

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. 264491 (*Agnes D. Arellano, Luzviminda C. Rosales, Earvene Jared S. Cunanan, Emma J.B. Villamater, Marcelina Eva T. Rayos, Lolita M. Atienza, Edgard E. Valdez, Joseph D. Mendoza, Richell A. Casao, and Romeo L. Ramos, petitioners v. Commission on Audit Proper, represented herein by Michael G. Aguinaldo, Chairperson, and Roland C. Pondoc, Commissioner, respondent.*) – This Petition for *Certiorari*<sup>1</sup> under Rule 65, in relation to Rule 64, of the Rules of Court seeks to nullify Decision No. 2022-220<sup>2</sup> dated January 24, 2022 of the Commission on Audit (COA) Proper insofar as it affirmed the Notice of Disallowance (ND) Nos. 13-001-101 (12),<sup>3</sup> and 13-056-164 (12) to 13-062-164 (12)<sup>4</sup> all dated November 20, 2013; and ND Nos. 14-001-101 (13),<sup>5</sup> 14-001-164 (13),<sup>6</sup> and 14-002-164 (13) to 14-004-164 (13)<sup>7</sup> all dated November 3, 2014, pertaining to the payment of PHP 342,000.00 as professional fees and honorarium to Atty. Phillip D. Sawali<sup>8</sup> (*Atty. Sawali*) who was exempted by the COA Proper from returning the said amount.

**Antecedents**

On March 12, 2012, the Board of Regents (BOR) of Batangas State University (BSU) issued Board Resolution No. 354,<sup>9</sup> series of 2012, approving the engagement of Atty. Sawali as BSU’s management

<sup>1</sup> *Rollo*, pp. 3-228.

<sup>2</sup> *Id.* at 31-36.

<sup>3</sup> *Id.* at 83-84.

<sup>4</sup> *Id.* at 69-82.

<sup>5</sup> *Id.* at 136-137.

<sup>6</sup> *Id.* at 134-135; Notice of Disallowance No. 14-001-164 (13) was inadvertently omitted in the dispositive portion of Decision No. 2022-220 dated January 24, 2022 of the COA Proper which affirmed Decision No. 2016-39 dated September 20, 2016 of COA Regional Office No. IV-A.

<sup>7</sup> *Id.* at 138-143.

<sup>8</sup> Also referred to as Atty. Philip D. Sawali in the Decision No. 2022-220 dated January 24, 2022; and ND Nos. 13-001-101 (12), and 13-056-164 (12) to 13-062-164 (12), all dated November 20, 2013; ND Nos. 14-001-101 (13), and 14-002-164 (13) to 14-004-164 (13), all dated November 3, 2014.

<sup>9</sup> *Id.* at 37-38.

consultant.<sup>10</sup> Under the parties' Contract of Management Consultancy<sup>11</sup> dated April 30, 2012, Atty. Sawali shall report directly to the University President and shall serve as consultant of BSU's Executive Committee and BOR.<sup>12</sup> His duties included initiating and/or supporting efforts 'to shift the direction and approach of the University to deliver high and quality performance'<sup>13</sup> on corporate services; strategic corporate advice in key areas; and governance, compliance and risk management.<sup>14</sup>

On post-audit, the COA Audit Team Leader and Supervising Auditor issued the following NDs concerning the payment of professional fees and honorarium to Atty. Sawali for the period of May 2012 to April 2013:<sup>15</sup>

ND No.	Date	Benefit	Period Covered	Amount
13-056-164 (12)	November 20, 2013	Professional Fee	May 2012	₱30,000.00
13-057-164 (12)	November 20, 2013	Professional Fee	June 2012	₱30,000.00
13-001-101 (12)	November 20, 2013	Professional Fee	July 2012	₱30,000.00
13-058-164 (12)	November 20, 2013	Professional Fee	August 2012	₱30,000.00
13-059-164 (12)	November 20, 2013	Professional Fee	September 2012	₱30,000.00
13-060-164 (12)	November 20, 2013	Professional Fee	October 2012	₱30,000.00
13-061-164 (12)	November 20, 2013	Honorarium	October 2012	₱20,000.00
13-062-164 (12)	November 20, 2013	Professional Fee	November 2012	₱30,000.00
14-001-164 (13)	November 3, 2014	Professional Fee	December 2012	₱30,000.00
14-001-101 (13)	November 3, 2014	Professional Fee	January 2013	₱30,000.00
14-003-164 (13)	November 3, 2014	Professional Fee	February 2013	₱30,000.00
14-002-164 (13)	November 3, 2014	Professional Fee	March 2013	₱30,000.00
14-004-164 (13)	November 3, 2014	Professional Fee	April 2013	₱30,000.00
<b>TOTAL</b>				<b>₱380,000.00</b>

The payment was disallowed on audit for being allegedly contrary to Republic Act No. 10155, otherwise known as the 2012 General Appropriations Act, and Republic Act No. 9184.<sup>16</sup> Too, the engagement of

<sup>10</sup> Id. at 170.

