



Republic of the Philippines
 Supreme Court
 Manila

EN BANC

**BAYANI F. FERNANDO,
 ANGELITO S. VERGEL DE DIOS,
 CESAR S. LACUNA, RUBEN C.
 GUILLERMO, RAMON S. ONA,
 FELIMON T. TARRAGO,
 FEDERICO E. CASTILLO, ALLAN
 ARCEO, DANILO M. SEÑORAN,*
 RENE ESTIPONA and EDENISON
 F. FAINSAN, in his capacity as the
 incumbent Assistant General
 Manager for Finance and
 Administration of the METRO
 MANILA DEVELOPMENT
 AUTHORITY,**

Petitioners,

- versus -

**HONORABLE COMMISSION ON
 AUDIT EN BANC, RIZALINA Q.
 MUTIA, Director IV, Cluster B-
 General Public Service II and
 Defense, National Government Sector,
 COMMISSION ON AUDIT and
 IRENEO B. MANALO, State Auditor
 V, Supervising Auditor,
 COMMISSION ON AUDIT,**

Respondents.

G.R. No. 214910

Present:

SERENO, C.J.,
 CARPIO,
 VELASCO, JR.,
 LEONARDO-DE CASTRO,
 PERALTA,
 BERSAMIN,
 DEL CASTILLO,
 PERLAS-BERNABE,
 LEONEN,**
 JARDELEZA,
 CAGUIOA,**
 MARTIRES,***
 TIJAM,
 REYES, JR., and
 GESMUNDO,** JJ.

Promulgated:

February 13, 2018

X -----X

DECISION

JARDELEZA, J.:

This is a petition for review on *certiorari*¹ under Rule 64, in relation to Rule 65, of the Rules of Court, assailing Decision No. 2012-165² dated October 15, 2012 of the Commission on Audit (COA) which disapproved

* Also referred to as "Daniolo" in some parts of the records.

** On official business.

*** On official leave.

¹ Rollo, pp. 3-16.

² *Id.* at 47-57.

the COA-National Government Sector (NGS) Cluster-B Decision No. 2010-006 dated June 18, 2010 and effectively denied the appeal of the Metropolitan Manila Development Authority (MMDA) with modifications.³

On March 22, 2004, the MMDA conducted a public bidding for the Design and Construction of Steel Pedestrian Bridges in various parts of Metro Manila, with William L. Tan Construction (WLTC) emerging as the winning bidder.⁴ Thus, on March 24, 2004, the MMDA⁵ and WLTC⁶ executed a Contract⁷ where the latter agreed to design and construct 14 steel pedestrian bridges for a price of ₱196,291,834.71⁸ to be completed within 120 calendar days from receipt of the Notice to Proceed (NTP). The MMDA also issued the NTP on March 24, 2004 and WLTC received it on the same day.⁹

During the construction, WLTC executed Deeds of Assignment for parts of the project to third-party contractors.¹⁰ The MMDA also issued three suspension orders (SOs) to WLTC on various dates, as well as the corresponding resume orders subsequently.¹¹ Based on WLTC's claimed work accomplishment, the MMDA paid WLTC a total of ₱161,903,009.85 net of taxes,¹² and withheld ₱9,052,570.48 as retention fee.¹³ The MMDA also did not pay WLTC the difference of ₱5,861,078.43 since it was the computed liquidated damages for the 120-calendar day delay in the completion of the project.¹⁴

On post-audit, the Supervising Auditor of COA-MMDA issued Notice of Suspension (NS) No. 08-23-TF-(2004-2007) on all payments pending the MMDA's submission of required documents within 90 days from notice, and by reason of the Technical Evaluation Reports (TERs) dated March 9, 2007 and June 18, 2007 of COA engineers assigned at COA-MMDA.¹⁵ The TERs concluded that the contract cost of ₱199,801,671.91 was excessive for being 29.63% above the COA Estimated Cost of ₱151,409,330.45 due to high percentage mark-up and erroneous computation of site works.¹⁶ The TERs also showed that the liquidated damages to be imposed should be ₱18,153,348.63, instead of ₱5,861,078.43, due to the delay in the

³ *Id.* at 55.

