Review,<sup>19</sup> dated November 22, 2013, with the COA Commission Proper (COA-CP) to assail this Decision.

***The Ruling of the COA-CP***

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<sup>11</sup> Id. at 112-113. Underscoring supplied.  
<sup>12</sup> Id. at 121-126.  
<sup>13</sup> Id. at 158-162.  
<sup>14</sup> Id. at 160.  
<sup>15</sup> Id.  
<sup>16</sup> Id. at 161.  
<sup>17</sup> Id.  
<sup>18</sup> Id.  
<sup>19</sup> Id. at 146-167.

The COA-CP issued Decision No. 2018-116,<sup>20</sup> dated January 26, 2018, which denied the Petition for Review and affirmed ND No. 2012-012 (2011). While the COA-CP agreed that the RATA and the SCA are separate benefits which can both be enjoyed by lawyers in the government, the COA-CP stressed that the ND on the payment of the SCA was issued not because the grant of SCA is entirely without legal basis; in fact, it may be given to lawyers appearing before the court and chargeable against the agency's savings.<sup>21</sup> The SCA was disallowed in audit because the SSS granted it as a regular allowance, when it should be granted on a per appearance in court basis.<sup>22</sup> Thus, the COA-CP found that the disallowance was proper since the records of payroll lacked support of evidence of court appearances.<sup>23</sup> The dispositive portion reads:

**WHEREFORE**, premises considered, the Petition for Review of Social Security System, Quezon City, of Commission on Audit Corporate Government Sector-Cluster 2 Decision No. 2013-0006 dated October 23, 2013, is hereby **DENIED** for lack of merit. Accordingly, Notice of Disallowance No. 2012-012 (2011) dated October 23, 2012, on the payment of Special Counsel Allowance for calendar year 2011 in the total amount of P2,544,000.00 is **AFFIRMED**.<sup>24</sup>

The SSS filed a Motion for Reconsideration, dated May 29, 2018, which the COA-CP denied in its Decision No. 2022-098,<sup>25</sup> dated January 24, 2022. The COA-CP ruled that the documents submitted by the SSS, in support of its contention that the SCA was granted only to lawyers who appeared in court, show only partial payment of the SCA and do not prove the lawyers' total attendance in court for the year 2011.<sup>26</sup> More importantly, the DBM disallowed the budget from which the SCA is sourced.<sup>27</sup> With the DBM's disapproval, the expenditures constitute irregular payments.<sup>28</sup> The COA-CP ruled that the payees are required to refund the amounts actually received based on the principles of unjust enrichment and *solutio indebiti*.<sup>29</sup> On the other hand, all the approving and certifying officers, including the members of the Board of Trustees (BOT) of SSS, are to be held solidarily liable for the total disallowed amount.<sup>30</sup> The COA-CP further directed the issuance of a supplemental ND to all the members of the BOT who authorized or took part in the approval of the disallowed transactions.<sup>31</sup> The dispositive portion of Decision No. 2022-098 reads:

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<sup>20</sup> Id. at 41-46.

<sup>21</sup> Id. at 44.

<sup>22</sup> Id.

<sup>23</sup> Id.

<sup>24</sup> Id. at 45. Emphasis in the original.

<sup>25</sup> Id. at 54-60.

<sup>26</sup> Id. at 56.

<sup>27</sup> Id.

<sup>28</sup> Id.

<sup>29</sup> Id.

<sup>30</sup> Id. at 57.

<sup>31</sup> Id.