<sup>11</sup> Id. at 39-40.

<sup>12</sup> Id.

<sup>13</sup> Id. at 171.

<sup>14</sup> Id.

<sup>15</sup> Id. at 69-84 and 134-143.

<sup>16</sup> Government Procurement Reform Act effective January 26, 2003.

Atty. Sawali as BSU's Management Consultant was without the written concurrences of the Office of the Solicitor General and the COA per COA Circular No. 95-011<sup>17</sup> dated December 4, 1995.

The following persons were determined to be liable:<sup>18</sup>

*For ND Nos. 13-001-101 (12), and 13-056-164 (12) to 13-062-164 (12) all dated November 20, 2013*

Name	Position/Designation	Nature of Participation in the Transaction
Nora L. Magnaye	University President/Vice Chairman, BOR	As Agency Head and Vice Chairman, BOR for approving Board Resolution No. 354 S. 2012. For certifying/ signing the Obligation Request that [the] charges to [the] appropriation/allotment are lawful and incurred under her direct supervision and supporting documents are valid, proper and legal
Atty. Jellie M. Molino <sup>19</sup>	University/ Board Secretary	For certifying/signing the Obligation Request that [the] charges to [the] appropriation/allotment are lawful and incurred under her direct supervision and supporting documents are valid, proper and legal
Luzviminda C. Rosales	VP-Admin and Finance	For approving the payment
Atty. Earvene Jared S. Cunanan <sup>20</sup>	Director for Admin Services	For approving the payment
Lolita M. Atienza	Asst. Director, Accounting	For certifying [the] availability of cash and that supporting documents are complete
Richell A. Casao <sup>21</sup>	Admin Asst. III	For certifying [the] availability of cash and that supporting documents are complete
Emma J.B. Villamater	Director for Finance	For certifying the obligation request as to availability of allotment
Marcelina Eva T. Rayos <sup>22</sup>	Budget Officer	For certifying the obligation request as to availability of allotment
Romeo L. Ramos <sup>23</sup>	Admin Asst. II	For certifying the obligation request as to availability of allotment

<sup>17</sup> Prohibition against employment by government agencies and instrumentalities, including government-owned or controlled corporations, of private lawyers to handle their legal cases; dated December 4, 1995.

<sup>18</sup> Culled from COA Regional Office No. IV-A's Decision No. 2016-39 dated September 20, 2016; *rollo*, pp. 170-186.

<sup>19</sup> Only for ND No. 13-058-164 (12).

<sup>20</sup> Only for ND No. 13-001-101 (12).

<sup>21</sup> Only for ND Nos. 13-001-101 (12), and 13-059-164 (12) to 13-061-164 (12).

<sup>22</sup> Only for ND No. 13-058-164 (12).

<sup>23</sup> Only for ND Nos. 13-060-164 (12) and 13-061-164 (12).

*See*

Atty. Edgard E. Valdez <sup>24</sup>	Internal Audit	For passing the transaction in audit
Joseph D. Mendoza	Internal Audit	For passing the transaction in audit
Nona S. Ricafort	Chairman, BOR	For approving Board Resolution No. 354 S. 2012
Severino Santos	Member, BOR	For approving Board Resolution No. 354 S. 2012
Alexander R. Madrigal	Member, BOR	For approving Board Resolution No. 354 S. 2012
Filemon T. Berba, Jr.	Member, BOR	For approving Board Resolution No. 354 S. 2012
Agnes D. Arellano	Member, BOR	For approving Board Resolution No. 354 S. 2012
Roger M. Rosita	Member, BOR	For approving Board Resolution No. 354 S. 2012
Atty. Phillip D. Sawali	Management Consultant	Payee

*For ND Nos. 14-001-101 (13), and 14-001-164 (13) to 14-004-164 (13) all dated November 3, 2014*