⁴ *Id.* at 24.

⁵ Represented by then Chairman Bayani F. Fernando.

⁶ Represented by William L. Tan.

⁷ *Rollo*, pp. 18-23.

⁸ *Id.* at 24, 47-48. The contract price was originally ₱199,801,671.91, but was revised via Variation Order No. 1.

⁹ *Id.* at 25.

¹⁰ *Id.* at 48. Grandspan Development Corp., J.O.C. Fabrication & Construction Corp., EEI Corporation, and Yamato Engineering Co., Ltd., Manila Branch.

¹¹ *Id.* at 48-49. SOs dated March 23, 2004, July 30, 2004, and November 15, 2004 and Resume Orders dated April 21, 2004, October 25, 2004, and January 27, 2005.

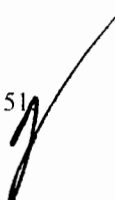
¹² *Id.* at 51.

¹³ *Id.* at 50.

¹⁴ *Id.*

¹⁵ *Rollo*, p. 51.

¹⁶ *Id.* at 32.



construction for 344 days.¹⁷

On January 29, 2009, the COA State Auditor issued Notice of Disallowance (ND) No. 09-001-TF-(04-06).¹⁸ The COA State Auditor held that the documents¹⁹ requested under the NS remained unsubmitted. As such, the suspended transactions matured into a disallowance pursuant to Section 82 of Presidential Decree (PD) No. 1445.²⁰ These documents were essential support for the claim against government funds and in the evaluation of the contract considering the audit observations cited in the NS. The COA State Auditor held WLTC, its subcontractors, and petitioners, except Edenison F. Fainsan (Fainsan), liable for the disallowance.²¹

The MMDA appealed before the COA-NGS Cluster-B, attaching WLTC's request for extension of the contract period dated February 10, 2005 and the approval of the MMDA dated February 17, 2005.²²

Ruling on the appeal, the COA-NGS Cluster-B lifted the disallowance, except for liquidated damages of ₱2,063,321.56. It re-evaluated the disallowance and found that the increased deployment of labor and equipment was necessary in the actual implementation of the project. The contract cost variance was, upon re-evaluation, found to be well within the COA allowable limit. The liquidated damages, on the other hand, were reduced after the team considered the granted request for extension of time to WLTC. In view of the modification of the ND, the decision of the COA-NGS Cluster-B was elevated to the COA Proper on automatic review.²³

The COA Proper disapproved the decision of the COA-NGS Cluster-B and denied the appeal of the MMDA with modifications. It reduced the original disallowance from ₱161,903,009.85 to ₱37,255,307.46 consisting of liquidated damages of ₱18,153,348.63 and contract cost variance of

¹⁷ *Id.* at 51.

¹⁸ *Id.* at 38-42.

¹⁹ *Id.* at 39. These include, among others, the following:

1. Copy of complete set of as-built plans with separate shops/drawings on changes made due to variation orders, duly approved by the Regional Director, Department of Public Works and Highways-National Capital Region (DPWH-NCR) pursuant to the Memorandum of Agreement (MOA) between MMDA and DPWH;
2. Copy of program work and technical specifications, duly approved by the Regional Director, DPWH-NCR as per MOA;
3. Contractor's detailed breakdown of estimates and/or unit cost analysis/derivation for work item expressed in volume/areas/lump/lot specifically for siteworks for all footbridges;
4. Detailed computation of contract time signed/approved by the agency officials concerned;
5. Copy of the original plans, indicating the affected portions of the project, and revised plans and specifications, indicating the changes made, duly approved by the Regional Director, DPWH-NCR; and
6. Copy of the agency's report on the necessity/justifications for the need of variation order which shall include: (a) the computation as to the quantities of the additional/deductive works involved per item indicating the specific stations where such works are needed; (b) the date of inspection conducted and the result of such inspection; and (c) detailed estimate of the unit cost of such items of work for new unit costs, including those expressed in volume/area/lump sum/lot.

²⁰ GOVERNMENT AUDITING CODE OF THE PHILIPPINES.

