



Republic of the Philippines  
Supreme Court  
Manila

EN BANC

PHILIPPINE HEALTH  
INSURANCE CORPORATION,  
*Petitioner,*

G.R. No. 253043

Present:

- versus -

COMMISSION ON AUDIT,  
*Respondent.*

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

Promulgated:

June 13, 2023

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DECISION

KHO, JR., J.:

Assailed in this Petition for *Certiorari*<sup>1</sup> under Rule 64, in relation to Rule 65, of the Rules of Court with an application for the issuance of restraining order and writ of preliminary injunction are the Decision No.

\* On official leave.

\*\* Designated Acting Chief Justice per Special Order No. 2977 dated June 1, 2023.

\*\*\* On official leave.

\*\*\*\* On leave.

<sup>1</sup> *Rollo*, pp. 3-45.

2018-175<sup>2</sup> dated January 29, 2018 and the Resolution<sup>3</sup> dated January 30, 2020 of the Commission on Audit (COA) Commission Proper (COA Proper) which upheld the Decision No. 2012-16<sup>4</sup> dated January 10, 2013 of the Cluster Director (COA CD) of COA Corporate Government Sector (CGS) – A disallowing the salaries, allowances and benefits granted by petitioner Philippine Health Insurance Corporation (PHIC) to Atty. Valentin C. Guanio (Atty. Guanio) from September 1, 2009 to December 31, 2010 in the aggregate amount of ₱1,445,793.69.

### The Facts

On May 29, 2008, pursuant to Republic Act No. (RA) 7875,<sup>5</sup> as amended, the Board of Directors (BOD) of PHIC, a chartered government-owned and controlled corporation (GOCC), issued PhilHealth Board Resolution No. 1135, series of 2008,<sup>6</sup> creating the position of Corporate Secretary, *viz.*:

#### PHILHEALTH BOARD RESOLUTION NO. 1135, S. 2008

#### RESOLUTION CREATING THE POSITION OF THE PHIC CORPORATE SECRETARY WITH SALARY GRADE OF 28 & DESIGNATING THE SENIOR VICE-PRESIDENT OF THE LEGAL SERVICES SECTOR (SVP-LSS) AS THE OIC-CONCURRENT CORPORATE SECRETARY

X X X X

**WHEREFORE**, the Board resolves as it is hereby resolved that a position of Corporate Secretary with Salary Grade 28 is hereby created pursuant to its power under Section 16(n) of R.A. 7875, as amended;

X X X X

**RESOLVED FURTHER**, to allocate funds from the Corporate Operating Budget (COB) for the position item of Corporate Secretary with salary grade 28 with the same compensation and benefit packages as that corresponding to the same position under the PHIC Re-Engineered structure;

X X X X

**RESOLVED FINALLY**, to direct the Management Services Sector through the Human Resources Department to take the necessary

<sup>2</sup> *Id.* at 55–64. Signed by Chairperson Michael G. Aguinaldo and Commissioners Jose A. Fabia and Isabel D. Agito.

<sup>3</sup> *Id.* at 49–54. Docketed as Decision No. 2020–237 and signed by Chairperson Michael G. Aguinaldo (dissenting) and Commissioners Jose A. Fabia and Roland C. Pondoc.

<sup>4</sup> Not attached to the *rollo*.

<sup>5</sup> Entitled “AN ACT INSTITUTING A NATIONAL HEALTH INSURANCE PROGRAM FOR ALL FILIPINOS AND ESTABLISHING THE PHILIPPINE HEALTH INSURANCE CORPORATION FOR THE PURPOSE,” approved on February 14, 1995.

<sup>6</sup> *Rollo*, pp. 269–272.

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steps to incorporate the above-amendments and/or adjustments of the plantilla items in the Re-Engineered PhilHealth Organization.

x x x x<sup>7</sup>

Pursuant to PhilHealth Board Resolution No. 1135, the PHIC BOD approved PhilHealth Board Resolution No. 1301, series of 2009,<sup>8</sup> dated July 30, 2009, appointing Atty. Guanio as its corporate secretary effective September 1, 2009, viz.:

**PHILHEALTH BOARD RESOLUTION NO. 1301, S. 2009**

**RESOLUTION APPROVING THE APPOINTEMENT OF A CORPORATE SECRETARY OF THE PHILHEALTH BOARD**

x x x x

**WHEREFORE**, premises considered, the Board resolves as it is hereby resolved to approve the appointment of Atty. Valentin C. Guanio to the position of Corporate Secretary (Item No. 03-00-0007: Salary Grade 28) effective on 1 September 2009 with entitlement to the salary, benefits, allowances and expenses attached to positions with the same salary grade, and to appropriate corresponding funds for such purpose; and further resolved to authorize the President and CEO to sign and issue the corresponding appointment papers.

x x x x<sup>9</sup>

Accordingly, Atty. Guanio received salaries, allowances, and benefits in the aggregate amount of **₱1,445,793.69** paid on various dates for work done within the period from September 1, 2009 to December 31, 2010.<sup>10</sup>

On post-audit, Supervising Auditor (SA) assigned to PHIC, Elena L. Agustin, issued an Audit Observation Memorandum<sup>11</sup> (AOM) No. 10-014 dated May 24, 2010. In the AOM, the SA stated that the creation and filling up of the position of Corporate Secretary, a coterminous position, had a significant impact on the budget allocation for Personal Services of PHIC due to the increase in compensation relating to the said position. Thus, the SA recommended that the PHIC management should: (1) seek the imprimatur of the Department of Budget and Management (DBM) before implementing the appointment in accordance with its mandate under the Revised Administrative Code of 1987; and (2) submit to the Office of the President (OP), through the DBM, the said appointment for review and approval.<sup>12</sup>

<sup>7</sup> *Id.* at 269-270.