Name	Position/Designation	Nature of Participation in the Transaction
Nora L. Magnaye	University President/Vice Chairman, BOR	As Agency Head and Vice Chairman, BOR for approving Board Resolution No. 354 S. 2012. For certifying/signing the Obligation Request that [the] charges to [the] appropriation/allotment are lawful and incurred under her direct supervision and supporting documents are valid, proper and legal
Luzviminda C. Rosales <sup>25</sup>	VP-Admin and Finance	For approving the payment
Lolita M. Atienza	Asst. Director, Accounting	For certifying [the] availability of cash and that supporting documents are complete
Emma J.B. Villamater	Director for Finance	For certifying the obligation request as to availability of allotment
Marcelina Eva T. Rayos <sup>26</sup>	Budget Officer	For certifying the obligation request as to availability of allotment
Joseph D. Mendoza	Internal Audit	For passing the transaction in audit
Nona S. Ricafort	Chairman, BOR	For approving Board Resolution No. 354 S. 2012
Severino Santos	Member, BOR	For approving Board Resolution No. 354 S. 2012
Alexander R. Madrigal	Member, BOR	For approving Board Resolution No. 354 S. 2012
Filemon T. Berba, Jr.	Member, BOR	For approving Board Resolution No. 354 S. 2012

<sup>24</sup> Only for ND Nos. 13-056-164 (12) to 13-057-164 (12), and 13-001-101 (12).

<sup>25</sup> Only for ND Nos. 14-001-164 (13), 14-001-101 (13) to 14-003-101 (13).

<sup>26</sup> Only for ND No. 14-004-101 (13).

Agnes D. Arellano	Member, BOR	For approving Board Resolution No. 354 S. 2012
Roger M. Rosita	Member, BOR	For approving Board Resolution No. 354 S. 2012
Atty. Phillip D. Sawali	Management Consultant	Payee

### Proceedings before the COA Regional Office

Aggrieved, the above-named BSU officials and employees lodged separate appeals before COA Regional Office No. IV-A, first on June 3, 2014<sup>27</sup> against the NDs dated November 20, 2013, and on May 7, 2015<sup>28</sup> against the NDs dated November 3, 2014.

By Decision No. 2016-39<sup>29</sup> dated September 20, 2016, COA Regional Office No. IV-A, through Regional Director Janet D. Nacion, affirmed the subject NDs, *viz.*:

**WHEREFORE**, premises considered, the consolidated Appeals are hereby **DENIED** for lack of merit. Notice of Disallowance (ND) Nos. 13-056-164(12), 13-061-164 (12), 13-057-164 (12), 13-001-101 (12), 13-058-164 (12), 13-059-164 (12), 13-060-164 (12), 13-062-164 (12) all dated November 20, 2013 in the total amount of ₱230,000.00 and ND Nos. 14-001-164 (13), 14-001-101 (13), 14-003-164 (13), 14-002-164 (13), 14-004-164 (13) all dated November 3, 2014 in the total amount of ₱150,000.00 are hereby **AFFIRMED**. Accordingly, the Appellants are hereby **ORDERED** to refund the aggregate amount of ₱380,000.00 disallowed in the subject NDs.

Consistent with the above discussions, Appellees SA and ATL are hereby instructed to: (a) exert earnest efforts in serving all the NDs either through personal service or registered mail, in accordance with Section 7, Rule IV of the RRPC, to BOR Chairman Nona S. Ricafort; and (b) issue Notice of Finality of Decision (NFD) to all the persons liable under ND Nos. 13-061-164 (12), 13-057-164 (12), 13-001-101 (12), 13-058-164 (12), 13-059-164 (12), 13-060-164 (12), 13-062-164 (12) all dated November 20, 2013 in the total amount of ₱230,000.00 except for BSU Supreme Student Council President and BOR Member, Mr. Roger M. Rosita.<sup>30</sup> (Emphasis in the original).

COA Regional Office No. IV-A held that the appeal filed on June 3, 2014 pertaining to the NDs dated November 20, 2013 was signed only by Roger M. Rosita (*Rosita*). Thus, as for the other BSU officials and employees, the NDs dated November 20, 2013 already became final and executory. Nevertheless, all the aforementioned BSU officials and

<sup>27</sup> *Rollo*, pp. 112-133.

<sup>28</sup> *Id.* at 144-167.

<sup>29</sup> *Id.* at 170-186.

<sup>30</sup> *Id.* at 185.

employees, except Rosita, were ordered to refund the disallowed amount of PHP 380,000.00.

### **Proceedings before the COA Proper**

Undaunted, petitioners filed a Petition for Review<sup>31</sup> on November 8, 2016, but the COA Proper denied it for being filed out of time and for lack of merit per its Decision No. 2022-220<sup>32</sup> dated January 24, 2022. In the same decision, however, it resolved to exempt Atty. Sawali from the obligation to refund the questioned amount which was reduced from PHP 380,000.00 to PHP 342,000.00, thus:

**WHEREFORE**, premises considered, the Petition for Review of Dr. Nora Lumbera-Magnaye, Atty. Luzviminda C. Rosales, Atty. Earvene Jared Cunanan, Atty. Edgard Valdez, Mr. Romeo Ramos, Mr. Joseph Mendoza, Mrs. Lolita Atienza, Mrs. Marcelina Eva Rayos, and Ms. Richell Casao of the Batangas State University, Batangas City is hereby **DENIED** for being filed out of time and for lack of merit. Accordingly, Commission on Audit Regional Office No. IV-A Decision No. 2016-39 dated September 20, 2016, which affirmed Notice of Disallowance (ND) Nos. 13-001-101 (12) and 13-056-164 (12) to 13-062-164 (12), all dated November 20, 2013; and ND Nos. 14-001-101 (13) and 14-002-164 (13) to 14-004-164 (13), all dated November 3, 2014, on the payment of professional fees and honorarium to Atty. Philip D. Sawali, in the reduced amount of [PHP] 342,000.00, is **AFFIRMED**. However, Atty. Sawali is not liable to refund the amounts actually received as compensation for services rendered by him.<sup>33</sup> (Emphasis in the original).

### **The Present Petition**

Petitioners now fault the COA Proper with grave abuse of discretion amounting to lack or excess of jurisdiction when it: (a) failed to rule on their petition for review on the merits; and (b) affirmed petitioners' liability for the NDs in the reduced amount of PHP 342,000.00. Petitioners, thus, pray that the subject disallowance be lifted and they be excused from the obligation to refund the same.<sup>34</sup>

### **Issues**

1. Did the COA Proper commit grave abuse of discretion amounting to lack or excess of jurisdiction when it disallowed the payment for Atty. Sawali's professional fees and honorarium in the amount of PHP 342,000.00?

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<sup>31</sup> Id. at 187-222.

<sup>32</sup> Id. at 31-36.

<sup>33</sup> Id. at 35.

<sup>34</sup> Id. at 14.

2. Are petitioners liable to return this amount?

### Our Ruling

The petition is partly meritorious.

***Although the petition has procedural defects, considerations of substantial justice warrant a liberal treatment thereof***

True, the petition is procedurally infirm. *For one*, there is no showing that petitioners sought a reconsideration of the assailed ruling of the COA Proper before they came to the Court *via* the present petition for *certiorari*; nor was there any justification why a motion for reconsideration, as *condition sine qua non* to the filing of the present petition for *certiorari*, was not availed of. This omission contravenes two procedural rules, *i.e.*, Section 1, Rule 65 of the Rules of Court ordaining that a petition for *certiorari* may be availed of only when there is no appeal, nor any other 'plain, speedy and adequate remedy in the ordinary course of law';<sup>35</sup> and Section 10 of Rule X<sup>36</sup> of the 2009 Revised Rules of Procedure of the COA providing as a remedy the filing of a motion for reconsideration of the COA's adverse decision or resolution. *For another*. As aptly found by the COA Proper,<sup>37</sup> the present petition for *certiorari* was filed beyond the 6-month period prescribed under Section 3 of Rule VII<sup>38</sup> of the 2009 Revised Rules of Procedure of the COA.

While the foregoing infirmities may already warrant the outright dismissal of the petition, the attendant circumstances dictate that we relax the rules in the higher interest of substantial justice. Indeed, rules of procedure are mere tools designed to expedite the resolution of cases and other matters pending in court. A strict and rigid application of the rules that would tend to frustrate rather than promote justice must be avoided.<sup>39</sup> On this score, therefore, we set aside the procedural infirmities and resolve the case on the merits.

<sup>35</sup> *Bilibli v. Commission on Audit*, G.R. No. 231871, July 6, 2021.

<sup>36</sup> Section 10. *Motion for Reconsideration*. — A motion for reconsideration may be filed within the time remaining of the period to appeal, on the grounds that the evidence is insufficient to justify the decision; or that the said decision is contrary to law. Only one (1) motion for reconsideration of a decision of the Commission shall be entertained.

<sup>37</sup> *Rollo*, p. 32.

<sup>38</sup> 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 ASB.

<sup>39</sup> *Supra*, note 35.

***The COA did not commit grave abuse of discretion in disallowing payment for Atty. Sawali's professional fees and honorarium***

Petitioners assert that Atty. Sawali's engagement as BSU's management consultant should not be construed as legal services as to require the concurrences of both the Office of the Solicitor General and the COA. They reason that BSU has its own legal division, headed by its Director for Legal Affairs, which handles BSU's legal matters. Atty. Sawali's duties are entirely distinct from those of a legal consultant, such that his services directly pertained to the operational issues of BSU not its legal issues.<sup>40</sup>

We are not persuaded.