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**WHEREFORE**, the Motion for Reconsideration of Social Security System (SSS) and Motion for Intervention of Atty. Ricardo R. Gatdula, Jr., of Commission on Audit Decision No. 2018-116 dated January 26, 2018, are hereby **DENIED**. Accordingly, Notice of Disallowance (ND) No. 2012-012 (2011) dated October 23, 2012, on the payment of Special Counsel Allowance for calendar year 2011, in the total amount of P2,544,000.00, is **AFFIRMED**. All the approving and certifying officers shall remain solidarily liable under the ND, while the payees shall be liable to refund to the extent of the amounts received.<sup>32</sup>

Hence, this Petition for *Certiorari*, which prays for the reversal of the COA-CP Decision No. 2018-116, COA-CP Decision No. 2022-098, and ND No. 2012-012 (2011). In support thereof, the SSS argues that:

- (i) the approval from the Office of the President on the grant of benefits to SSS' officials and employees is no longer required;
- (ii) the SCA is given not as a regular allowance, but on a court appearance basis;
- (iii) the ND issued on the basis of the DBM-confirmed COB for CY 2011 was not proper, considering that the same was only received by SSS after the SCA for 2011 was already disbursed;
- (iv) the approving and certifying officers were not in bad faith when they authorized or allowed the grant of SCA for CY 2011; and
- (v) the SCA was genuinely given in consideration of services rendered and, hence, should not be returned.

#### *The Issue*

Did the COA-CP act with grave abuse of discretion in affirming the COA CGS-2 Decision, disallowing the SCA?

#### *The Ruling of the Court*

The Court finds that the COA-CP did not act with grave abuse of discretion in issuing Decision Nos. 2018-116 and 2022-098, which are in accord with the facts and applicable laws and jurisprudence. However, the Court partly modifies the COA-CP Decision with respect to the liability of the officers who approved and certified the disbursement of the SCA.

At the onset, factual findings of administrative bodies charged with their specific field of expertise are afforded great weight by the courts and in the absence of substantial showing that such findings were made from an erroneous estimation of the evidence presented, they are conclusive and, in the interest of stability of the governmental structure, should not be

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<sup>32</sup> Id. Emphasis in the original.

disturbed.<sup>33</sup> Thus, not all errors of the Commission on Audit are reviewable by the Court in a *certiorari* proceeding:

A Rule 65 petition is a unique and special rule because it commands limited review of the question raised. As an extraordinary remedy, its purpose is simply to keep the public respondent within the bounds of its jurisdiction or to relieve the petitioner from the public respondent's arbitrary acts. In this review, the Court is confined solely to questions of jurisdiction whenever a tribunal, board or officer exercising judicial or quasi-judicial function acts without jurisdiction or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction.

The limitation of the Court's power of review over COA rulings merely complements its nature as an independent constitutional body that is tasked to safeguard the proper use of the government and, ultimately, the people's property by vesting it with power to (i) determine whether the government entities comply with the law and the rules in disbursing public funds; and (ii) disallow legal disbursements of these funds.<sup>34</sup>

It is the general policy of the Court to sustain the decisions of administrative authorities, especially one which is constitutionally created, not only on the basis of the doctrine of separation of powers but also for their presumed expertise in the laws that they are entrusted to enforce.<sup>35</sup>

In its Petition, the SSS argues that, as a corporate body created pursuant to Republic Act No. 8282, otherwise known as the Social Security Act of 1997, the SSS shall be under the direction and control of the SSC. It argues that the President's control over the SSS may be exercised through the *ex officio* chairperson of the SSC, on the basis of the doctrine of qualified political agency. Moreover, the SSS argues that the SCA is not a new allowance which requires the approval of the President.

The argument is devoid of merit. There is nothing in the SSS Charter that exempts it from the requirement of approval of the President, through the DBM. It is settled that government-owned and -controlled corporations, including the SSS, are always subject to the supervision and control of the President of the Philippines.<sup>36</sup> Accordingly, absent the approval of the President, the disallowance of the payment of the SCA was proper.

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<sup>33</sup> *Abpi v. Commission on Audit*, 943 SCRA 53, 66 (2020), citing *Lumayna v. Commission on Audit*, 616 Phil. 929, 940 (2009).

<sup>34</sup> *Maritime Industry Authority v. Commission on Audit*, 750 Phil. 288, 307 (2015). Citations and emphases omitted.

<sup>35</sup> *Abpi v. Commission on Audit*, *supra* note 33, citing *Maritime Industry Authority v. Commission on Audit*, *supra* note 34.