<sup>8</sup> *Id.* at 267-268.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 106-107.

<sup>11</sup> *See id.* at 56. Not attached to the *rollo*.

<sup>12</sup> *Id.*

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In its reply,<sup>13</sup> PHIC argued that the position of corporate secretary is an integral part of the Office of the Corporate Secretary created by its BOD pursuant to its mandate under Section 16(n) of RA 7875,<sup>14</sup> as amended. It further argued that the position is not new, and that PHIC is given wide discretion regarding the appointing powers of heads of agencies and GOCCs.<sup>15</sup>

Not satisfied with PHIC's explanation, the SA issued a Notice of Disallowance (ND) No. HO 11-001<sup>16</sup> dated May 19, 2011 against the payment of salaries, allowances, and benefits of Atty. Guanio in the aggregate amount of **₱1,445,793.69**. She reasoned that the creation of the position of corporate secretary and the appointment of Atty. Guanio to the said position were done without the authority and approval of the DBM in consonance to its mandate under the Revised Administrative Code of 1987.<sup>17</sup> Hence, the persons held liable by the COA under the disallowance were the approving and certifying officers, as well as Atty. Guanio, as recipient:

Name	Position/Designation	Nature of Participation in the Transaction
Valentin C. Guanio	Corporate Secretary	Payee
Victoria D. Pablo	Senior Manager Comptrollership Department	Approved Payment
Lynie S. Arcenas	Fiscal Controller III	Certified as to availability of funds
	PHIC BOD	Approved the appointment
Willie M. Bumacod	Fiscal Controller IV	Certified as to availability of funds
Lilia R. Garrido	Fiscal Controller II	Certified as to availability of funds
Rey B. Aquino	President and CEO	Approved payment
Melinda C. Mercado	Executive Vice President/COO	Recommended approval of payment
Bibiana T. Cruz	Chief, Accounting And Internal Control Division	Certified as to availability of funds
Val S. Valila	Senior Vice President Fund Management Sector	Approved payment

<sup>13</sup> See *id.* at 56. Not attached to the *rollo*.

<sup>14</sup> Section 16. *Powers and Functions*. – The Corporation shall have the following powers and functions:

x x x x

n) to organize its office, fix the compensation of and appoint personnel as may be deemed necessary and upon the recommendation of the president of the Corporation;

x x x x.

<sup>15</sup> *Id.* at 56.

<sup>16</sup> *Id.* at 106–112.

<sup>17</sup> *Id.* at 261.

Evangeline F. Racelis	Senior Manager Treasury Department	Approved payment
Cheryl R. Welan	OIC, Human Resource Department	Certified that expense is necessary, lawful, and authorized

Aggrieved, PHIC appealed<sup>18</sup> to the COA CD of COA CGS – A. In the COA CGS – A Decision No. 2012-16 dated January 16, 2013, the COA CD denied the appeal for lack of merit and affirmed the disallowance.<sup>19</sup>

Dissatisfied, PHIC elevated the matter to the COA Proper *via* a petition for review.<sup>20</sup>

### The Ruling of the COA Proper

In a Decision No. 2018-175<sup>21</sup> dated January 29, 2018, the COA Proper affirmed the ruling of the COA CGS – A. Accordingly, the COA Proper held that the approving and certifying officers, as well as the BOD, are solidarily liable to refund the amount that Atty. Guanio received. However, it absolved Atty. Guanio of such obligation to refund.<sup>22</sup>

In so ruling, the COA Proper held that it is only the DBM which has the mandate to classify positions, determine the appropriate salaries for specific position classes and review the compensation benefits of agencies pursuant to the Revised Administrative Code of 1987. Thus, without the DBM's imprimatur when required, the creation of position, appointment, and payment of salaries and benefits lacked legal basis and should be disallowed. Citing the case of *Intia, Jr. v. COA*,<sup>23</sup> the COA Proper reiterated that BOD's discretion on the matter of personnel compensation is not absolute and must be exercised in strict conformity with standards laid down by law such as RA 6758 or the Salary Standardization Law (SSL) — thus, resolutions of the BOD must first be reviewed and approved by the DBM pursuant to Section 6 of Presidential Decree No. (PD) 1597.<sup>24</sup>

<sup>18</sup> See *id.* at 57. Not attached to the *rollo*.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 55–64. Signed by Chairperson Michael G. Aguinaldo and Commissioners Jose A. Fabia and Isabel D. Agito.

<sup>22</sup> *Id.* at 63.

<sup>23</sup> 366 Phil. 273 (1999) [Per J. Romero, *En Banc*].

<sup>24</sup> See *rollo*, pp. 58–60. Section 6 of P.D. 1597, entitled “FURTHER RATIONALIZING THE SYSTEM OF COMPENSATION AND POSITION CLASSIFICATION IN THE NATIONAL GOVERNMENT” (June 11, 1978), provides:

Section 6. *Exemptions from OCPC Rules and Regulations.* – Agencies positions, or groups of officials and employees of the national government, including government owned or controlled corporations, who are hereafter exempted by law from OCPC coverage, shall observe such guidelines and policies as may be issued by the President governing position classification, salary rates, levels of allowances, project and other honoraria, overtime rates, and other forms of compensation and fringe benefits. Exemptions notwithstanding, agencies shall report to the President, through the Budget

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On the existence of presidential imprimatur by then President Gloria Macapagal-Arroyo through PHIC's communications, the COA Proper held that these did not explicitly indicate a request for approval of the creation of the position and the salaries and allowance for the said position. Anent PHIC's invocation of fiscal autonomy, the COA Proper citing the 2016 case of *Phil. Health Insurance Corp. v. COA*<sup>25</sup> reiterated that PHIC's fiscal autonomy does not mean absolute discretion in the disbursement of government funds and immunity from existing rules and regulations.<sup>26</sup>

However, insofar as Atty. Guanio is concerned, the COA Proper ruled that he is considered a *de facto* employee and is thus entitled to the salaries and other benefits given for the period of September 1, 2009 to December 31, 2010. As such, he need not refund the amount he received based on good faith.<sup>27</sup>

Undaunted, PHIC moved for partial reconsideration<sup>28</sup> which was denied in a Resolution<sup>29</sup> dated January 30, 2020 with Chairperson Michael G. Aguinaldo dissenting.<sup>30</sup>

Hence, the instant petition.