As summarized by the COA Regional Office No. IV-A, Atty. Sawali, who was supposedly engaged as a management consultant, performed the following tasks per his Accomplishment Reports:<sup>41</sup>

- Evaluation and assessment of the case against BSU Management filed by the BSU Faculty Confederation (BSU-FC) for alleged unfair labor practices, union busting, and refusal to negotiate, which is pending resolution with the Public Sector Labor Management Council (PSLMC);
- Drafting of appeals to the COA Regional Office No. IV from various NDs by the resident auditor;
- Evaluation and recommendation on the case between the Management of BSU Nasugbu and CSC Regional Office No. 4 on the appointment of Ms. Analyn H. Venzon to the position of Guidance Counselor III under temporary appointment;
- Further research and finalization of the draft appeals concerning cases involving BSU Management and Officials for COA disallowances of Representation and Transportation Allowance, Honoraria for the conduct of evening classes, and Administrative and Executive Housing Allowances;
- Liaison work and representations with relevant government officials regarding pending Motions for Reconsideration filed by the University President in connection with the cases of alleged unfair labor practice pending with the PSLMC;
- Rendering of routine advice, legal or otherwise, in connection with matters referred which have implications to BSU.
- Designation as a member of the Legal Committee to study and make recommendations on pending cases and related legal concerns with the BOR;
- Research on pertinent laws, rules and guidelines related to certain aspects of management of the University;

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<sup>40</sup> *Rollo*, p. 17.

<sup>41</sup> *Id.* at 41-55.



- Recommendation of actions and practices to avoid and/or manage legal risks in the operation of the University;
- Preparation of reports pertaining to the legal and management aspects of current issues affecting the University and its Officials;
- Issuance of reports related to the legal and management aspects of current issues affecting the University and its officials.<sup>42</sup>

Both COA Regional Office No. IV-A and the COA Proper correctly found that the Accomplishment Reports of Atty. Sawali showed that his work in BSU was essentially legal in nature. And as aptly ruled by the COA Proper, Atty. Sawali's work was considered as 'practice of law' in accordance with the Court's ruling in *Cayetano v. Monsod*<sup>43</sup> (*Cayetano*). 'Practice of law' was defined in *Cayetano* as '**any activity, in or out of court, which requires the application of law, legal procedure, knowledge, training and experience.**'<sup>44</sup>

That Atty. Sawali in fact rendered the foregoing services is undisputed. To repeat, his discharge thereof constituted practice of law as these services required the application of the law, as well as his legal knowledge, training and experience.

In any event, it was the nature of the services he actually performed for BSU, and not his designation as a management consultant which determined the character of his engagement. On this score, the Court rules that Atty. Sawali was hired as private legal consultant of BSU.

Under COA Circular No. 86-255,<sup>45</sup> as amended by COA Circular No. 95-011,<sup>46</sup> the following indispensable conditions must then be satisfied before a government agency or instrumentality can hire a private lawyer: (1) the hiring must be justified by an exceptional circumstance; (2) the written conformity and acquiescence of the Office of the Solicitor General must be secured; and (3) the written concurrence of the COA must also be obtained.<sup>47</sup>

These conditions are absent in this case. First, petitioners never proffered an exceptional circumstance to justify the hiring of Atty. Sawali as BSU's private lawyer. If indeed, as petitioners posit, BSU has a legal division handling its legal affairs, then why was Atty. Sawali hired to replicate the functions of this legal division, in addition to his supposed management functions? Further, as concurrently found by COA Regional

<sup>42</sup> Id. at 182-183.

<sup>43</sup> Id. at 35.

<sup>44</sup> *Cayetano v. Monsod*, 278 Phil. 235, 243 (1991).

<sup>45</sup> Inhibition against employment by government agencies and instrumentalities, including government-owned or controlled corporations, of private lawyers to handle their legal cases; April 2, 1986.

<sup>46</sup> *Supra*, note 17.

<sup>47</sup> *Ricalde v. Commission on Audit*, G.R. No. 253724 (Resolution), February 15, 2022.

Office No. IV-A and the COA Proper, the written concurrences of the Office of the Solicitor General and the COA were not obtained by BSU in violation of Circular No. 95-011 dated December 4, 1995.

In fine, it cannot be said that the COA Proper gravely abused its discretion in affirming the subject NDs. Nevertheless, we are constrained to modify the liability of the approving and certifying officers in accordance with prevailing jurisprudence as will be further discussed below.