²¹ *Rollo*, pp. 40-41.

²² *Id.* at 51.

²³ *Id.* at 51-52.

₱19,101,958.83. This was further reduced to ₱22,341,658.55 considering that the MMDA already withheld ₱9,052,570.48 as retention money and ₱5,861,078.43 as liquidated damages. The COA Proper named WLTC and the responsible officials of the MMDA liable for the disallowance.²⁴

It further ruled that WLTC was liable for ₱18,153,348.63 due to the delay in the construction for 344 days. The contract expressly provided that the project should be completed for 120 days, or on July 21, 2004,²⁵ counted from March 24, 2004. The project, however, was only completed on June 30, 2005 without any request for extension of time before the original date of completion. The COA Proper faulted the MMDA and the COA-NGS Cluster-B for considering the SO dated March 23, 2004 and thusly using the April 21, 2004, the date of the RO, as the effective date of the Contract.²⁶ The COA Proper held that it was incorrect to do so because there was no project to suspend yet on March 23, 2004 as the contract was executed on March 24, 2004. Said SO was also merely signed by Ramon S. Ona (Ona), for and in behalf of the MMDA. The COA Proper held that he did not have authority to issue any SO or contract that will bind the Government. Even on the assumption that he did, the approved contract time extension, as confirmed by Fainsan, was not covered with the required performance security under Republic Act (RA) No. 9184.²⁷ It also held that the reasons for the SOs²⁸ were inherent risks that a contractor assumes in a design and construction project.²⁹

The COA Proper also upheld the original disallowance of ₱19,101,958.83 representing contract cost variance. WLTC explained that this pertains to additional cost of manpower and equipment due to increased deployment of labor and equipment to expedite the completion of the project. However, the COA Proper found that WLTC only needed to expedite the completion of the project because it had long been overdue. Thus, the alleged additional cost of manpower and equipment should not be borne by the Government.³⁰

Hence, this petition which raises the issue of whether the MMDA and/or its concerned officers can be held liable for the liquidated damages and/or contract cost variance. Petitioners argue that WLTC bears the sole

²⁴ *Id.* at 55-56.

²⁵ *Id.* at 27-30, 117-125. COA erroneously stated that the contract expiry date was on July 23, 2004. In its Computation of Liquidated Damages attached as Annex "G" in the petition and Annex 7 in the comment, the correct date, July 21, 2004, was used.

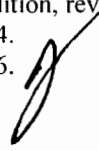
²⁶ *Id.* at 53.

²⁷ Government Procurement Reform Act; *rollo*, pp. 53-54.

²⁸ *Id.* at 54, 70, 111-115. The reasons cited were: right-of-way problems; change in location for C-5/Beulah, Lanuza and Katipunan footbridges; relocation of aerial, ground and underground lines of utility companies; conflict between footbridges footings and DPWH box culvert along Marcos Highway; delay in the issuance of permits and clearances; encroachment on LRT condition; resistance of Chevrolet; pending clarification of proposed DPWH box culvert location, pending approval of final location, poor weather condition, revision of design and pending approval of Change Order No. 1.

²⁹ *Id.* at 52-54.

³⁰ *Id.* at 55-56.



liability because the delay in the project and the additional costs incurred to expedite its completion were the entire fault of WLTC.

We deny the petition.

At the outset, we sustain petitioners' position that Ona, as Project Manager, had the authority to issue the SOs and ROs, and to approve the request for extension of contract time on behalf of the MMDA. Office Order No. 220, series of 2003³¹ issued by then MMDA Chairman Bayani F. Fernando, and which designated Ona as Project Manager, has the general objective of ensuring the proper implementation of the project. We find that the authority to suspend construction work and grant requests for contract time extension are necessarily included in Ona's tasks. We take note of the practice in the construction industry where the Project Manager exercises discretion on technical matters involving construction work. Owners of the project are oftentimes not technically suited to oversee the construction work; professional project managers are thus usually hired, precisely to oversee the day-to-day operations on the construction site, exercise professional judgment when expedient, and render his independent decision on technical matters such as adjustments in cost and time.³²