### The Issue Before the Court

The issue for the Court's resolution is whether the COA Proper gravely abused its discretion in affirming the disallowance of the salary, allowances, and benefits received by Atty. Guanio pursuant to his appointment as corporate secretary by the PHIC BOD.

PHIC argues that the payments made to Atty. Guanio were valid because: (a) it was expressly granted fiscal autonomy under Section 16(n) of RA 7875; (b) the creation of the position of PHIC corporate secretary and Atty. Guanio's appointment were valid corporate acts under RA 7875 in relation to Governance Commission for GOCCs (GCG) Memorandum Circular No. 2012-07 or the Code of Corporate Governance for GOCCs identifying the position as one of the board officers of a GOCC; (c) the creation of the position was approved by then President Gloria Macapagal-Arroyo in two executive communications; and (d) the Revised Administrative Code of 1987 grants the PHIC BOD the exclusive authority to approve its

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Commission, on their position classification and compensation plans, policies, rates and other related details following such specifications as may be prescribed by the President.

<sup>25</sup> 801 Phil. 427 (2016) [Per J. Peralta, *En Banc*].

<sup>26</sup> *See rollo*, pp. 60–61.

<sup>27</sup> *Id.* at 61–62.

<sup>28</sup> *Id.* at 65–92.

<sup>29</sup> *Id.* at 49–54. Docketed as Decision No. 2020–237 and signed by Chairperson Michael G. Aguinaldo (dissenting) and Commissioners Jose A. Fabia and Roland C. Pondoc.

<sup>30</sup> *See Dissenting Opinion*; *id.* at 113–118.

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Corporate Operating Budget (COB) as confirmed by the Office of Government Corporate Counsel (OGCC), in its Opinion No. 056, series of 2004, stating that DBM has limited authority to review the COB of GOCCs.<sup>31</sup>

### The Court's Ruling

Prefatorily, the determination on the propriety of PHIC's prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction has been rendered moot in light of the Court's disposition on the merits of the present case as will be discussed below.

Here, the Court finds the petition to be partly meritorious.

#### I.

The COA is constitutionally empowered to exercise its general auditing power to determine, prevent, and disallow illegal, unnecessary, excessive, extravagant, or unconscionable expenditures of government funds.<sup>32</sup> This power is "among the constitutional mechanisms that [give] life to the check and balance system inherent in our form of government."<sup>33</sup> Accordingly, Article IX (D), Section 2 of the 1987 Constitution gives COA a wide latitude to rule on the legality of the disbursement of government funds, *viz.*:

#### D. THE COMMISSION ON AUDIT

X X X X

Section 2. (1) The Commission on Audit shall have the **power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to,** the Government, or any of its subdivisions, agencies, or instrumentalities, **including government-owned or controlled corporations with original charters,** and on a post-audit basis: (a) constitutional bodies, commissions and offices that have been granted fiscal autonomy under this Constitution; (b) autonomous state colleges and universities; (c) other government-owned or controlled corporations and their subsidiaries; and (d) such nongovernmental entities receiving subsidy or equity, directly or indirectly, from or through the Government, which are required by law or the granting institution to submit to such audit as a condition of subsidy or equity. x x x.

x x x (Emphases and underscoring supplied)

In this relation, "the Court has generally sustained COA's decisions or resolutions in deference to its expertise in the implementation of the laws it

<sup>31</sup> See *id.* at 11–36.

<sup>32</sup> *Small Business Corporation v. COA*, G.R. No. 251178, April 27, 2021 [Per J. Perlas–Bernabe, *En Banc*].

<sup>33</sup> *Id.* See also *Delos Santos v. COA*, 716 Phil. 322, 332 (2013) [Per J. Perlas–Bernabe, *En Banc*].

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has been entrusted to enforce.”<sup>34</sup> It is only when the COA has clearly acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction that the Court may exercise its juridical power to correct its decisions or resolutions.<sup>35</sup>

Here, the Court finds that the COA did not commit any grave abuse of discretion in affirming the propriety of the disallowance relative to the salaries, allowances, and benefits granted to Atty. Guanio due to his appointment as Corporate Secretary pursuant to the resolutions of the PHIC BOD.

*PHIC's fiscal autonomy pursuant to Section 16(n), RA 7875 is subject to limitations.*

In supporting the creation of the position of corporate secretary and the grant of salaries, allowances, and benefits to Atty. Guanio, PHIC invokes its fiscal autonomy as provided under Section 16(n) of RA 7875, to wit:

Section 16. *Powers and Functions.* – The Corporation shall have the following powers and functions:

x x x x

n) **to organize its office, fix the compensation of and appoint personnel** as may be deemed necessary and upon the recommendation of the president of the Corporation;

x x x x. (Emphasis supplied)

Contrary to PHIC's assertions of the law's full grant of fiscal autonomy, PHIC cannot invoke Section 16(n) of RA 7875 as an exception to compliance with the SSL. In *Intia, Jr. v. COA*,<sup>36</sup> the Court has held that even GOCCs with an express exception from the rules and regulations of the Compensation and Position Classification Office (CPCO) of the DBM, such as the Philippine Postal Corporation (PPC) created under RA 7354,<sup>37</sup> are nonetheless required to follow certain standards in formulating their classifications systems such as Section 6 of PD 1597,<sup>38</sup> viz.:

<sup>34</sup> *Miralles v. COA*, 818 Phil. 380, 389 (2017).