***Liability of the approving and certifying officers***

In *Ricalde v. Commission on Audit*<sup>48</sup> (*Ricalde*), we decreed that the approving and certifying officers therein cannot be made accountable for the refund of the disallowed amount since, as in this case, the COA Proper had already determined the propriety of allowing the payees therein, who were hired as private lawyers, to retain all the payments made to them for their services to prevent unjust enrichment on the part of the government, thus:

Sections 38(1) and 39, Chapter 9, Book I of Executive Order No. 292 or the Administrative Code of 1987 require a clear showing of bad faith, malice, or gross negligence attending the performance of official duties and functions to hold an approving and certifying officer civilly liable. Once bad faith, malice, or gross negligence is established, the liability of approving/certifying officers to return disallowed amounts is not individual, but solidary with all persons taking part in the transaction, including every person receiving such payment in accordance with Section 43, Chapter 5, Book VI of the Administrative Code, *viz.*:

SEC. 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.**

x x x x

Such solidary liability is justified since the payees could not have received the disallowed amounts if it was not for the officer's errant discharge of his or her official duties or functions. Parenthetically, when the payees are excused to return the disallowed amount in recognized

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<sup>48</sup> Id.

situations, such as when it was genuinely given in consideration of services rendered or it constitutes payment on the basis of *quantum meruit*, the officers' liability to return must necessarily be extinguished. Indeed, a payment made in consideration of actual services rendered from which the government benefitted, albeit irregular or unlawful for some reason, cannot be considered as an undue leakage from the public coffers to still require its return from the payees, much more from the public officers. Otherwise, the government will be unjustly enriched as it will be allowed to reap the benefits of the payees' services at the expense of another.

Verily, in *Madera v. Commission on Audit*, we introduced the concept of 'net disallowed amount' to clarify the nature and extent of the approving and/or certifying officers' liability in a disallowed transaction *vis-à-vis* that of the payees.' We ruled:

With the liability for unlawful expenditures properly understood, x x x **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 Estela Perlas-Bernabe] coins the term '**net disallowed amount**' to refer to the **total disallowed amount minus the amounts excused to be returned by the payees**. Likewise, [Justice Marvic Leonen] is of the same view that **the officers held liable [to] 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**.

In *Torreta v. Commission on Audit*, we laid down specific guidelines on the return of disallowed amounts in cases involving irregular or illegal government contracts, *viz.*:

2. If a Notice of Disallowance is upheld, the rules on return are as follows:

x x x x

b. Pursuant to Section 43 of the Administrative Code of 1987, approving and certifying officers who are clearly shown to have acted in bad faith, malice, or gross negligence, are **solidarily liable together with the recipients** for the return of the disallowed amount.

c. The civil liability for the disallowed amount may be **reduced by the amounts due to the recipient based on the application of the principle of *quantum meruit*** on a [case-to-case] basis.

x x x x'<sup>49</sup> (Citations omitted, emphasis in original).

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<sup>49</sup> Id.

As it was, the COA Proper had already excused Atty. Sawali from the obligation to refunding the amounts he received as compensation and honorarium for the services he rendered for BSU.

Applying *Ricalde*, petitioners should likewise be excused from returning the net disallowed amount here. Accordingly, notwithstanding the disallowance of Atty. Sawali's professional fees and honorarium under the subject NDs, petitioners are excused from refunding the disallowed amount of PHP 342,000.00 which the payee himself was no longer required to refund.

**FOR THESE REASONS**, the Petition for *Certiorari* is **GRANTED IN PART**. The Commission on Audit Decision No. 2022-220 dated January 24, 2022 is **AFFIRMED with MODIFICATION**. Petitioners Agnes D. Arellano, Luzviminda C. Rosales, Earvene Jared S. Cunanan, Emma J.B. Villamater, Marcelina Eva T. Rayos, Lolita M. Atienza, Edgard E. Valdez, Joseph D. Mendoza, Richell A. Casao, and Romeo L. Ramos need not refund the disallowed amount of PHP 342,000.00." (1)

By authority of the Court:

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

*(With Dissenting Opinion of Associate Justice Alfredo Benjamin S. Caguioa)*

MS. AGNES D. ARELLANO (reg)  
Incumbent Director  
Instructional Material Development Center  
MS. EMMA J.B. VILLAMATER (reg)  
Former Chief Administrative Officer  
MS. LOLITA M. ATIENZA (reg)  
Former Director for Finance Services  
MR. JOSEPH MENDOZA (reg)  
Former Internal Audit  
MR. ROMEO L. RAMOS (reg)  
Incumbent Director, Financial Services  
ATTY. LUZVIMINDA C. ROSALES (reg)  
Incumbent Vice President  
Administration and Finance  
MS. MARCELINA EVA RAYOS (reg)  
Former Assistant Director for Budget  
ATTY. EDGARD E. VALDEZ (reg)  
Incumbent Dean of College of Law  
MS. RICHELL A. CASAO (reg)  
Administrative Assistant III – Senior Bookkeeper  
ATTY. EARVENE JARED S. CUNANAN (reg)  
Incumbent Director, Institutional Planning and  
Development Office  
Batangas State University  
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THE CHAIRPERSON (x)  
Commission on Audit  
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Quezon City