We note further that the MMDA never repudiated the acts of Ona, but has, in fact, ratified the same. However, this is not to take anything away from the COA's duty to look into the propriety of Ona's acts. The COA is endowed with enough latitude to determine, prevent and disallow irregular, unnecessary, excessive, extravagant or unconscionable expenditures of government funds. As specifically applied here, it is well within the scope of the COA's authority to evaluate and determine whether the SOs or the extension of the contract time, which necessarily includes the waiver of any penalty or liquidated damages to be imposed, is valid. The plain reason is that government funds are involved. Hence, even if the MMDA, through Ona, favorably granted the requests for suspension of work and the extension of contract time, this cannot bind or preclude the COA from exercising its constitutionally mandated function in reviewing the same and to ensure its conformity with the law.³³ It has the power to ascertain whether public funds were utilized for the purpose for which they had been intended. Thus, the COA is traditionally given free rein in the exercise of its constitutional duty to examine and audit expenditures of public funds especially those which are palpably beyond what is allowed by law. It is only when the COA has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, that this Court entertains a petition questioning its rulings.³⁴

³¹ *Id.* at 71.

³² *Filipinas (Pre-Fab Building) Systems, Inc. v. MRT Development Corporation*, G.R. Nos. 167829-30, November 13, 2007, 537 SCRA 609, 630. Citation omitted.

³³ *Development Bank of the Philippines v. Ballesteros*, G.R. No. 168794, August 30, 2006, 500 SCRA 282, 297.

³⁴ *Sanchez v. COA*, G.R. No. 127545, April 23, 2008, 552 SCRA 471, 489.

Bearing all the foregoing in mind, we find no grave abuse of discretion on the part of the COA in issuing its assailed Decision.

Glaringly, petitioners do not deny the fact of delay in the project and actually state in their petition that it is undisputed. Indeed, records show that petitioners counted a 120-day delay reckoned from March 2, 2005³⁵ until June 30, 2005.³⁶ In contrast, the COA counted a 344-day delay reckoned from July 21, 2004³⁷ until June 30, 2005. The point of difference in their respective computations was in how the SOs, ROs, and extension of contract time were considered. For petitioners, these were valid; while for the COA, they were not. We agree with the COA.

It appears that petitioners, for some reason, treated the first SO and RO on March 23, 2004 and April 21, 2004, respectively, to have pushed the effectivity of the contract to April 21, 2004. This is erroneous. As the name itself suggests, the SO should have only suspended the operation and nothing more. The SO,³⁸ in fact, expressly directed WLTC to suspend all construction operation and did not contain anything about revising or moving the effectivity of the contract.

Petitioners also failed to belie the COA's finding that the first SO was dated March 23, 2004. This was highly suspicious, to say the least, because the Notice of Award and the NP were issued on the next day, March 24, 2004. The COA is correct, therefore, in holding that there was no contract or project to suspend yet when the first SO was issued. There was also no reasonable explanation why WLTC's alleged request for suspension was dated March 24, 2004, when the SO was issued a day before. At any rate, the request was in complete violation of Clause 7 of the Contract which expressly provides that the "contractor shall give written notice to the Authority at least 10 days prior to the beginning, suspension or resume of the work, to the end that the Authority may make the necessary preparation for inspection."³⁹

Considering, therefore, that the original effectivity (March 24, 2004) and expiry (July 21, 2004) of the contract must stand, it follows that the succeeding SOs in July 30, 2004 and November 15, 2004 are invalid. No extension of contract time was issued before the expiry of the contract. Even if we were to assume that the contract time was validly extended and the July and November 2004 SOs could have been feasible, we stress that petitioners failed to refute the findings of the COA that the reasons for these SOs are without legal basis for being inherent risks of the project.

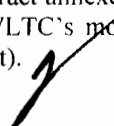
³⁵ *Rollo*, p. 54.

³⁶ *Id.* at 30.

³⁷ *Id.* at 52-53.

³⁸ *Id.* at 111.

³⁹ *Id.* at 101; Clause 7 of the Contract (as correctly pointed out by the COA, the Contract annexed to the petition is missing a page which contains Clause 7. It was, however, quoted in WLTC's motion for reconsideration dated November 26, 2012, attached as Annex 8 to the COA's comment).