<sup>36</sup> *Social Security System v. Commission on Audit*, G.R. No. 222217, July 27, 2021.

The Court has previously ruled on this issue in *Social Security System v. Commission on Audit (SSS v. COA)*.<sup>37</sup> In that case, the COA disallowed certain allowances, including the SCA, that the SSS paid in excess of the DBM-approved COB for CY 2010. In ruling against the SSS, the Court *En Banc* explained:

**GOCCs like the SSS are always subject to the supervision and control of the President. That it is granted authority to fix reasonable compensation for its personnel, as well as an exemption from the SSL, does not excuse the SSS from complying with the requirement to obtain Presidential approval before granting benefits and allowances to its personnel.** This is a doctrine which has been affirmed time and again in jurisprudence.

....

**Verily, and contrary to the SSS' contentions, the grant of authority to fix reasonable compensation, allowances, and other benefits in the SSS' charter does not conflict with the exercise by the President, through the DBM, of its power to review precisely how reasonable such compensation is, and whether or not it complies with the relevant laws and rules.** Neither is there any merit in the claim that the SSS' charter supersedes the provisions of P.D. 1597, Memorandum Order No. 20, s. 2001, Joint Resolution No. 4, s. 2009, and Executive Order No. 7, s. 2010 as far as their applicability to the SSS is concerned. **Nothing in its charter explicitly repeals these laws and regulations, and there is no irreconcilable conflict between the provisions of these laws on the one hand, and the SSS' charter on the other.** Hence, no implied repeal can be gleaned therefrom.

....

**All told, the COA did not err in finding that the SSS is subject to the requirement of Presidential approval through the DBM, and that as regards the Special Counsel Allowance, Overtime Pay, and Incentive Awards it paid out to its personnel in C.Y. 2010, this requirement was not complied with. Hence, the disallowance of these amounts was proper.**<sup>38</sup>

The attendant facts in this case are very similar to those in the aforementioned case. Here, the DBM disallowed the payment of the SCA for being in excess of the confirmed COB for CY 2011. The DBM clearly noted that the proposed COB for CY 2011 contained an over-provision for the SCA, and that the approval thereof should not be construed "as allowing the increase in salary rates and the grant of new or an increase in rates of allowances/benefits." In the ND, the COA reiterated this note from the DBM, to the effect that "the approval of the COB should not be construed as

<sup>37</sup> G.R. No. 243278, November 3, 2020.

<sup>38</sup> Id. Emphasis Supplied.

an authorization for specific expenditure items under PS and that all other allowances/benefits not covered by the Salary Standardization Law (SSL), one of which is the Special Counsel Allowance, shall be subject to the approval of the President of the Philippines.” As already settled by jurisprudence, there is no irreconcilable conflict between the SSS Charter and the various laws requiring prior presidential approval. With the SSS’ failure to secure approval prior to the disbursement of funds for the SCA, the Court affirms the finding that the ND was properly issued.


Moreover, the question of whether the SCA was granted as a regular allowance or on a “per-court-appearance” basis is a question of fact that is beyond the purview of this Court in a *certiorari* proceeding. Section 5, Rule 64 of the Rules of Court states that the findings of fact of the Commission supported by substantial evidence shall be final and non-reviewable. Thus, the Court accords respect and finality to the factual finding of the COA regarding the nature of the disallowed SCA.

In assailing the issuance of the ND, the SSS further argues that the same was not proper, considering that it only received the DBM-confirmed COB for CY 2011 more than a year after the SCA for 2011 was already disbursed.