COMMISSION ON AUDIT – REGIONAL OFFICE IV-A  
SUCS and other NGS Stand Alone Agencies  
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EN BANC

G.R. No. 264491 – AGNES D. ARELLANO, LUZVIMINDA C. ROSALES, EARVENE JARED S. CUNANAN, EMMA J.B. VILLAMATER, MARCELINA EVA T. RAYOS, LOLITA M. ATIENZA, EDGARD E. VALDEZ, JOSEPH D. MENDOZA, RICHELL A. CASAO, and ROMEO L. RAMOS, *petitioners, versus* COMMISSION ON AUDIT COMMISSION PROPER, represented herein by MICHAEL G. AGUINALDO, Chairperson, and ROLAND C. PONDOC, Commissioner, *respondent*.

Promulgated:

January 31, 2023

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DISSENTING OPINION

CAGUIOA, J.:

I file this Dissent to maintain my position in *PSALM v. Commission on Audit*<sup>1</sup> (*PSALM*) that the Commission on Audit (COA) itself had suspended or lifted all pre-audit of government transactions when it issued Circular No. 2011-002.<sup>2</sup> Accordingly, I disagree that the subject disallowances should be upheld. I submit that there was no requirement for Batangas State University (BSU) to obtain the written concurrence of the COA prior to engaging the services of private counsel, Atty. Phillip D. Sawali (Atty. Sawali).

In *PSALM*, the Court definitively found that the requirement of prior written concurrence is an instance of **pre-audit**. When government agencies seek the COA's concurrence, the COA reviews the letter-request to determine if the legal fees to be paid are excessive, extravagant, or unreasonable.

As I had pointed out in my Concurring and Dissenting Opinion in *PSALM*, the COA itself had suspended or lifted all pre-audit of government transactions when it issued Circular No. 2011-002. The relevant portion of this Circular states:

Guided by the foregoing, and in order to accelerate the delivery of public services and ensure facilitation of government transactions, this Commission hereby withdraws selective pre-audit under COA Circular No. 2009-002 **and thereby lifts all pre-audit activities presently being performed on financial transactions of the national government agencies, government owned and/or controlled corporations and local**

<sup>1</sup> G.R. No. 247924, November 16, 2021.

<sup>2</sup> Subject: Lifting of Pre-audit of Government Transactions, dated July 22, 2011.



**government units**, except those required by existing law. (Emphasis supplied)

The reason for the lifting of pre-audit activities was stated concisely by former COA Chairperson Grace Pulido-Tan: “We have [been] receiving concerns from agencies that auditors are looking for this and that documents. *Nauuntal ang mga proyekto.*”<sup>3</sup>

Prior to Circular No. 2011-002, the COA had historically already been issuing circulars which imposed, and then lifted pre-audit of government transactions. In 1982, the COA issued Circular No. 82-195<sup>4</sup> which stated that financial transactions of the government shall no longer be subject to pre-audit by the COA, with certain exceptions. Remarkably, this Circular No. 82-195 stated that pre-audit activities shall continue to be performed on the “[r]eview and evaluation of consultancy contracts” but not as pre-requisites to payment of claims.<sup>5</sup>

In 1986, the COA issued Circular No. 86-257<sup>6</sup> which reinstated the pre-audit activities on a limited and selective basis in view of the subsequent events demonstrating that the elimination of the pre-audit system was contributory to irregular, illegal, wasteful and anomalous disbursements of huge amounts of public funds. In that same year, the COA issued Circular No. 86-255<sup>7</sup> requiring the prior written conformity of the Office of the Solicitor General (OSG) or the Office of the Government Corporate Counsel (OGCC), as well as the written concurrence of the COA to the hiring of private counsel; otherwise, the payment of retainer fees would be disallowed in audit.

After three years, COA Circular No. 89-299,<sup>8</sup> as amended by Circular No. 89-299A,<sup>9</sup> again lifted the pre-audit as a pre-requisite to the implementation or prosecution of projects and payment of claims. This Circular covered the financial transactions, irrespective of amount, of all agencies of the National Government (NGAs) and all government-owned and/or controlled corporations (GOCCs). Instead, those financial transactions of the government agencies were subjected to post-audit by the COA.<sup>10</sup>

<sup>3</sup> John Constantine G. Cordon, *Pre-audit process doesn't prevent corruption – COA*, *Manila Times*, December 21, 2011, available at <https://www.manilatimes.net/2011/12/21/news/national/pre-audit-process-doesnt-prevent-corruption-coa/755528/>.

<sup>4</sup> Subject: Lifting of Pre-Audit of Government Transactions, dated October 26, 1982.

<sup>5</sup> Id.