Moreover, in further revising the expiry of the contract and pushing it to March 2, 2005, petitioners claim that WLTC, in its letter dated February 10, 2005, requested for an extension of contract time and the MMDA granted the same on February 17, 2005. Again, even if we were to assume that the contract time was validly extended to April 24, 2004 and that the subsequent SOs could have likewise been feasible, the supposed contract time extension must still fail. Records do not show what the reasons for such extension were and whether they were valid and allowed under the law in the first place.⁴⁰ Significantly, as admitted by Fainsan, the extension was not covered with Performance Security.⁴¹

Petitioners, however, insist that the consequences of delay in the form of liquidated damages should fall on the shoulders of WLTC alone because it was the one who requested the suspension of work (and extension of contract time). The MMDA, on the other hand, never suspended the work operations at its own discretion; it merely assented to the requests “upon finding of reasonable justification therefor.”⁴² As for the contract cost variance, petitioners posit it was due to WLTC’s act of subcontracting parts of the project. This was allegedly made entirely at the behest and preference of WLTC upon realizing that it cannot complete the project on time. Petitioners denied any participation in the acts of WLTC and even alleged that these were in violation of the Contract.⁴³

The question, however, as to which party is at fault for subcontracting parts of the project is beside the point. The same holds true with respect to which party initiated the requests for suspension of work and extension of contract time, as petitioners suggest. The bottom line is petitioners allowed and approved the disbursement of funds for the payment to WLTC, without withholding or deducting the correct amount of liquidated damages and contract cost variance. Their very admission in their petition that WLTC was at fault for the delay and guilty of violating the provisions of the contract against subcontracting proves that they have acted negligently in the disbursement of the payment to WLTC.

Petitioners are correct that under RA No. 9184, liquidated damages are payable by the contractor in case of breach of contract. As the owner of the project, however, the MMDA has the obligation to make sure that the contractor pays in case of breach. Paragraph 3, Item CI 8 of the Implementing Rules and Regulations of PD No. 1594 provides that liquidated damages “shall be deducted from any money due or which may become due the contractor under the contract, and/or collect such liquidated damages from the retention money or other securities posted by the contractor, whichever is convenient to the Government.” This is mandatory.

⁴⁰ Item CI 11 of the Implementing Rules and Regulations (IRR) of PD No. 1594.

⁴¹ *Rollo*, p. 54.

⁴² *Id.* at 9.

⁴³ *Id.* at 10-11.

Petitioners' position with regard to the contract cost variance also dovetails with the findings of the COA that it was incurred by WLTC to expedite the completion of the project. The COA found that by February 2005, the project was only halfway done despite having three subcontractors already. WLTC executed another agreement with a fourth subcontractor, Yamato, which finally expedited the construction. The COA is correct, therefore, in holding that these alleged additional costs of manpower and equipment must not be borne by the Government. These are not the same as additional or extra work which are performed over and above of what is required under the contract (or would not have been included in the agreed contract price) which would necessitate compensation for the contractor. In any case, these costs cannot be validly considered as additional or extra work costing because they were not shown to have been duly covered by change or extra work orders.⁴⁴

Worse, as admitted by petitioners, the alleged additional costs of manpower and equipment were incurred by WLTC *after having entered into subcontract agreements*, in violation of its contract with the MMDA.⁴⁵ Thus, petitioners should not have allowed the disbursement to pay for this alleged contract cost variance. All told, the disallowance, as modified by the COA Proper, must be upheld.

In its Decision, the COA Proper held WLTC and the responsible officials of the MMDA liable for the disallowance. The responsible officials referred to are those originally named in the ND:

Name	Position/Designation	Nature of Participation in the Transactions
1. Bayani F. Fernando	Chairman, MMDA	Approved the transactions
2. Angelito S. Vergel De Dios	Director, TOC [Traffic Operations Center]	Certified that expenses were necessary, lawful and under his direct supervision.
3. Cesar S. Lacuna	Deputy Chairman	Certified that expenses were necessary, lawful and under his direct supervision Approved Certification of Accomplishment and Inspection Recommended approval of Agency Estimates
4. Ruben C. Guillermo	Acting Director II, Accounting Services	Certified that the supporting documents

⁴⁴ Pursuant to Item CI 2 of the IRR of PD No. 1594.