*SSS v. COA* also dealt with a similar issue, and the Court there treated this factual background as a badge of good faith on the part of the SSS:

Second, the Court notes that the DBM responded to the SSS’ proposed 2010 COB only on April 12, 2011, or more than a year after SSS’ Board Resolution No. 185 dated March 9, 2010 was passed where the SSS proposed the amount of ₱5,384,737,000.00 for PS in its 2010 COB. **In an ideal situation, the DBM approval should have been obtained by the SSS prior to implementing its proposed operating budget. However, the SSS could not have been expected to do so in this instance.** The DBM’s action on the proposed COB came well beyond the calendar year during which the subject COB was supposed to be implemented. Relevantly, some of the disallowed amounts were in the nature of **Special Counsel Allowance** and Overtime Pay, which are forms of direct compensation **paid in consideration of services rendered by the personnel who received them.** It would have been unreasonable for the SSS to put on hold the disbursement of these amounts, as well as virtually all expenditures and operations for C.Y. 2010, while it awaited the DBM’s response. In the meantime, when the SSS paid the subject benefits and allowances to its personnel in 2010, the DBM’s partial disallowance had not yet been issued.

Third, the SSS asserts in its petition that it had pegged the amounts of the subject benefits and allowances at the level of its actual disbursements from its 2009 or the previous year’s budget. **Notably, the SSS’ 2009 COB was also confirmed by the DBM *post facto* the following year, or on May 21, 2010 – without disallowance or**





**adjustment.** Taken together with its authority to set reasonable compensation for its officers and employees under Section 3(c) of its charter, **this led the SSS to believe that its disbursements of the subject benefits and allowances in 2010 were in accordance with all applicable laws on the matter.**<sup>39</sup>

The same ruling should apply in this case. Notably, at the time the SCA was disbursed in 2011, there was no categorical ruling yet on the authority of the SSS to grant the SCA *vis-à-vis* the requirement to secure prior approval of the President, through the DBM. The SSS' lack of knowledge of a prior ruling prohibiting a particular disbursement should be treated as a badge of good faith. The facts do not show a deliberate intent to disregard applicable rules on the grant of the SCA, or to bypass the DBM's authority.

In *Madera v. Commission on Audit*,<sup>40</sup> the Court laid down the following guidelines on the liability of officers and recipients with regard to disbursements subject of a Notice of Disallowance (the Madera Rules):

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, solidarity liable to return only the net disallowed amount which, as discussed herein, excludes amounts excused under the following sections 2c and 2d.
  - 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.

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<sup>39</sup> Id. Emphasis and underscoring supplied, citations omitted.  
<sup>40</sup> G.R. No. 244128, September 8, 2020.

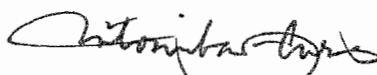
- d. The Court may likewise excuse the return of recipients based on undue prejudice, social justice considerations, and other bona fide exceptions as it may determine on a case to case basis.<sup>41</sup>

Based on the foregoing, the Court finds that the officers who certified and/or approved the disbursement of the SCA must be excused from civil liability for the disallowed amount on the basis of their good faith. On the other hand, Rule 2c of the Madera Rules do not apply to the recipients of the SCA as the grant thereof lacked legal basis.<sup>42</sup> Thus, all recipients should be held liable for the return of the disallowed amounts.

**WHEREFORE**, the Petition for Certiorari is **PARTLY GRANTED**. The Commission on Audit – Commission Proper Decision No. 2018-116, dated January 26, 2018, and Decision No. 2022-098, dated January 24, 2022, are **AFFIRMED WITH MODIFICATION**.

The Notice of Disallowance No. 2012-012 (2011) dated October 23, 2012 in the total amount of PHP 2,544,000.00 is **UPHELD**. The approving and certifying officers of the Social Security System are absolved from solidary liability on account of good faith. However, the recipients of the disallowed amounts – whether approving or certifying officers or mere passive recipients – are held individually liable for the return of the disallowed amounts they respectively received, with six percent (6%) legal interest per annum, reckoned from the finality of this Resolution until fully paid.” (19)

By authority of the Court:

  
**MARIFE M. LOMIBAO-CUEVAS**  
Clerk of Court *mm*

<sup>41</sup> Id.

<sup>42</sup> See *Abellanosa v. Commission on Audit*, G.R. No. 185806. November 17, 2020.

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**[For uploading pursuant to A.M. No. 12-7-1-SC]**

G.R. No. 262968  
kat 1/31/23 (URes19) 4/4/23

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