<sup>35</sup> *Philippine Health Insurance Corporation v. COA*, 837 Phil. 90, 107 (2018) [Per J. Tijam, *En Banc*].

<sup>36</sup> *Supra* note 22.

<sup>37</sup> Entitled “AN ACT CREATING THE PHILIPPINE POSTAL CORPORATION, DEFINING ITS POWERS, FUNCTIONS AND RESPONSIBILITIES, PROVIDING FOR REGULARIZATION OF THE INDUSTRY AND FOR OTHER PURPOSES CONNECTED THEREWITH,” approved on April 3, 1992.

<sup>38</sup> Section 6 of P.D. 1597, entitled “FURTHER RATIONALIZING THE SYSTEM OF COMPENSATION AND POSITION CLASSIFICATION IN THE NATIONAL GOVERNMENT,” provides:

Section 6. *Exemptions from OCPC Rules and Regulations.* – Agencies positions, or groups of officials and employees of the national government, including government owned or controlled corporations, who are hereafter exempted by law from OCPC



As the Solicitor General correctly observed, there is no express repeal of Section 6[,] P.D. No. 1597 by RA No. 7354. Neither is there an implied repeal thereof because there is no irreconcilable conflict between the two laws. On the one hand, Section 25 of R.A. No. 7354 provides for the exemption of PPC from the rules and regulations of the CPCO. On the other hand, Section 6 of P.D. 1597 requires PPC to report to the President, through the DBM, the details of its salary and compensation system. **Thus, while the PPC is allowed to fix its own personnel compensation structure through its Board of Directors, the latter is required to follow certain standards in formulating said compensation system.** One such standard is specifically stated in Section 25 of [R.A.] No. 7354.<sup>39</sup> (Emphasis and underscoring supplied)

In this relation, it is well to reiterate the Court *En Banc*'s recent pronouncement in the 2021 case of *Phil. Health Insurance Corp. v. COA*<sup>40</sup> stating that there is no law which exempts PHIC from abiding by the provisions of the SSL as even the laws amending the PHIC Charter such as RA 9241,<sup>41</sup> approved in 2004, and RA 10606,<sup>42</sup> approved in 2013, do not provide for such exemption. Moreover, the Court has previously held that the PHIC's fiscal autonomy under RA 7875<sup>43</sup> is limited in nature. The Court has consistently held<sup>44</sup> that PHIC's power to organize its office, fix the compensation of and appoint personnel does not necessarily mean that it has the absolute and unbridled discretion to exercise the same. In particular, the Court in the 2016 case of *Phil. Health Insurance Corp. v. COA*<sup>45</sup> explained, *viz.*:

As clearly expressed in *PCSO v. COA*, even if it is assumed that there is an explicit provision exempting a GOCC from the rules of the then Office of Compensation and Position Classification (OCPC) under the DBM, the

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coverage, shall observe such guidelines and policies as may be issued by the President governing position classification, salary rates, levels of allowances, project and other honoraria, overtime rates, and other forms of compensation and fringe benefits. Exemptions notwithstanding, agencies shall report to the President, through the Budget Commission, on their position classification and compensation plans, policies, rates and other related details following such specifications as may be prescribed by the President.

<sup>39</sup> *Intia, Jr. v. COA*, supra note 22, at 293. Section 25 of RA 7354 states:

Section 25. *Exemption From Rules and Regulations of the Compensation and Position Classification Office.* – All personnel and positions of the Corporation shall be governed by Section 22 hereof, and as such shall be exempt from the coverage of the rules and regulations of the Compensation and Position Classification Office. The Corporation, however, shall see to it that its own system conforms as closely as possible with that provided for under Republic Act No. 6758.

<sup>40</sup> G.R. No. 230218, July 6, 2021 [Per J. Leonen, *En Banc*].

<sup>41</sup> Entitled "AN ACT INSTITUTING A NATIONAL HEALTH INSURANCE PROGRAM FOR ALL FILIPINOS AND ESTABLISHING THE PHILIPPINE HEALTH INSURANCE CORPORATION FOR THE PURPOSE," February 10, 2004.

<sup>42</sup> Entitled "AN ACT AMENDING REPUBLIC ACT NO. 7875, OTHERWISE KNOWN AS THE 'NATIONAL HEALTH INSURANCE ACT OF 1995,' AS AMENDED, AND FOR OTHER PURPOSES," June 19, 2013.

<sup>43</sup> Entitled "AN ACT INSTITUTING A NATIONAL HEALTH INSURANCE PROGRAM FOR ALL FILIPINOS AND ESTABLISHING THE PHILIPPINE HEALTH INSURANCE CORPORATION FOR THE PURPOSE," February 14, 1995.

<sup>44</sup> See *Phil. Health Insurance Corp. v. COA*, supra; *Phil. Health Insurance Corp. v. COA*, G.R. No. 222129, February 2, 2021 [Per J. Inting, *En Banc*]; *Phil. Health Insurance Corp. v. COA*, G.R. No. 235832, November 3, 2020 [Per J. Inting, *En Banc*]; *Phil. Health Insurance Corp. v. COA*, 839 Phil. 573 (2018) [Per J. Jardeleza, *En Banc*]; *PhilHealth v. COA*, 801 Phil. 427 (2016) [Per J. Peralta, *En Banc*].

<sup>45</sup> 801 Phil. 427 (2016) [Per J. Peralta, *En Banc*].

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power of its Board to fix the salaries and determine the reasonable allowances, bonuses and other incentives was still subject to the standards laid down by applicable laws: P.D. No. 985, its 1978 amendment, P.D. No. 1597, the SSL, and at present, R.A. 10149. **To sustain petitioners' claim that it is the PHIC, and PHIC alone, that will ensure that its compensation system conforms with applicable law will result in an invalid delegation of legislative power, granting the PHIC unlimited authority to unilaterally fix its compensation structure. Certainly, such effect could not have been the intent of the legislature.**<sup>46</sup> (Emphasis and underscoring supplied)

Thus, notwithstanding the authority of PHIC to organize its office, fix the compensation of and appoint its personnel, PHIC is still required to: (a) comply with the requirements found in the SSL with regard to the creation of positions under Compensation and Position Classification System; (b) observe the policies and guidelines issued by the President with respect to position classification, salary rates, levels of allowances, project and other honoraria, overtime rates, and other forms of compensation and fringe benefits; (c) report to the President, through the Budget Commission (now the DBM), on their position classification and compensation plans, policies, rates and other related details following such specifications as may be prescribed by the President.<sup>47</sup>

*PHIC failed to comply with the requirements of creating a new position.*

Consistent with the requirements under the SSL and PD 1597, DBM Corporate Compensation Circular No. 10-99 details the procedure GOCCs must comply with anent the positions that are created, viz.:

#### 5.0 IMPLEMENTING PROCEDURES

5.1. All existing positions and those that thereafter will be created in GOCCs/GFIs shall be allocated to the appropriate classes on the basis of the nature of duties and responsibilities and qualification requirements of the position and in accordance with the herein prescribed Index of Occupational Services (IOS), marked as Annex A which forms as an integral part of this Circular.

5.2. In cases where there are no appropriate classes in the herein prescribed IOS suitable for the operational needs and/or to the established management policy of the GOCCs/GFIs consistent with their corporate programs/plans, creation of new classes unique and appropriate to their operations shall be allowed and included in the same IOS.

x x x x

<sup>46</sup> *Id.* at 452-453.

<sup>47</sup> *See Philippine Retirement Authority v. Buñag*, 444 Phil. 859 (2003) [Per J. Puno, Third Division].

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5.8. The GOCCs/GFIs concerned shall, upon receipt of the prescribed IOS, prepare the corresponding Position Allocation List (PAL) following the attached format marked as Annex B and submit same to DBM through CPCB for evaluation and approval.

5.9. GOCCs/GFIs shall prepare five (5) copies of a Plantilla of Positions in accordance with the organization structure/staffing pattern previously approved for them by the DBM following the attached format marked as Annex C and submit same to DBM through CPCB within thirty (30) days from receipt of the duly approved PAL. The CPCB shall certify and approve same in accordance with the condition stipulated in Item 5.7 above.

Any GOCC/GFI presently adopting an organization structure/staffing pattern other than the one approved by the DBM shall likewise submit a Plantilla of Positions based on existing organization structure/staffing pattern which will likewise be evaluated and approved by the DBM simultaneous with the evaluation and certification/approval of the position classification and salary grade/rate allocation.<sup>48</sup>

The records of the case fail to show that PHIC complied with the aforementioned requirements when the PHIC BOD through their resolutions created the position of corporate secretary and the consequent appointment of Atty. Guanio to the position.

Neither can PHIC seek refuge in citing that the position of the corporate secretary can be found under the Code of Corporate Governance for GOCCs. Similar to the DBM Circular, the Code of Corporate Governance for GOCCs requires a GOCC's BOD to comply with the GOCC Compensation and Position Classification System, viz.:

SEC. 7. Mandate and Responsibility for the GOCC's Performance. Although the day-to-day management of the affairs of the GOCC may be with Management, the Board is, however, responsible for providing policy directions, monitoring and overseeing Management actions, as articulated in its Charter or Articles of Incorporation, and other relevant legislation, rules and regulations. These mandated functions and responsibilities include the following:

x x x x

(d) Determine the organizational structure of the GOCC, defining the duties and responsibilities of its Officers and employees and **adopting a compensation and benefit scheme that is consistent with the GOCC Compensation and Position Classification System (CPCS) developed by GCG and formally approved by the President of the Philippines;** (Emphasis and underscoring supplied)

<sup>48</sup> DBM Corporate Compensation Circular No. 10-99, Rules and Regulations for the Implementation of the Revised Compensation and Position Classification System Prescribed Under R.A. No. 6758 for Government-Owned and/or Controlled Corporations (GOCCs) and Financial Institutions (GFIs), Department of Budget and Management, February 15, 1999.

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Here, PHIC was unable to show that the organizational and compensation structure attributed to the creation of the position of corporate secretary, as well as the grant of salaries, benefits, and allowances to Atty. Guanio were consistent with the GOCC Compensation and Position Classification System.

On this note, PHIC cannot find solace in the alleged approval or confirmation by then President Gloria Macapagal-Arroyo of the approval of the creation of the position of corporate secretary and the salaries and allowance for the said position. In the 2018 case of *Phil. Health Insurance Corp. v. COA*,<sup>49</sup> the Court, through Justice Francis H. Jardeleza, held that the alleged presidential approvals were merely marginal notes and could not have produced any effect inasmuch as they were never reduced in any formal memorandum.<sup>50</sup>

Considering the foregoing, the Court finds that the COA Proper did not commit grave abuse of discretion in disallowing the grant of salaries, allowances, and benefits to Atty. Guanio in his appointment to the position of Corporate Secretary.

## II.

With the issue regarding the propriety of the disallowances already settled, it is necessary to determine the civil liability of the individuals directed to return the amounts pursuant to prevailing case law. The prevailing guidelines on the civil liability of persons made to return disallowed personnel incentives and benefits are laid down in *Madera v. COA*<sup>51</sup> (*Madera*). In *Madera*, the Court prescribed the Rules on Return, as follows:

### 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, solidarily liable to

<sup>49</sup> 839 Phil. 573 (2018) [*En Banc*].

<sup>50</sup> *Id.* at 591.

<sup>51</sup> 882 Phil. 744 (2020) [Per J. Caguioa, *En Banc*].

- 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.
  - 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>52</sup>

Under the *Madera* Rules on Return, the public officers who are made liable to return the disallowed incentives and benefits are classified as either (a) an approving/certifying officer or (b) the payee-recipient.

Prior to determining the respective liabilities of the approving and certifying officers, the Court notes that *the COA Proper has already absolved Atty. Guanio from returning the disallowed amounts that he received as a passive recipient on the basis of good faith.*<sup>53</sup> This same finding was not modified by the COA Proper in its Resolution denying PHIC's partial motion for reconsideration. *Considering that PHIC no longer raised the matter of Atty. Guanio's liability in its Petition, the COA Proper's ruling on this matter is now considered final and immutable.*<sup>54</sup> Thus, the Court's resolution shall be limited to the disposition of the civil liabilities of PHIC's approving and certifying officers.

The liability of approving/certifying officers is governed by the public accountability framework of the Revised Administrative Code of 1987 because it is rooted on the errant performance of the public officer's official functions, particularly in terms of approving/authorizing the unlawful expenditure.<sup>55</sup> However, the law requires that there is a showing of bad faith, malice, or gross negligence in the performance of their duties prior to holding the guilty officers solidarily liable to return the disallowed amounts.<sup>56</sup> Thus, when good faith exists on the part of the approving/certifying officers in the disbursement of the disallowed amount, they shall be absolved from being solidarily liable to return the disallowed amount. In *Abellanosa v. COA*<sup>57</sup>

<sup>52</sup> *Id.* at 817–818.

<sup>53</sup> *Rollo*, pp. 61–62.

<sup>54</sup> See *Securities and Exchange Commission v. COA*, G.R. No. 252198, April 27, 2021 [Per J. Lazaro-Javier, *En Banc*]; and *Ancheta v. COA*, G.R. No. 236725, February 2, 2021 [Per J. M. Lopez, *En Banc*].

<sup>55</sup> *Small Business Corporation v. COA*, G.R. No. 251178, April 27, 2021 [Per J. Perlas-Bernabe, *En Banc*].

<sup>56</sup> Administrative Code of 1987, Book I, Chapter 9, Section 38 (1) states:

Section 38. Liability of Superior Officers. – (1) A public officer shall not be civilly liable for acts done in the performance of his official duties, unless there is a clear showing of bad faith, malice or gross negligence.

On the other hand, Section 43, Chapter 5, Book VI of the Administrative Code of 1987 states:

Section 43. 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.

<sup>57</sup> 890 Phil. 413 (2020) [Per. J. Perlas-Bernabe, *En Banc*].

(*Abellanosa*), the Court, speaking through retired Senior Associate Justice Estela M. Perlas-Bernabe (SAJ Perlas-Bernabe), elucidated on this matter as follows:

When a public officer is to be held civilly liable in his or her capacity as an approving/authorizing officer, the liability is to be viewed from the public accountability framework of the Administrative Code. This is because *the civil liability is rooted on the errant performance of the public officer's official functions, particularly in terms of approving/authorizing the unlawful expenditure*. As a general rule, a public officer has in his or her favor the presumption that he or she has regularly performed his or her official duties and functions. For this reason, **Section 38 (1), Chapter 9, Book I of the Administrative Code of 1987** requires a clear showing of bad faith, malice, or gross negligence attending the performance of such duties and functions to hold approving/authorizing officer civilly liable:

Section 38. *Liability of Superior Officers*. — (1) A public officer shall **not be civilly liable** for acts done in the performance of his official duties, unless there is a **clear showing of bad faith, malice or gross negligence**. (Emphases and underscoring supplied)

The need to first prove bad faith, malice, or gross negligence before holding a public officer civilly liable traces its roots to the State agency doctrine — a core concept in the law on public officers. From the perspective of administrative law, public officers are considered as agents of the State; and as such, acts done in the performance of their official functions are considered as acts of the State. In contrast, when a public officer acts negligently, or worse, in bad faith, the protective mantle of State immunity is lost as the officer is deemed to have acted outside the scope of his official functions; hence, he is treated to have acted in his personal capacity and necessarily, subject to liability on his own.

Once the existence of bad faith, malice, or gross negligence as contemplated under Section 38, Chapter 9, Book I of the Administrative Code of 1987 is clearly established, the liability of approving/authorizing officers to return disallowed amounts based on an unlawful expenditure is solidary together with all other persons taking part therein, as well as every person receiving such payment. This solidary liability is found in Section 43, Chapter 5, Book VI of the Administrative Code of 1987, which states:

Section 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. (Emphases and underscoring supplied)

With respect to “**every official or employee authorizing or making such payment**” in bad faith, with malice, or gross negligence, the law justifies holding them solidarily liable for amounts they may or may not

have received, considering that the payee-recipients would not have received the disallowed amounts if it were not for the officers' errant discharge of their official duties and functions.<sup>58</sup> (Emphases and underscoring in the original)

Later on, in *Celeste v. COA*<sup>59</sup> (*Celeste*), the Court, speaking through Justice Alfredo Benjamin S. Caguioa, clarified that an officer performing purely ministerial acts or duties in connection with the approval of the disallowed amount — or those which said officer “performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to or the exercise of his[/her] own judgment upon the propriety or impropriety of the act done”<sup>60</sup> — should be absolved from the obligation to return the same, provided that: (1) their functions are not related to the legality or illegality of the disbursement of the disallowed amounts; and (2) these officers are not involved in decision-making for the agency to which they belong. More particularly, *Celeste* instructs that the act of “certifying the availability of funds” is a mere ministerial function, considering that such officer “could not have refused to certify the availability of funds if that were factually true.”<sup>61</sup> Thus, the Court concluded that an officer certifying the availability of funds should be absolved from liability considering that the disallowance was anchored on the illegality of granting incentives to certain employees and not on the availability of funds or adequacy of documents, as in this case.<sup>62</sup>

Therefore, and pursuant to *Celeste*, certain officers involved in the disallowed transaction, particularly Lynie S. Arcenas, Willie M. Bumacod, Lilia R. Garrido, and Bibiana T. Cruz (Arcenas, *et al.*) should be absolved from the obligation to return the disallowed amount as they merely certified the availability of funds and that the disallowances in the present case are anchored on the irregularity and illegality of the creation of the position of Corporate Secretary and Atty. Guanio's appointment, thereof. Thus, Arcenas, *et al.*, should be absolved from the obligation of returning the disallowed amount.

On the other hand, the Court finds that the members of the BOD together with the approving and certifying officers (except for Arcenas, *et al.*) to be solidarily liable to return the disallowed amount. It has been consistently ruled that **the presumption of good faith fails when an explicit law, rule, or regulation has been violated** — thus amounting to gross negligence,<sup>63</sup> as in

<sup>58</sup> *Id.* 427–429.

<sup>59</sup> G.R. No. 237843, June 15, 2021.

<sup>60</sup> *Id.*, citing: *Roble Arrastre, Inc. v. Hon Villaflores*, 531 Phil. 30 (2006) [Per J. Chico–Nazario, First Division].

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> See *SSS v. COA*, G.R. No. 244336, October 6, 2020 [Per J. Lazaro–Javier, *En Banc*]; *Rotoras v. COA*, 860 Phil. 268 (2019) [Per J. Leonen, *En Banc*]; *Dr. Velasco v. COA*, 695 Phil. 226 (2012) [Per J. Perlas–Bernabe, *En Banc*]; *MIAA v. COA*, 681 Phil. 644 (2012) [Per J. B. Reyes, *En Banc*]; *Reyna v. COA*, 657 Phil. 209 (2011) [Per J. Peralta, *En Banc*]; and *Casal v. COA*, 538 Phil. 634 (2006) [Per J. Carpio–Morales, *En Banc*].

this case. As discussed above, PHIC, through its BOD and approving and/or certifying officers, was unable to comply with the requirements found under PD 1597, the SSL, as well as DBM Corporate Compensation Circular No. 10-99.

In this relation, PHIC's reliance on the OGCC Opinions confirming their fiscal autonomy to organize its office, appoint and compensate its personnel cannot be considered as due diligence. In the 2021 case of *Phil. Health Insurance Corp. v. COA*,<sup>64</sup> the Court explained that OGCC Opinion No. 258 could not be invoked as an opinion granting PHIC unbridled fiscal autonomy considering that the same was issued (*i.e.*, on 1999) after the Court's declaration that Section 6 of PD 1597 requires OGCC to observe rules, policies, and guidelines in the grant of allowances and benefits. On the other hand, OGCC Opinion No. 056 merely provides that disbursements which do not require budgetary support from the National Government do not need the prior approval of the DBM. The foregoing opinions of the OGCC do not explicitly provide clarification regarding PHIC's power to create the position of corporate secretary or its required compliance under the Compensation and Position Classification System. Aside from these opinions, there was no showing that PHIC made attempts to clarify its authority to create the position of Corporate Secretary, appoint Atty. Guanio thereto, and grant him salaries, allowances, and benefits without complying with the prescribed rules and procedures under the law.

In determining the total amount to be returned by the approving and certifying officers, the Court in *Madera* created the concept of the "net disallowed amount," which referred to "the total disallowed amount minus the amounts excused to be returned by recipients"<sup>65</sup> under *Madera's* Rules 2c and 2d as modified by *Abellanosa*.<sup>66</sup>

In the case of *Pastrana v. COA*<sup>67</sup> (*Pastrana*), the Court, through Justice Edgardo L. Delos Santos, had the occasion to rule upon the effect of absolving the passive recipients at the COA level in the determination of liabilities of the approving and/or certifying officers who were not in good faith in relation to the disallowed amount. The Court held that the amounts respectively received by the payee-recipients shall be discounted in the determination of the civil liability of the approving and/or certifying officers considering that

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<sup>64</sup> Supra note 39.

<sup>65</sup> See Concurring Opinion of SAJ Perlas-Bernabe in *Madera v. COA*, supra note 50.

<sup>66</sup> In *Abellanosa v. COA*, supra note 56, the applicability of Rule 2c requires the following to concur:

1. The item of compensation must have proper basis in law but was only disallowed due to irregularities that are merely procedural in nature; and

2. The item of compensation must have a clear, direct, and reasonable connection to the actual performance of the recipient's official work and functions for which it was intended as compensation.

As for Rule 2d, *Abellanosa* held that the same should only be invoked in highly exceptional circumstances -- after considering all relevant factors (*e.g.*, the nature and purpose of the disbursement, and its underlying conditions).

<sup>67</sup> G.R. Nos. 242082 and 242083, June 15, 2021.

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payee-recipients' absolution from liability had already attained finality. Nonetheless, the approving and/or certifying officers in *Pastrana* were still required to return the amounts that they received considering that they were not in good faith, *i.e.*, they were grossly negligent in the performance of their duties as approving and/or certifying officers.<sup>68</sup>

The application of the concept of the "net disallowed amount" vis-à-vis the effect of the finality of the COA Proper's ruling exempting the passive recipients from returning the amounts they received was further explained by SAJ Perlas-Bernabe in her concurring opinion in *Pastrana*,<sup>69</sup> viz.:

Meanwhile, the consequence of respecting the payee-recipients' absolution at the COA level is that the amounts respectively received by them should already be removed from the equation when determining the civil liability of the approving/certifying officers who are parties at the Court's level. In a sense, this is an application of the concept of the "net disallowed amount," which term was originally intended to refer to "the total disallowed amount minus the amounts excused to be returned by recipients" based on the exceptions found in Madera's Rules 2c and 2d but may as well apply to amounts excused to be returned by recipients on account of the COA's discretion not to anymore exact civil liability from certain parties.

Once the net disallowed amount is determined by excluding the amounts respectively received by the payee-recipients who were excused at the COA level, the civil liability of the remaining parties, *i.e.*, approving/certifying officers, before the Court is the only remaining issue to be determined. (Emphasis and underscoring supplied)

Here, the PHIC's approving and certifying officers as enumerated above (except for Arcenas, *et al.*, as discussed) ought to have been solidarily liable to return the entire disallowed amount ₱1,445,793.69 received by Atty. Guanio as salaries. However, and pursuant to *Pastrana*, Atty. Guanio's absolution to return the entirety of such amount at the COA level results in its removal from the amount to be returned by PHIC's approving and certifying officers. Otherwise stated, the "net disallowed amount" to be returned by the aforementioned PHIC officers have been reduced to nil despite their lack of good faith. Nonetheless, it bears stressing that such effective absolution on their part is without prejudice to the filing of the proper administrative and/or criminal cases against them, should the State so wish to pursue the same.

**ACCORDINGLY**, the petition is **PARTLY GRANTED**. The Decision No. 2018-175 dated January 29, 2018 and the Resolution dated January 30, 2020 of the Commission on Audit Commission Proper are hereby **AFFIRMED** with **MODIFICATION** in that: (a) Lynie S. Arcenas, Willie M. Bumacod, Lilia R. Garrido, and Bibiana T. Cruz are **ABSOLVED** from the obligation to return the disallowed amount; and (b) petitioner's other

<sup>68</sup> *Id.*

<sup>69</sup> See Concurring Opinion of SAJ Perlas-Bernabe; *id.*

approving and certifying officers are **EXCUSED** from returning the disallowed amount of ₱1,445,793.69 under Notice of Disallowance No. HO 11-001 dated May 19, 2011, without prejudice to the finding of any administrative and/or criminal liability that any of them may have incurred under existing laws and jurisprudence.

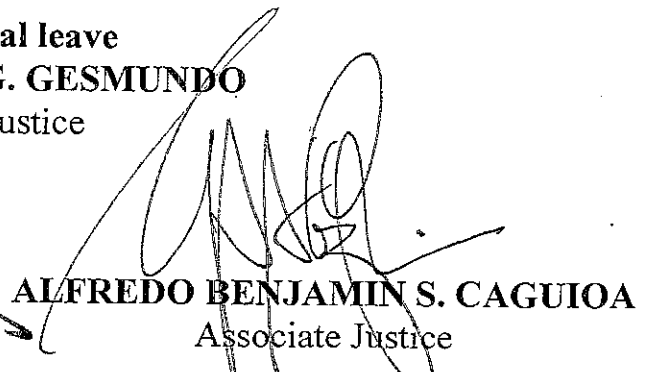
**SO ORDERED.**

  
**ANTONIO T. KHO, JR.**  
Associate Justice

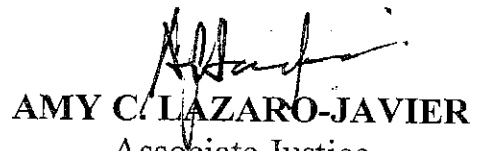
**WE CONCUR:**


**On official leave**  
**ALEXANDER G. GESMUNDO**  
Chief Justice

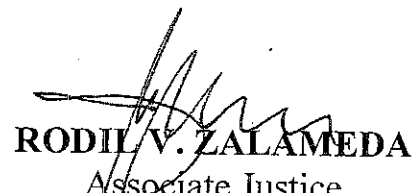
  
**MARVIC M.V.F. LEONEN**  
Acting Chief Justice

  
**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

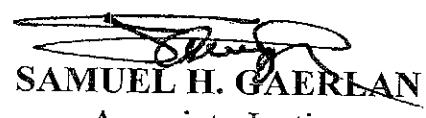
**On official leave**  
**RAMON PAUL L. HERNANDO**  
Associate Justice

  
**AMY C. LAZARO-JAVIER**  
Associate Justice

  
**HENRI JEAN PAUL B. INTING**  
Associate Justice

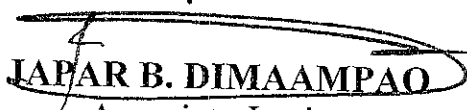
  
**RODIL V. ZALAMEDA**  
Associate Justice

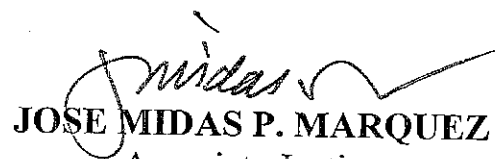
  
**MARIO V. LOPEZ**  
Associate Justice

  
**SAMUEL H. GAERLAN**  
Associate Justice

  
**RICARDO R. ROSARIO**  
Associate Justice

**On leave**  
**JHOSEP Y. LOPEZ**  
Associate Justice

  
**IAPAR B. DIMAAMPAO**  
Associate Justice


  
**JOSE MIDAS P. MARQUEZ**  
Associate Justice



**MARIA FILOMENA D. SINGH**  
Associate Justice

**CERTIFICATION**

Pursuant to Article VIII, Section 13 of the Constitution, I certify 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.



**MARVIC M.V.F. LEONEN**  
Acting Chief Justice  
*(Per Special Order No. 2977  
dated June 1, 2023)*