⁴⁵ *Rollo*, p. 22. Clause 16 of the Contract provides that:

16. The Contractor hereby agrees not to assign and/or sublet this Contract to any Third Party without the prior written approval of the Authority. (Emphasis omitted.)

		are complete and proper
5. Ramon S. Ona	Project Director	Recommended approval of Certificate of Accomplishment and Inspection Certified the Statement of Time Elapsed and Work Accomplished Approved Summary of Statement of Work Accomplished Approved Summary of Billings Approved Contractor's Statement of Work Accomplished Submitted Agency Estimate Signed Suspension Order Nos. 1 to 4
6. Felimon T. Tarrago	Head, Project Inspector, PMST	Prepared/submitted Summary of Contractor's Statement of Work Accomplished Prepared Summary of Billings Signed Resumption Order/Site Instruction
7. Federico E. Castillo	Project Engineer	Signed Certificate of Accomplishment and Inspection Prepared Statement of Elapsed and Work Accomplished Checked Summary of Statement of Work Accomplished Checked Contractor's Statement of Work Accomplished Checked/Reviewed Agency Estimate Prepared/signed Technical Evaluation Report
8. Allan Arceo	Engineer	Prepared/signed Technical Evaluation Report
9. Danilo M. Señorán	Engineer II	Prepared Agency Estimate

10. Rene Estipona	Engineer	Prepared/signed Technical Evaluation Report ⁴⁶
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The COA Proper is correct in holding WLTC and the above MMDA officials solidarily liable for the disallowance. Section 43, Chapter V, Book VI of the Administrative Code of 1987⁴⁷ expressly provides that “[e]very 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.”

Complementarily, Section 103 of PD No. 1445 provides that 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. In determining who are liable for audit disallowances or charges, the COA is guided by Section 19 of the Manual of Certificate of Settlement and Balances,⁴⁸ which provides:

19.1 The liability of public officers and other persons for audit disallowances shall be determined on the basis of: (a) the nature of the disallowance; (b) the duties, responsibilities or obligations of the officers/persons concerned; (c) the extent of their participation or involvement in the disallowed transaction; and (d) the amount of losses or damages suffered by the government thereby. The following are illustrative examples:

19.1.1 Public officers who are custodians of government funds and/or properties shall be liable for their failure to ensure that such funds and properties are safely guarded against loss or damage; that they are expended, utilized, disposed of or transferred in accordance with law and regulations, and on the basis of prescribed documents and necessary records.

19.1.2 Public officers who certify to the necessity, legality and availability of funds/budgetary allotments, adequacy of documents, etc. involving the expenditure of funds or uses of government property shall be liable according to their respective certifications.

19.1.3 Public officers who approve or authorize transactions involving the expenditure of government funds and uses of government properties shall be liable

⁴⁶ *Id.* at 40-41.

⁴⁷ Executive Order No. 292.

⁴⁸ COA Circular No. 94-001, Prescribing the Use of the Manual on Certificate of Settlement and Balances.

for all losses arising out of their negligence or failure to exercise the diligence of a good father of a family.

The liability of public officials who allowed the illegal expenditure or disbursement stems from the general principle that public officers are stewards who must use government resources efficiently, effectively, honestly and economically to avoid the wastage of public funds.⁴⁹ The prudent and cautious use of these funds is dictated by their nature as funds and property **held in trust** by the public officers for the benefit of the sovereign trustees – the people themselves – and for the specific public purposes for which they are appropriated.⁵⁰ To maintain inviolate the public trust reposed on them, public officers must exercise **ordinary diligence** or the **diligence of a good father of a family**. This means that they should observe the relevant laws and rules as well as exercise ordinary care and prudence in the disbursement of public funds. If they do not, the disbursed amounts are disallowed in audit, and the law imposes upon public officers the obligation to return these amounts.⁵¹

In our earlier discussion, we highlighted several dubious circumstances relating to the issuances of the SOs, the contract time extension, and the payment of the contract cost variance. Coupled with these is the own damning admission of petitioners about violations in the Contract. These acts prove that petitioners had knowledge of facts and circumstances which would render the disbursements illegal. They were thus grossly negligent in their duties.