<sup>6</sup> Subject: Selective Pre-Audit on Government Transactions, dated March 31, 1986.

<sup>7</sup> Subject: Inhibition against employment by government agencies and instrumentalities, including government-owned or controlled corporations, of private lawyers to handle their legal cases, dated April 2, 1986.

<sup>8</sup> Subject: Lifting of Pre-Audit of Government Transactions of National Government Agencies and Government-Owned or Controlled Corporations, dated March 21, 1989.

<sup>9</sup> Subject: Restatement with Amendments of COA Circular No. 89-299 on Lifting of Pre-Audit of Financial Transactions of National Government Agencies and Government-Owned and/or Controlled Corporations, dated September 8, 1989.

<sup>10</sup> Id.



The COA subsequently issued Circular No. 94-006<sup>11</sup> in 1994 which expanded the lifting of pre-audit to cover local government units (LGUs) and Circular No. 95-006<sup>12</sup> in May 1995 which lifted the pre-audit of all financial transactions without exception. In December of that same year, the COA issued Circular No. 95-011,<sup>13</sup> which required the written conformity and acquiescence of the OSG or the OGCC **AND** the written concurrence of the COA before the hiring of private counsel. This was followed by Circular No. 2009-002,<sup>14</sup> through which the COA reinstated selective pre-audit on government transactions in NGAs, LGUs, and GOCCs with original charters with certain transactions mentioned therein. Rounding out this sequence of COA issuances is the aforementioned Circular No. 2011-002,<sup>15</sup> which lifted the pre-audit of government transactions.

The pattern that emerges from the foregoing sequence of COA issuances is that **whenever the COA believed it was necessary to reinstate the pre-audit system, what it did was to issue another circular amending or revoking the withdrawal of pre-audit.**

In the instant case, the COA cites its Circular No. 95-011<sup>16</sup> as basis for disallowing the payments to Atty. Sawali due to lack of prior concurrence. As a species of pre-audit, this requirement under Circular No. 95-011 was rendered *functus officio* by the issuance of the subsequent Circular No. 2011-002. Atty. Sawali's services were engaged on April 30, 2012, and payments were made to him up until April 2013. **Up to that point, the COA had not issued any subsequent circular amending or revoking Circular No. 2011-002, or reinstating the system of pre-audit.** In fact, the next issuance by the COA on the matter is the fairly new Circular No. 2021-003,<sup>17</sup> issued only on July 16, 2021, well beyond the period of Atty. Sawali's engagement by BSU.

To reiterate, at the time that BSU engaged the services of Atty. Sawali, it was Circular No. 2011-002 that was subsisting, and the COA had not issued any circular revoking it. Hence, at the time, **there was no system of pre-audit prevailing and BSU was not required to obtain prior COA concurrence.**

<sup>11</sup> Subject: Lifting of pre-audit in all agencies of the Government, including government-owned and/or controlled corporations and local government units, and restating the provisions of all COA Circular on the matter, dated February 17, 1994.

<sup>12</sup> Subject: Total lifting of pre-audit on all financial transactions of the National Government agencies, government-owned and/or controlled corporations and local government units, dated May 18, 1995.

<sup>13</sup> Subject: Prohibition against employment by government agencies and instrumentalities, including government-owned or controlled corporations, of private lawyers to handle their legal cases, dated December 4, 1995.

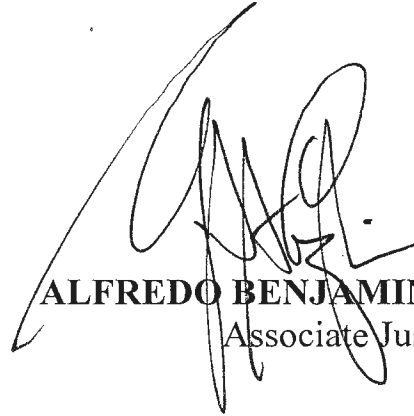
<sup>14</sup> Subject: Reinstating Selective Pre-Audit on Government Transactions, dated May 18, 2009.

<sup>15</sup> Supra note 2.

<sup>16</sup> Supra note 13.

<sup>17</sup> Subject: Exempting Government Agencies and Instrumentalities, Including Government-Owned or Controlled Corporations from the Requirement of Written Concurrence from the Commission on Audit on the Engagement of: (1) Lawyers under Contracts of Service or Job Order Contracts; and (2) Legal Consultants, subject to specific conditions.

For the foregoing reasons, I believe that the Petition for *Certiorari* should be granted and the assailed COA Decision No. 2022-220 dated January 24, 2022 should be set aside.

A handwritten signature in black ink, appearing to be 'ABC', is written over the printed name and title of the signatory.

**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice