G.R. No. 213189 – FAUSTINO SILANG, *ET AL.*, *petitioner* v. COMMISSION ON AUDIT, *respondent.*

Promulgated:

September 8, 2015

CONCURRING OPINION

BRION, *J.*:

I write this Concurring Opinion to highlight the liabilities of officers of local government units in the disbursement of public funds, a topic I have pursued in many other cases. In so doing, I express my support for the *ponencia*'s decision to partially modify the respondent Commission on Audit's (*COA*) Resolution dated March 13, 2014, which upheld the Notices of Disallowance Nos. 2009-0001-101-(08) and 2009-002-101(09).

I point out at the outset that a local government has the authority and prerogative to negotiate and to enter into a Collective Negotiation Agreement (*CNA*) with its employees.[1] In implementing its negotiated CNA, the local government necessarily has to disburse and use funds to support the agreed CNA terms.

That the law authorizes the use of its funds, however, does not automatically make the disbursement legal. The use of public funds must be in accordance with the requirements of law – in this case, DBM Circular No. 2006-1. The release of funds without fully complying with DBM Circular No. 2006-1 results into an illegal expenditure that can lead to possible liability, a solidary one to refund the disbursed funds by the responsible government officials and employees, as what had happened in the present case.

The Case

Before us is a petition for *certiorari* assailing the Resolution issued by the Commission on Audit (*COA*), which upheld the Notices of Disallowance Nos. 2009-0001-101-(08) and 2009-002-101(09). These NDs disallowed the CNA Incentives paid to the rank-and-file employees of the local government unit (*LGU*) of Tayabas, Quezon, for the years 2008 and 2009.

On November 13, 2007, and February 4, 2008, the LGU of Tayabas, Quezon, entered into CNAs with the Unyon ng mga Kawani ng Pamahalaang Lokal ng Tayabas (*UNGKAT*), an employee's organization of

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[1] See Public Sector Labor Management Council Resolution No. 04, Series of 2002.

the LGU of Tayabas, Quezon, duly registered with the Department of Labor and Employment (*DOLE*) and with the Civil Service Commission (*CSC*).

The local *Sanggunian* subsequently passed Ordinance No. 08-03 appropriating ₱9.23 million for the payment of the 2008 CNA. The implementation of the ordinance was ordered suspended by the Office of the COA Auditor, Province of Quezon. Eventually, a Notice of Disallowance was issued against it.

In the meantime, the Sanggunian passed Ordinance No. 09-01, which appropriated ₱39.86 million for the 2009 CNA. This was also subsequently disallowed, for the same reasons given in disallowing Ordinance No. 08-03.

The Office of the Auditor of the Province of Quezon disallowed these appropriations for the following reasons:

(1) The CNAs lacked prior registration with the CSC;
(2) UNGKAT is not accredited by the CSC as the sole and exclusive negotiation agent of the LGU concerned; and
(3) Cost-cutting measures in the CNA had not been identified.

The LGU of Tayabas, as represented by its mayor, Faustino Silang, contested the suspension and subsequent disallowance of these ordinances. The COA Regional Director and COA *en banc* affirmed the Notices of Disallowance for the following reasons:

(1) UNGKAT was ***not accredited as the sole and exclusive negotiation agent*** of the LGU of Tayabas at the time the LGU entered into CNAs with them, contrary to Item No. 5.1 of Department of Budget and Management (DBM) Circular No. 2006-1. At the time UNGKAT entered into the CNAs, it was merely registered with the DOLE, which gives it the right to be certified as the LGU's exclusive negotiating representative; and

(2) Funding for the 2008 CNA was sourced from the LGU's savings two months before it was signed; this violated Item 7.1.2 of DBM Circular No. 2006-1.

Thus, Silang and the rank-and-file employees of the LGU of Tayabas filed the present petition for *certiorari*, imputing grave abuse of discretion on the COA *en banc*'s acts of affirming the Notices of Disallowance.

I **agree** with the *ponencia*'s decision to affirm the COA *en banc*'s resolution upholding the Notices of Disallowance, and to partially modify the civil liabilities of the local government officials and employees involved.

As the *ponente* observed, these NDs merely followed the requirements of DBM Circular No. 2006-1. It was thus proper to order the disallowances

as the ordinances – appropriating funds for the CNAs – did not comply with the requirements.

I now proceed to discuss my reasons for the liabilities of the local government officials and employees involved.

Liability of government employees directly responsible for illegal expenditures

Section 52, Chapter 9, Title I-B, Book V of the Administrative Code expressly provides that persons who are directly responsible for the illegal expenditures of public funds shall be liable:

> 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***. [Emphasis supplied]

This liability of government employees and officials for illegal expenditures similarly finds support in the Local Government Code, which imputes personal liability for unlawful expenditures against the official or employee responsible for it, *viz*:

> Section 351. General Liability for Unlawful Expenditures. – Expenditures of funds or use of property in violation of this Title and other laws shall be ***a personal liability of the official or employee responsible therefor.*** [Emphasis supplied]

Book VI, Chapter V, Section 43 of the Administrative Code expounds on what direct responsibility for illegal expenditures entails, particularly the extent of personal liability for reimbursement that each participating public employee would bear:

> 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***. [Emphasis supplied]

Thus, the law in clear terms expressly provides that public employees directly responsible for an illegal expenditure regardless of his or her part in authorizing its release, in making the payment, or in otherwise taking part shall be ***solidarily liable for its reimbursement***. Also solidarily liable are the persons who received payment from an illegally disbursed public fund.

As an **exception**, jurisprudence absolves public employees who acted in good faith in approving, releasing, or receiving these funds. The Court,

for practical and equitable reasons, no longer requires them to reimburse the funds already disbursed. Good faith in this case meant that the government employees and officers acted in "the honest belief that the amounts given were due to the recipients."

Under these legal principles, I join the *ponencia* in finding that the approving officers, *i.e.*, the Mayor and the members of the Sanggunian, have been directly responsible for the illegal expenditure of CNA incentives. Also responsible are the officers of the UNGKAT who directly participated in the negotiations for these incentives.

None of them can invoke the honest belief that the requirements of DBM Circular No. 2006-1 on CNA incentives were complied with; as the government officers and employees directly authorized to negotiate, to agree on, and to release these funds, they carry the duty to know and comply with the rules applicable to these transactions.

Liability of approving officers

Under the local government code, an ordinance is necessary for the use of local funds.[2]

The local chief executive prepares the budget proposal,[3] which is the basis for the budget to be enacted by the local Sanggunian.[4]

As a rule, savings generated from the annual budget revert back to the general fund.[5] DBM Circular No. 2006-1 authorizes the local chief executive and the Sanggunian to use savings from released Maintenance and Other Operating Expenses (*MOOE*) funds to grant cash incentives to rank-and-file employees of the local government, through a CNA.[6]

In the present case, the Mayor and the Sanggunian exceeded their authority to grant cash incentives under a CNA, as they (*1*) entered into a CNA with a union that had not been accredited as the sole and exclusive negotiating agent of the local government employees of Tayabas; and (*2*) with regard to the 2008 CNA, they had used savings incurred two months before the CNA was signed.

These requirements are clearly stated in DBM Circular No. 2006-1, which provides the procedure for negotiating and entering into a CNA. As the approving officers vested with the authority to negotiate and enter into a CNA, the Mayor and Sanggunian members are directly responsible for the negotiation and release of the public funds involved and are thus solidarily

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2 Title V, Chapter 1, Section 305, Local Government Code .
3 Title V, Chapter 1, Section 318, Local Government Code.
4 Title V, Chapter 1, Section 319, Local Government Code.
5 Title V, Chapter 1, Section 322, Local Government Code.
6 Section 7.0, DBM Circular No. 2006-1.

liable for their illegal expenditure of these funds for noncompliance with the requirements.

Further, as the *ponente* had correctly observed, the Mayor and the Sanggunian could not invoke their good faith to absolve them from their solidary liability. Good faith, as earlier pointed out, involves the honest belief that one is legally entitled to the fund received.

The Mayor's and the Sanggunian members' roles in initiating, negotiating, and approving CNAs vest them with the responsibility to comply with the requirements of DBM Circular No. 2006-1; part of this responsibility is to know these requirements and to act as dictated by these requirements.

Moreover, I find it highly suspect that these approving officers continued to push for a second ordinance involving CNA incentives after the first ordinance had already been suspended by the provincial auditor. The second ordinance involved more money for the payment of CNA incentives and suffered from the same infirmities and noncompliance with DBM Circular No. 2006-1 as the first ordinance.

To my mind, the enactment of the second ordinance shows a reckless disregard for DBM Circular No. 2006-1. With the second ordinance, the approving officers ignored the reasons behind the earlier order of suspension of the first ordinance, particularly the failure to comply with DBM Circular No. 2006-1. This disregard for the DBM Circular most definitely could not qualify as good faith compliance with what had been shown to them that must be observed.

That these approving officers did not receive any of these funds is not sufficient justification to absolve them from liability. The receipt or non-receipt of illegally disbursed funds is immaterial to the solidary liability of government officials directly responsible therefor. We had the occasion to rule on this point in the recent case *Maritime Industry Audit v. COA*,[7] where the Court *en banc* held the approving officers who acted in bad faith to be solidarily liable for the return of the disallowed funds even if they did not receive any part of the fund.

Liability of UNGKAT officers who directly participated in the negotiations

Aside from the Mayor and the Sanggunian, UNGKAT officers who directly participated in the negotiations also share responsibility for the illegal disbursement of the released funds. They are responsible and liable as the funds were released after the negotiations where they had taken part; the

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[7] G.R. No. 185812, January 13, 2015.

CNAs were between UNGKAT (that they led and represented) and the local government.

Too, the reason behind the illegality of the CNAs is UNGKAT's failure to register as the exclusive negotiation agent of the LGU of Tayabas' rank-and-file employees. UNGKAT's officers, as the leaders and representatives of the LGU employees, have the duty to comply with the procedures and requirements that allow the union to represent the LGU employees in a CNA.

That the union in a CNA must be accredited as the sole negotiating agent is not a new requirement under DBM Circular No. 2006-1. As early as 2002, Public Sector Labor Management Council Resolution No. 01 Series of 2002 already required the registration of government employees' unions with the DOLE and their accreditation with the CSC before they are allowed to enter collective negotiations with management.

Thus, by the time UNGKAT started negotiations with the LGU of Tayabas in 2008, the requirement of prior accreditation had been in place for at least six years. Noncompliance with a requirement that had been in effect for this long can no longer be considered an act of good faith; such omission is an utter disregard of the laws involving the CNA negotiations.

Ordinary rank-and-file employees and UNGKAT members with no participation in the CNAs are not liable for the return of the CNA incentives.

Thus, the only set of employees who are not obliged to reimburse the illegally disbursed funds in the present case are its passive recipients, *i.e.*, the ordinary rank-and-file employees of the LGU of Tayabas, including the UNGKAT members and officers who had no direct participation in the negotiations.

The reason for this conclusion is that they had been mere passive recipients of good graces and they had (and still have) every right to rely on the presumptions of regularity and good faith accorded to public officers responsible for the disbursement and expenditure of public funds. In particular, as mere passive recipients, they did not actively take part in the CNA, had no responsibility to undertake in carrying out the requirements for union registration and accreditation, and could not have known the taints of irregularities that the funds released to them carried.

ARTURO D. BRION
Associate Justice