In previous cases involving disallowances of salaries, benefits, and allowances, we have not excused from liability the approving officers who patently disregarded case laws, COA directives, and the Consitution.⁵² We held that while there is a presumption of regularity in the performance of official duties, this presumption must fail in the presence of an explicit rule that was violated.⁵³ In *Casal v. COA*,⁵⁴ for example, we sustained the liability of certain officers of the National Museum who, notwithstanding their good faith, participated in approving and authorizing the incentive award granted to its officials and employees in violation of Administrative Order Nos. 268⁵⁵ and 29⁵⁶ which prohibited the grant of productivity incentive benefits or other allowances of similar nature unless authorized by the Office of the President. We held, thus:

⁴⁹ See J. Brion's Concurring and Dissenting Opinion in *Technical Education and Skills Development Authority v. COA*, G.R. No. 204869, March 11, 2014, 718 SCRA 402, 433.

⁵⁰ *Id.* Emphasis in the original, citation omitted.

⁵¹ *Id.* Emphasis in the original, citation omitted.

⁵² See *Tatangco, Jr. v. COA*, G.R. No. 215061, June 6, 2017.

⁵³ *Sambo v. COA*, G.R. No. 223244, June 20, 2017.

⁵⁴ G.R. No. 149633, November 30, 2006, 509 SCRA 138.

⁵⁵ Rationalizing the Grant of Productivity Incentive Benefits for Calendar Year 1991 to all Personnel of Government Agencies (1992).

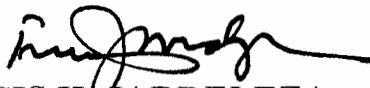
⁵⁶ Authorizing the Grant of Calendar Year 1992 Productivity Incentive Benefits to Government Personnel and Prohibiting Payments of Similar Benefits in Future Years Unless Duly Authorized by the President (1993).

The failure of petitioners-approving officers to observe all these issuances cannot be deemed a mere lapse consistent with the presumption of good faith. Rather, even if the grant of the incentive award were not for a dishonest purpose as they claimed, the patent disregard of the issuances of the President and the directives of the COA amounts to gross negligence, making them liable for the refund thereof. x x x⁵⁷ (Citation and italics omitted.)

Applying by analogy the above ruling, we hold that petitioners are liable for the disallowance.

WHEREFORE, the October 15, 2012 Decision and June 20, 2014 Resolution of the Commission on Audit are **AFFIRMED**.

SO ORDERED.



FRANCIS H. JARDELEZA
Associate Justice

WE CONCUR:



MARIA LOURDES P. A. SERENO
Chief Justice



ANTONIO T. CARPIO
Associate Justice

PRESBITERO J. VELASCO, JR.
Associate Justice


TERESITA J. LEONARDO-DE CASTRO
Associate Justice


DIOSDADO M. PERALTA
Associate Justice


LUCAS P. BERSAMIN
Associate Justice


MARIANO C. DEL CASTILLO
Associate Justice

⁵⁷ *Sambo v. COA*, *supra* note 53.

This is to certify that J. Leonen left his vote of concurrence with the ponencia
(On Official Business)

Mr. Kent
ESTELA M. PERLAS-BERNABE
Associate Justice

MARVIC M. V. F. LEONEN
Associate Justice

(On Official Business)
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

(On Official Leave)
SAMUEL R. MARTIRES
Associate Justice

[Signature]
NOEL GIMENEZ TIJAM
Associate Justice

[Signature]
ANDRES B. REYES, JR.
Associate Justice

(On Official Business)
ALEXANDER G. GESMUNDO
Associate Justice

CERTIFICATION

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

[Signature]
MARIA LOURDES P. A. SERENO
Chief Justice

CERTIFIED TRUE COPY

[Signature]
EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court