

# Protecting the People’s Purse: Recent Landmark Jurisprudence on the Recovery of Unlawful Allowances and Other Forms of Improper Compensation Granted to Government Personnel

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## I. INTRODUCTION

*While public funds evaporate in feasts of fraternity, a bell of rosy fire rings in the clouds.*

— Arthur Rimbaud

The misuse of public funds held in trust by public officers has long been a controversial issue in liberal democracies such as the Philippines. In the national setting, one alarming area where public funds are misspent is in the grant of allowances, benefits, bonuses, incentives, and other forms of

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additional compensation by various government offices, agencies, or corporations to their personnel.

Perennially, the Commission on Audit (COA) has reported disallowances of such kind of unlawful expenditures aggregating in hundreds of millions of Pesos at the very least.<sup>1</sup> While the Supreme Court has, as a matter of judicial policy, usually upheld the COA's audit findings in due deference to its technical expertise as a specialized and constitutionally-created body,<sup>2</sup> such affirmance presents an empty victory for the State if the funds improperly expended cannot be fully recovered from those accountable.

As a general trend in Philippine case law, the Court has for the longest time adopted a doctrinal stance contrary to the customarily stringent approach to public funds by *excusing* the refund of amounts innocently, yet unlawfully

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1. See Eduardo Gonzales, *COA Affirms P37.4 Million in Disallowed Monetary Benefits for Philhealth Employees, Officials*, MANILA BULL., Dec. 28, 2019, available at <https://mb.com.ph/2019/12/28/coa-affirms-p37-4-million-in-disallowed-monetary-benefits-for-philhealth-employees-officials> (last accessed July 31, 2021) [<https://perma.cc/YC7R-6KFQ>]; *COA to PhilHealth: Return P164-M Illegal Perks*, RAPPLER, Aug. 3, 2018, available at <https://www.rappler.com/nation/coa-decision-philhealth-officials-allowances-bonuses> (last accessed July 31, 2021) [<https://perma.cc/9DG2-2EBA>]; *COA Orders 5 SEC Officials to Refund P92 Million in Illegal Pay Hikes*, RAPPLER, Jan. 24, 2020, available at <https://www.rappler.com/nation/coa-orders-sec-officials-refund-millions-illegal-pay-hikes> (last accessed July 31, 2021) [<https://perma.cc/NGZ6-JADB>]; Llanesca T. Panti, *COA Upholds Notice of Disallowance on P56M Benefits for PhilHealth-Eastern Visayas Personnel*, GMA NEWS, Oct. 8, 2019, available at <https://www.gmanetwork.com/news/news/nation/710928/coa-upholds-notice-of-disallowance-on-p56m-benefits-for-philhealth-eastern-visayas-personnel/story> (last accessed July 31, 2021) [<https://perma.cc/E54Q-Z5QS>]; Dhel Nazario, et al., *COA Orders 5 Philhealth Officials to Return P20M Paid as Extra Compensation to Employees*, MANILA BULL., Mar. 28, 2019, available at <https://mb.com.ph/2019/03/28/coa-orders-5-philhealth-officials-to-return-p20m-paid-as-extra-compensation-to-employees> (last accessed July 31, 2021) [<https://perma.cc/R9WZ-CBU8>]; *DBP Hits COA for Disallowance Notice on Bonuses*, PHIL. DAILY INQ., Feb. 6, 2016, available at <https://newsinfo.inquirer.net/762011/dbp-hits-coa-for-disallowance-notice-on-bonuses> (last accessed July 31, 2021) [<https://perma.cc/HS9U-XUDQ>]; & Adrian Ayalin, *COA Orders PhilHealth to Return P139-M Benefits for Execs, Employees*, ABS-CBN NEWS, July 1, 2019, available at <https://news.abs-cbn.com/news/07/01/19/coa-orders-philhealth-to-return-p139-m-benefits-for-execs-employees> (last accessed July 31, 2021) [<https://perma.cc/JJA8-PD23>].
  2. See *Miralles v. Commission on Audit*, G.R. No. 210571, 840 SCRA 108, 116-17 (2017).

received by government personnel. This exculpatory treatment in the latter's favor, anchored on the so-called "*Good Faith Rule*,"<sup>3</sup> frustrates clearly the recovery efforts of the government, which forfeits the right to run after the primary benefactors of misappropriated public funds.

Incidentally, the practical consequence of the recipients' absolution from civil liability for the misspent amounts is that the officers who had authorized the illegal disbursement in bad faith or with gross negligence would inevitably bear the sole burden of returning the entire amount themselves, even if they did not receive any portion of it. Ordinarily, these authorizing officers, in palpable violation of laws or administrative issuances, had either approved the illegal disbursement (i.e., as approving officers) or had certified as to their necessity and legality (i.e., as certifying officers).

Meanwhile, where the defense of good faith may be appreciated equally in favor of such authorizing officers, it is the government instead that suffers the financial loss. In this scenario, where the authorizing officers and recipients of amounts improperly granted as compensation are both deemed to have acted in good faith in the grant and/or receipt thereof, the return of the misused funds is *completely excused*. Clearly, significant fiscal leakage results from this jurisprudential scheme.

This liberal posturing changed with the recent promulgation of *Madera, et al. v. Commission on Audit*.<sup>4</sup> In a landmark ruling, the Court abandoned decisively the "*Good Faith Rule*" and instead instituted a general rule of return as against the recipients notwithstanding their "passive" receipt of unlawful items of compensation.<sup>5</sup> Aside from this, the Court also introduced a broader set of guidelines intended to govern the civil liability of all the persons involved.<sup>6</sup>

This Article rigorously examines and dissects the "rules on return" recently established in *Madera, et al.*, as further refined by the case *Abellanosa, et al. v. Commission on Audit*.<sup>7</sup> For a deeper appreciation of the foregoing cases, however, it is first necessary to provide a brief overview of the government compensation system as well as the rule on integration of allowances, followed

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3. See e.g., *Silang v. Commission on Audit*, G.R. No. 213189, 770 SCRA 110 (2015).

4. *Madera, et al. v. Commission on Audit*, G.R. No. 244128, Sept. 8, 2020, available at <https://sc.judiciary.gov.ph/13945> (last accessed July 31, 2021).

5. *Id.* at 40.

6. *Id.* at 35-36.

7. *Abellanosa, et al. v. Commission on Audit*, G.R. No. 185806, Nov. 17, 2020, available at <https://sc.judiciary.gov.ph/16850> (last accessed July 31, 2021).

by a short background of audit disallowances in the context of unlawful grants of compensation to government personnel.

## II. THE GOVERNMENT COMPENSATION SYSTEM AND AUDIT DISALLOWANCES OF UNLAWFUL COMPENSATION

Unlike in the private sector, the employment terms and conditions of public sector employees are generally fixed by law.<sup>8</sup> Particularly, as it presupposes the disbursement of public funds, the only compensation that may be granted to and received by government personnel are only those authorized under statute.<sup>9</sup> This is consistent with the basic precept that “[n]o money shall be paid out of any public treasury or depository except in pursuance of an appropriation law or other specific statutory authority.”<sup>10</sup>

As a rule, the compensation<sup>11</sup> of government personnel is standardized. This long-standing constitutional policy<sup>12</sup> enjoins the equal pay of those performing substantially equal work and to base differences in pay upon substantive differences in duties and responsibilities as well as qualification requirements of diverse positions.<sup>13</sup> At present, the standardization of salaries in the public sector is governed by the Compensation and Position Classification System (CPCS) established in Republic Act No. 6758 (R.A.

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8. See *Confederation for Unity, Recognition and Advancement of Government Employees v. Abad*, G.R. No. 200418, Nov. 10, 2020, at 58, available at <https://sc.judiciary.gov.ph/19109> (last accessed July 31, 2021) (citing *Boncodin v. National Power Corporation Employees Consolidated Union (NECU)*, G.R. No. 162716, 503 SCRA 611, 627 (2006) (citing *Alliance of Government Workers v. Minister of Labor and Employment*, G.R. No. L-60403, 124 SCRA 1, 13 (1983) & A Decree Instituting a Labor Code Thereby Revising and Consolidating Labor and Social Laws to Afford Protection to Labor, Promote Employment and Human Resources Development And Insure Industrial Peace Based on Social Justice [LABOR CODE], Presidential Decree No. 442, art. 277 (1974) (as amended))).

9. *Id.*

10. *Ordaining and Instituting a Government Auditing Code of the Philippines [GOV'T AUDIT CODE]*, Presidential Decree No. 1445, § 4 (1) (1978).

11. The term “compensation” broadly includes all “salaries, wages, allowances, and other benefits” accruing to government employees. *Intia, Jr. v. Commission on Audit*, G.R. No. 131529, 306 SCRA 593, 606 (1999).

12. See PHIL. CONST. art. IX (B), § 5 & 1973 PHIL. CONST. art. XII (B), § 6 (superseded in 1987).

13. See *An Act Prescribing a Revised Compensation and Position Classification System in the Government and for Other Purposes [Compensation and Position Classification Act of 1989]*, Republic Act No. 6758 (1989).

No. 6758), otherwise known as the “Compensation and Position Classification Act of 1989” or the “Salary Standardization Law (SSL).”<sup>14</sup>

Building on the compensation framework established under Presidential Decree Nos. 985<sup>15</sup> and 1597<sup>16</sup> (P.D. No. 985 and P.D. No. 1597), the existing CPCS under R.A. No. 6758 allocates essentially standardized salary rates through a schedule of salary grades ranging from 1 to 33.<sup>17</sup> Particular government positions, organized by class on the basis of similarity of kind and level of difficulty and responsibility of work, are each identified and assigned respective salary grades by law, executive order, or administrative regulations issued by the Department of Budget and Management (DBM),<sup>18</sup> as the case may be.<sup>19</sup>

Fortifying the policy of standardization is the rule on integration of allowances. This is mandated by Section 12 of R.A. No. 6758 which provides

SECTION 12. Consolidation of Allowances and Compensation. — *All allowances, except for representation and transportation allowances; clothing and laundry allowances; subsistence allowance of marine officers and crew on board government vessels and hospital personnel; hazard pay; allowances of foreign service personnel stationed abroad; and such other additional compensation not otherwise specified herein as may be determined by the DBM, shall be deemed included in the standardized salary rates herein prescribed. Such other additional compensation, whether in cash or in kind, being*

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14. See Joint Resolution Authorizing the President of the Philippines to Modify the Compensation and Position Classification System of Civilian Personnel and the Base Pay Schedule of Military and Uniformed Personnel in the Government, and for Other Purposes, whereas cl. paras. 1-2, Jt. Res. No. 4, 14th Cong., 2d. Reg. Sess. (2009).
  15. A Decree Revising the Position Classification and Compensation Systems in the National Government, and Integrating the Same, Presidential Decree No. 985 (1976).
  16. Further Rationalizing the System of Compensation and Position Classification in the National Government, Presidential Decree No. 1597 (1978).
  17. Compensation and Position Classification Act of 1989, § 7.
  18. Notably, the Department of Budget and Management is invested with the “sole power and discretion to administer the compensation and position classification system of the national government.” *Commission on Human Rights Employees’ Association (CHREA) v. Commission on Human Rights*, G.R. No. 155336, 444 SCRA 300, 307 (2004).
  19. Compensation and Position Classification Act of 1989, § 6.

received by incumbents only as of [1 July] 1989 not integrated into the standardized salary rates shall continue to be authorized.<sup>20</sup>

Under the foregoing provision, all allowances and other forms of additional compensation being received by incumbent government employees are deemed, by legal fiction, integrated into their standard salaries.<sup>21</sup> The rationale behind this new rule is not difficult to discern.<sup>22</sup> The policy of standardization will certainly be frustrated if government agencies, offices, or corporations are each allowed unbridled discretion in the grant of additional compensation to their personnel, resulting in marked disparities in pay across different institutions.<sup>23</sup>

As may be gleaned from Section 12 itself, there are only three exceptions to the rule on integration.<sup>24</sup> These are:

- (1) [A]llowances granted for the purpose of defraying or reimbursing expenses incurred in the performance of their official functions[ ] as [specifically] enumerated in [the provision];
- (2) [E]xisting additional compensation received before the effectivity of R.A. No. 6758; and
- (3) [A]dditional compensation as determined by the [DBM] or the President.<sup>25</sup>

Apart from these, and in addition to those otherwise authorized by law, any other item of compensation — be it in the form of allowances, benefits, incentives, or bonuses — is deemed unlawful for being violative of the

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20. *Id.* § 12 (emphases supplied).

21. *See id.* & *Maritime Industry Authority v. Commission on Audit*, G.R. No. 185812, 745 SCRA 300, 342 (2015).

22. The consolidation of allowances in the standardized salary in Section 12 of Republic Act No. 6758 is a new rule in the Philippine position classification and compensation system. The previous laws on standardization of compensation of government officials and employees do not have this provision.” *Maritime Industry Authority*, 745 SCRA at 319-20.

23. *See Maritime Industry Authority*, 745 SCRA at 338.

24. Compensation and Position Classification Act of 1989, § 12.

25. *See Philippine Overseas Employment Administration v. Commission on Audit*, G.R. No. 210905, Nov. 17, 2020, at 15, available at <https://sc.judiciary.gov.ph/18759> (last accessed July 31, 2021).

constitutional proscription against double compensation under Section 8, Article IX (B) of the 1987 Constitution,<sup>26</sup> viz. —

Section 8. No elective or appointive public officer or employee shall receive additional, double, or indirect compensation, unless specifically authorized by law, nor accept without the consent of the Congress, any present, emolument, office, or title of any kind from any foreign government.

Pensions or gratuities shall not be considered as additional, double, or indirect compensation.<sup>27</sup>

On this score, the oft-cited case of *Maritime Industry Authority v. Commission on Audit*<sup>28</sup> is enlightening —

Republic Act No. 6758 deems all allowances and benefits received by government officials and employees as incorporated in the standardized salary, unless excluded by law or an issuance by the Department of Budget and Management. The integration of the benefits and allowances is by legal fiction.

The disallowed benefits and allowances of petitioner Maritime Industry Authority's officials and employees were not excluded by law or an issuance by the Department of Budget and Management. Thus, these were deemed already given to the officials and employees when they received their basic salaries. Their receipt of the disallowed benefits and allowances was tantamount to double compensation.<sup>29</sup>

Notably, the explicit delegation of rule-making powers to the DBM to determine any additional compensation which may be received by government employees apart from their standardized salaries allows for considerable room to take into account the diverse environments upon which the personnel of different state entities operate. In keeping with the standardization policy of the law, however, jurisprudence clarifies that, for an additional non-integrated allowance to be considered valid,

it must be shown that [these were] given to government employees of certain offices due to the unique nature of the office and of the work performed by the employee, taking into consideration the peculiar characteristics of each

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26. See *Republic v. Cortez*, G.R. No. 187257, 817 SCRA 19 (2017) & PHIL. CONST. art. IX (B), § 8.

27. PHIL. CONST. art. IX (B), § 8.

28. *Maritime Industry Authority*, 745 SCRA at 342.

29. *Id.* (citing *Gutierrez v. Department of Budget and Management*, 630 Phil. 1 (2010)).

government office where performance of the same work may entail different necessary expenses for the employee.<sup>30</sup>

Likewise, case law makes it clear that

the non[-]integrated allowances that may be granted in addition to those specifically enumerated in Section 12 of Republic Act No. 6758 should be in the nature similar to those enumerated in the provision, that is, they are amounts needed by the employee in the performance of his or her duties.<sup>31</sup>

At this juncture, it is fitting to point out that the broad coverage of the CPCS is not absolute. Certain government-owned and/or controlled corporations (GOCCs) have been, by way of a special provision usually contained in their respective charters, granted considerable flexibility to create their own compensation and position classification systems for the benefit of their respective offices. These include notable SSL-exempt entities such as the Philippine Postal Corporation, Trade and Investment Development Corporation of the Philippines, Land Bank of the Philippines, Social Security System, Small Business Guarantee and Finance Corporation, Government Service Insurance System, Development Bank of the Philippines, Home Guaranty Corporation, and the Philippine Deposit Insurance Corporation.<sup>32</sup>

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30. Philippine Charity Sweepstakes Office (PCSO) v. Pulido-Tan, G.R. No. 216776, 790 SCRA 477, 494-95 (2016) (citing *Maritime Industry Authority*, 745 SCRA at 328).

31. *Maritime Industry Authority*, 745 SCRA at 329 (citing Bureau of Fisheries and Aquatic Resources (BFAR) Employees Union, Regional Office No. VII, Cebu City v. Commission on Audit, G.R. No. 169815, 562 SCRA 134, 141 (2008)).

32. See e.g., An Act Creating the Philippine Postal Corporation, Defining its Powers, Functions and Responsibilities, Providing for Regulation of the Industry and for Other Purposes Connected Therewith [Postal Service Act of 1992], Republic Act No. 7354, § 22 (1992); An Act Further Amending Presidential Decree No. 1080, as Amended, by Reorganizing and Renaming the Philippine Export and Foreign Loan Guarantee Corporation, Expanding its Primary Purposes, and for Other Purposes, Republic Act No. 8494, § 7 (1998); An Act to Ordain the Agricultural Land Reform Code and to Institute Land Reforms in the Philippines, Including the Abolition of Tenancy and the Channeling of Capital into Industry, Provide for the Necessary Implementing Agencies, Appropriate Funds Therefor and for Other Purposes [Agricultural Land Reform Code], Republic Act No. 3844, § 90 (1963); An Act to Promote, Develop and Assist Small and Medium Scale Enterprises Through the Creation of a Small and Medium Enterprise Development (SMED) Council, and the Rationalization of Government Assistance Programs and Agencies Concerned with the Development [Magna Carta for Small Enterprises], Republic Act No. 6977, § 11 (e) (1997) (as amended); An Act Amending Presidential Decree No. 1146, as Amended, Expanding and Increasing the Coverage and Benefits of the



Nonetheless, it is well to note that these SSL-exempt entities, being under the auspices of the executive branch of government, are still subject to the President's power of supervision and control.<sup>33</sup> As such, Section 6 of P.D. No. 1597 enjoins them to "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."<sup>34</sup>

That said, with the fairly recent passage of Republic Act No. 10149, otherwise known as the "GOCC Governance Act of 2011,"<sup>35</sup> the special exemptions of GOCCs from the SSL have been explicitly superseded.<sup>36</sup> In an effort to exert more control over state corporations, the said law has created the Governance Commission for GOCCs (GCG), attached to the Office of the President, to act as "a central advisory, monitoring, and oversight body with authority[ ] to formulate, implement[,] and coordinate policies [concerning GOCCs]."<sup>37</sup> In line with this mandate and with the apparent intent to extend the policy of standardization to all GOCCs with far fewer

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Government Service Insurance System, Instituting Reforms Therein and for Other Purposes [Revised Government Service Insurance Act of 1977], Republic Act No. 8291, § 41 (m) (1997); An Act Creating the Rehabilitation Finance Corporation, Republic Act No. 85, § 15 (d) (1946); An Act Consolidating and Amending Republic Act Nos. 580, 1557, 5488 and 7835 and Executive Order Nos. 535 and 90, as They Apply to the Home Insurance and Guaranty Corporation Which Shall be Renamed as Home Guaranty Corporation, and for Other Purposes [Home Guaranty Corporation Act of 2000], Republic Act No. 8763, § 9 (5); & An Act Establishing the Philippine Deposit Insurance Corporation, Defining Its Powers and Duties and for Other Purposes, Republic Act No. 3591, § 8, para. 5 (1963).

33. *See Social Security System v. Commission on Audit*, G.R. No. 243278, Nov. 3, 2020, at 5, available at <https://sc.judiciary.gov.ph/18335> (last accessed July 31, 2021).

34. Presidential Decree No. 1597, § 6.

35. An Act to Promote Financial Viability and Fiscal Discipline in Government-Owned or -Controlled Corporations and to Strengthen the Role of the State in its Governance and Management to Make Them More Responsive to the Needs of Public Interest and for Other Purposes [GOCC Governance Act of 2011], Republic Act No. 10149 (2011).

36. *See id.* § 8.

37. *Id.* § 5.

exceptions,<sup>38</sup> the GCG was tasked by the law to develop a separate CPCS for all GOCCs.<sup>39</sup> This standardized compensation framework for GOCCs was eventually adopted upon the approval of former President Benigno C. Aquino III through Executive Order No. 203<sup>40</sup> issued on 22 March 2016, although its implementation had been suspended by the present administration for further study.<sup>41</sup> While the integration rule found in R.A. No. 6758<sup>42</sup> was not explicitly carried over to R.A. No. 10149,<sup>43</sup> its essence is embodied by Section 10 of the law insofar as it limits the grant of additional incentives by GOCCs to only those recommended by the GCG and approved by the President, viz.

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SECTION 10. *Additional Incentives.* — The GCG may recommend to the President, incentives for certain position titles in consideration of the good performance of the GOCC: *Provided,* That no incentives shall be granted unless the GOCC has fully paid all taxes for which it is liable, and the GOCC has declared and paid all the dividends required to be paid under its charter or any other laws.<sup>44</sup>

It is crucial to highlight the policy of standardization and along with it, the rule on integration, at the outset, as this appears to be the rule most frequently violated by government entities in the handling of public funds relative to matters of employee compensation. An assiduous review of jurisprudence in recent decades reveals that the Supreme Court has upheld consistently notices of disallowance issued by the COA disallowing various forms of compensation granted by government entities to their personnel on

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38. The only GOCCs exempted from the coverage of the law are: (1) Bangko Sentral ng Pilipinas; (2) State Universities and Colleges; (3) Cooperatives; (4) Local Water Districts; and (5) Economic Zone Authorities and Research Institutions. *Id.* § 4.

39. *Id.* § 8.

40. Office of the President, Adopting a Compensation and Position Classification System (CPCS) and a General Index of Occupational Services (IOS) for the GOCC Sector Covered by Republic Act No. 10149 and for Other Purposes, Executive Order No. 203, Series of 2016 [E.O. No. 203, s. 2016] (Mar. 22, 2016).

41. Office of the President, Suspending the Compensation and Position Classification System Under Executive Order No. 203 (s. 2016), Providing for Interim Compensation Adjustments, and for Other Purposes, Executive Order No. 36, Series of 2017 [E.O. No. 36, s. 2017] (July 28, 2017).

42. Compensation and Position Classification Act of 1989, § 12.

43. GOCC Governance Act of 2011, § 10.

44. *Id.*

account of violation of the said rule.<sup>45</sup> Aside from this, notices of disallowances are also frequently issued against the grant of items of compensation to public officials and employees for violation of other fiscal laws, rules, and regulations.<sup>46</sup>

As borne out by case law, public funds aggregating in hundreds of millions of pesos, at the very least, have been illegally disbursed in favor of government personnel.<sup>47</sup> In this regard, it bears expounding that the COA, being constitutionally charged with the determination, prevention, and disallowance of improper uses of public funds, plays a principal role in their identification and recovery in cases of misappropriation.<sup>48</sup> This reclamation process, which stems from the COA's conduct of regular or special audit as mandated by law,<sup>49</sup> commences with the issuance of a notice of disallowance by a duly authorized auditor against the government entity concerned as well as the

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45. See, e.g., *Philippine Charity Sweepstakes Office v. Commission on Audit*, G.R. No. 243607, Dec. 9, 2020, available at <https://sc.judiciary.gov.ph/18827> (last accessed July 31, 2021); *Nina P. Lumauan v. Commission on Audit*, G.R. No. 218304, Dec. 9, 2020, available at <https://sc.judiciary.gov.ph/16932> (last accessed July 31, 2021); *Philippine Overseas Employment Administration (POEA) v. Commission on Audit*, G.R. No. 210905, Nov. 17, 2020, available at <https://sc.judiciary.gov.ph/18759> (last accessed July 31, 2021); *Development Bank of the Philippines v. Ronquillo*, G.R. No. 204948, Sept. 7, 2020, available at <https://sc.judiciary.gov.ph/18798> (last accessed July 31, 2021); *Gubat Water District (GWD) v. Commission on Audit*, G.R. No. 222054, 921 SCRA 225 (2019); *Torcuator v. Commission on Audit*, G.R. No. 210631, 896 SCRA 191 (2019); *Balayan Water District (BWD) v. Commission on Audit*, G.R. No. 229780, 891 SCRA 126 (2019); *Laguna Lake Development Authority v. Commission on Audit, En Banc*, 887 SCRA 144 (2018); *Career Executive Service Board v. Commission on Audit*, G.R. No. 212348, 866 SCRA 475 (2018); *Metropolitan Waterworks and Sewerage System v. Commission on Audit*, G.R. No. 195105, 845 SCRA 551 (2017); *Sambo v. Commission on Audit*, G.R. No. 223244, 827 SCRA 550 (2017); *Duty Free Philippines Corporation (formerly Duty Free Philippines) v. Commission on Audit*, G.R. No. 210991, 796 SCRA 413 (2016); *Ronquillo, Jr. v. National Electrification Administration*, G.R. No. 172593, 790 SCRA 611 (2016); & *Pulido-Tan*, 790 SCRA at 507.

46. See generally *Madera, et al.*, G.R. No. 244128, at 23-24.

47. *Id.* at 22-27.

48. See *Caltex Philippines, Inc. v. Commission on Audit*, GR No. 92585, 208 SCRA 726, 743-44 (1992) (citing PHIL. CONST. art. IX (D), § 2).

49. See *Government Auditing Code of the Philippines*, § 28 & *Instituting the "Administrative Code of 1987" [ADMIN. CODE]*, Executive Order No. 292, bk. V, tit. I, ch. 6, §§ 38-41 (1987).

persons held liable thereunder (i.e., the authorizing officers and recipients) in accordance with the Commission's rules —

SECTION 10. Notice of Disallowance (ND).

10.1 The Auditor shall issue an ND-Form 3 — for transactions which are irregular/unnecessary/excessive and extravagant as defined in COA Circular No. 85-55A as well as other COA issuances, and those which are illegal and unconscionable.

10.1.1 Illegal expenditures are expenditures which are contrary to law.

10.1.2 Unconscionable expenditures are expenditures which are unreasonable and immoderate, and which no man in his right sense would make, nor a fair and honest man would accept as reasonable, and those incurred in violation of ethical and moral standards.

10.2 The ND shall be addressed to the agency head and the accountant; served on the persons liable; and shall indicate the transaction and amount disallowed, reasons for the disallowance, the laws/rules/regulations violated, and persons liable.<sup>50</sup>

The party aggrieved by the notice of disallowance may then avail himself of the administrative appellate remedies provided under the COA Rules of Procedure,<sup>51</sup> and, once properly exhausted, invoke the Court's *certiorari* jurisdiction under Rule 64 in relation to Rule 65 of the Rules of Court.<sup>52</sup>

Nevertheless, as earlier intimated, while the Court has generally sustained COA disallowances of illegal compensation, it has, for the longest time, adopted a doctrinal stance prejudicial to the state by excusing the refund of such amounts from the recipients on account of their "good faith" or "innocent" receipt thereof. As contemplated, the exculpatory defense of good faith would always obtain on the part of these recipients as they have no active participation whatsoever in the disbursement process. Their involvement therein is merely limited to the "passive receipt" of the disallowed amounts. The foregoing treatment, grounded on the so-called "*Good Faith Rule*," clearly frustrates the recovery efforts of the government, which is forfeited the right to run after the main beneficiaries of misspent public funds.

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50. Commission on Audit, The 2009 Rules and Regulations on the Settlement of Accounts [Rules and Regulations on the Settlement of Accounts], Circular No. 2009-006 [COA Circ. No. 2009-006], ch. III, § 10 (Sept. 15, 2009).

51. See Commission on Audit, The 2009 Revised Rules of Procedure of the Commission on Audit [2009 Revised Rules of Procedure of the Commission on Audit], rules V-VII (Sept. 15, 2009).

52. See 1997 RULES OF CIVIL PROCEDURE, rules 64 & 65.

## III. THE GOOD FAITH RULE

The “*Good Faith Rule*,” as understood in disallowance cases, traces its genesis to the 1998 case of *Blaquera, et al. v. Alcala*.<sup>53</sup> The case involved an administrative order issued by then President Fidel V. Ramos directing all government departments, offices, and agencies to cause the refund of excess amounts given as productivity incentive bonus for the year 1992 to their respective personnel for violating the ceiling imposed by a previous executive issuance.<sup>54</sup> To forestall deductions from their payroll accounts, several public officials and employees filed a petition for *certiorari* and prohibition before the Court challenging the validity of the aforementioned ceiling on constitutional grounds.<sup>55</sup>

Under Section 43, Chapter V, Book VI of Executive Order No. 292, otherwise known as the Administrative Code of 1987, it appears that the authorizing officers and recipients should have been “*jointly and severally liable*” to the Government for the return of the disputed amounts unlawfully paid and received. The provision 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.*<sup>56</sup>

This solidary liability, attributed against both the authorizing officers and recipients, is similarly reflected under the pertinent COA Rules, such as the Manual on Certificate of Settlement and Balance, which provide in part —

SECTION 30. Liability for Unlawful/Illegal Expenditures or Uses of Government Funds

...

30.1.2. Every expenditure or obligation authorized or incurred in violation of law or of the annual budgetary measure shall be void. Every payment

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53. Remedios T. Blaquera, et al. v. Angel C. Alcala & Carlito R. Altea, G.R. Nos. 109406, 110642, 111494, 112056, & 119597, Sept. 11, 1998, available at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/36261> (last accessed July 31, 2021).

54. *Id.*

55. *Id.*

56. ADMIN. CODE, bk. VI, ch. 5, § 43 (emphasis supplied).

made in violation thereof 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 for the full amount so paid and received.*<sup>57</sup>

COA Circular No. 2009-006 also provides —

SECTION 16. Determination of Persons Responsible/Liable. —

...

16.1.4 *Public officers and other persons* who confederated or conspired in a transaction which is disadvantageous or prejudicial to the government shall be held liable *jointly and severally with those who benefited therefrom.*

...

16.3 The *liability of persons determined to be liable under an ND/NC shall be solidary* and the Commission may go against any person liable without prejudice to the latter's claim against the rest of the persons liable.<sup>58</sup>

In *Blaquera, et al.*, however, while the Court upheld the assailed limitation on the allowable amount of productivity incentive bonuses as a valid exercise of the executive power of control, it nonetheless absolved *both* the authorizing officers and recipients from civil liability for the refund of the disputed amounts on the ground of good faith, viz. —

Untenable is petitioners' contention that the herein respondents be held personally liable for the refund in question. *Absent a showing of bad faith or malice, public officers are not personally liable for damages resulting from the performance of official duties.*

Every public official is entitled to the presumption of good faith in the discharge of official duties. Absent any showing of bad faith or malice, there is likewise a presumption of regularity in the performance of official duties.

...

Considering, however, that *all the parties here acted in good faith, we cannot countenance the refund of subject incentive benefits for the year 1992, which amounts the petitioners have already received. Indeed, no indicia of bad faith can be detected under the attendant facts and circumstances.* The officials and chiefs of offices concerned disbursed such incentive benefits in the honest belief that the

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57. Commission on Audit, Prescribing the Use of the Manual on Certificate of Settlement and Balances (Revised 1993) [Manual on Certificate of Settlement and Balance], Circular No. 94-001 [COA Circ. No. 94-001], §§ 30 & 30.1.2 (Jan. 20, 1994) (emphasis supplied).

58. COA Circ. No. 2009-006, §§ 16, 16.1.4 & 16.1.3 (emphases supplied).

amounts given were due to the recipients and the latter accepted the same with gratitude, confident that they richly deserve such benefits.<sup>59</sup>

Verily, in excusing refund for the entire disputed sum, the Court adopted a liberal stance contrary to the traditional stringent treatment of public funds.<sup>60</sup> In so ruling, the Court underscored the absence of any indicia of bad faith or malice on the part of the authorizing officers and recipients, which thus justified their absolution from civil liability for the amounts improperly disbursed.<sup>61</sup>

Thereafter, *Blaquera, et al.* then became the doctrinal basis for the application of the “*Good Faith Rule*” in a cavalcade of subsequent decisions involving audit disallowances of various unauthorized forms of compensation.<sup>62</sup> From the promulgation of *Blaquera, et al.* in 1998 up until

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59. *Blaquera, et al.*, G.R. Nos. 109406, 110642, 111494, 112056, & 119597 (emphases supplied) (citing *Yulo v. Civil Service Commission*, G.R. No. 94125, 219 SCRA 470, 478 (1993) (citing *Mabutol v. Pascual*, G.R. No. L-60898, 124 SCRA 867, 875 (1983); *Mendiola v. People*, G.R. Nos. 89983-84, 207 SCRA 85, 98 (1992); *Fernando v. Sto. Tomas*, 234 SCRA 546, 552 (1994); & *Tuzon v. Court of Appeals*, G.R. No. 90107, 212 SCRA 739, 744 (1992))).

60. *See Blaquera, et al.*, G.R. Nos. 109406, 110642, 111494, 112056, & 119597.

61. *Id.*

62. *See, e.g., Gubat Water District (GWD)*, 921 SCRA; *Montejo v. Commission on Audit*, G.R. No. 232272, July 24, 2018, *available at* <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64480> (last accessed July 31, 2021); *Metropolitan Waterworks and Sewerage System v. Commission on Audit*, G.R. No. 195105, 845 SCRA 551 (2017); *Velasco v. Commission on Audit*, G.R. No. 189774, 681 SCRA 102 (2012); *Casal v. Commission on Audit*, G.R. No. 149633, 509 SCRA 138 (2006); *Development Academy of the Philippines v. Pulido-Tan*, G.R. No. 203072, 806 SCRA 362, 386 (2016) (citing *Mendoza v. Commission on Audit*, G.R. No. 195395, 705 SCRA 306 (2013)); *Magno v. Commission on Audit*, G.R. No. 149941, 531 SCRA 339 (2007); *Singson v. Commission on Audit*, G.R. No. 159355, 627 SCRA 36 (2010); *Lumayno v. Commission on Audit*, G.R. No. 185001, 601 SCRA 163 (2009); *Barbo v. Commission on Audit*, G.R. No. 157542, 568 SCRA 302 (2008); *Kapisanan ng mga Manggagawa sa Government Service Insurance System (KMG) v. Commission on Audit*, G.R. No. 150769, 437 SCRA 371 (2004); *Veloso v. Commission on Audit*, G.R. No. 193677, 656 SCRA 767 (2011); *Abanilla v. Commission on Audit* 468 SCRA 87 (2005); *Home Development Mutual Fund v. Commission on Audit*, G.R. No. 157001, 440 SCRA 643 (2004); *Public Estates Authority v. Commission on Audit*, G.R. No. 156537, 512 SCRA 428 (2007); *Bases Conversion and Development Authority v. Commission on Audit*, G.R. No. 178160, 580 SCRA 295 (2009); & *Agra vs. Commission on Audit*, G.R. No. 167807, 661 SCRA 563 (2011).

*Madera, et al.* in 2020, the Court has, as a general trend, consistently absolved the recipients from civil liability for the return of items of compensation they have innocently, yet unlawfully, received.<sup>63</sup>

In effect, the foregoing treatment with respect to the recipients leads to two possible scenarios concerning the misused public funds, as demonstrated in our jurisprudence. *Either*: (1) the authorizing officers are solidarily liable for the entire amount if they acted with bad faith, malice, or gross negligence;<sup>64</sup>

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63. However, in case the disallowed expenditures were in the nature of Collective Negotiation Agreement (CNA) incentives, the recipients were made to return the amounts they individually received on the basis of their knowledge and participation in the approval of the expenditure, which the Court found to have negated the existence of good faith in their favor. *See id.*

The Court has also ruled that “unlike ordinary monetary benefits granted by the government, the CNA Incentive involve the participation of the employees who are intended to be the beneficiaries thereof.” *See Department of Public Works and Highways, Region IV-A v. Commission on Audit*, G.R. No. 237987, 897 SCRA 425, 447 (2019). *See also Dubongco v. Commission on Audit*, G.R. No. 237813, 895 SCRA 53, 73 (2019). *But see Rotoras v. Commission on Audit*, G.R. No. 211999, Aug. 20, 2019, available at <https://sc.judiciary.gov.ph/8130> (last accessed July 31, 2021) & *Government Service Insurance System (GSIS) v. Commission on Audit (COA)*, G.R. No. 162372, 658 SCRA 796, 825-27 (2011). The Court in these two cases ordered the passive recipients to return the disallowed benefits and allowances they received on the basis of the principles of unjust enrichment and/or constructive trust. *Id.*

64. *See, e.g., Fernandez v. Commission on Audit*, G.R. No. 205389, Nov. 19, 2019, available at <https://sc.judiciary.gov.ph/9598> (last accessed July 31, 2021); *Department of Public Works and Highways, Region IV-A*, 897 SCRA 425; *National Power Corp. v. Commission on Audit*, G.R. No. 240519, Feb. 19, 2019, available at <https://sc.judiciary.gov.ph/2170> (last accessed July 31, 2021); *Metropolitan Waterworks and Sewerage System*, 845 SCRA 551 (2017); *Nayong Pilipino Foundation, Inc. v. Pulido Tan*, G.R. No. 213200, 840 SCRA 136 (2017); *Tetangco, Jr. v. Commission on Audit*, G.R. No. 215061, 826 SCRA 179 (2017); *Sambo v. Commission on Audit*, G.R. No. 223244, 827 SCRA 550 (2017); *Oñate v. Commission on Audit*, G.R. No. 213660, 795 SCRA 661 (2016); *Philippine Charity Sweepstakes Office (PCSO)*, 790 SCRA; *Silang v. Commission on Audit*, G.R. No. 213189, 770 SCRA 110 (2015); *Maritime Industry Authority*, 745 SCRA; *Casal*, 509 SCRA. However, the general trend demonstrated in the foregoing cases was not followed in *Technical Education and Skills Development Authority v. Commission on Audit*, G.R. No. 204869, 718 SCRA 402, 424 (2014) & *Manila International Airport Authority v. Commission on Audit*, G.R. No. 194710, 665 SCRA 653, 676-79 (2012), where, despite a finding of bad faith on the part of the approving officers, the Court did not hold them solidarily



or (2) the entire amount is totally excused to be refunded — if the defense of good faith<sup>65</sup> may be appreciated in favor of the authorizing officers,<sup>66</sup> as in the case of *Blaquera, et al.*

As may be discerned, the application of the “*Good Faith Rule*” presents divergent outcomes — both of which are unjust. On one hand, it places the heavy burden for the return of the entire misused sum, often in the amount of tens of millions of pesos, solely on the shoulders of the erring authorizing officers. On the other hand, it results in significant fiscal leakage to the government, who is left without recourse to recover any portion of the misused amount.

This lamentable trend in our jurisprudence led to the revolutionary shift in *Madera, et al.*, where the Court finally decided to craft a well-balanced, statutorily-grounded framework establishing the rules on recovery of misused

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liable, but merely required each of them to refund the amounts they received for themselves. *Id.*

65. In the context of government expenditures, the concept of good faith, as applied in the context of the authorizing officers, is defined as

a state of mind denoting ‘honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry; an honest intention to abstain from taking any unconscientious advantage of another, even through technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render transaction unconscientious.’

*Development Bank of the Philippines v. Commission on Audit*, G.R. No. 221706, 858 SCRA 531, 550 (2018) (citing *Philippine Economic Zone Authority (PEZA) v. Commission on Audit*, G.R. No. 189767, 675 SCRA 513, 524 (2012) & *Maritime Industry Authority*, 745 SCRA at 347); & *Philippine Economic Zone Authority (PEZA) v. Commission on Audit (COA)*, G.R. No. 210903, 805 SCRA 618, 642 (2016)).

66. Illustrative are the following cases — See *Alejandrino v. Commission on Audit*, G.R. No. 245400, 925 SCRA 403 (2019); *Castro v. Commission on Audit*, G.R. No. 233499, Feb. 26, 2019, available at <https://sc.judiciary.gov.ph/2443> (last accessed July 31, 2021); *Montejo*, G.R. No. 232272; *Career Executive Service Board*, 866 SCRA; *Development Bank of the Philippines*, 858 SCRA; *Philippine Health Insurance Corp. v. Commission on Audit*, G.R. No. 213453, 811 SCRA 238 (2016); *Development Academy of the Philippines*, 806 SCRA 362 (2016); *Philippine Economic Zone Authority (PEZA)*, 805 SCRA; & *Social Security System v. Commission on Audit*, G.R. No. 210940, 802 SCRA 229 (2016).

public funds in the context of audit disallowances of government compensation.<sup>67</sup>

IV. INSTITUTING A GENERAL RULE OF RETURN: THE CASE OF *MADERA, ET AL. V. COA*

In *Madera, et al.*, the Court was faced with a petition challenging the COA's disallowance of various allowances granted by the Municipality of Mondragon, Northern Samar to its officials and employees during the year of 2013.<sup>68</sup> The allowances were not permitted because of a violation of the previously discussed integration rule under Section 12 of R.A. No. 6758, with the authorizing officers and passive recipients held civilly liable under the disallowance.<sup>69</sup> On appeal to the COA proper, the recipients were absolved from liability to refund the amounts they received on account of the “*Good Faith Rule*,” leaving authorizing officers as the sole petitioners at the Court's level.<sup>70</sup>

Speaking through Associate Justice Alfredo Benjamin S. Caguioa, the Court prefaced its landmark ruling by tracing the historical evolution of the “*Good Faith Rule*” and recognizing the unjust outcome fostered thereby, viz.

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In sum, the evolution of the ‘good faith rule’ that excused the passive recipients in good faith from return began in *Blaquera* (1998) and *NEA* (2002), where the good faith of both officers and payees were determinative of their liability to return the disallowed benefits — the good faith of all parties resulted in excusing the return altogether in *Blaquera*, and the bad faith of officers resulted in the return by all recipients in *NEA*.

...

The history of the rule as shown evinces that the original formulation of the ‘good faith rule’ excusing the return by payees based on good faith was not intended to be at the expense of approving and/or certifying officers. The application of this judge[-]made rule of excusing the payees and then placing upon the officers the responsibility to refund amounts they did not personally receive, commits an inadvertent injustice.<sup>71</sup>

In a critical turn, the Court then abandoned the “*Good Faith Rule*” as “judge-made” doctrine by acknowledging the applicability of the civil law

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67. *Madera, et al.*, G.R. No. 244128, at 35-36.

68. *Id.* at 1-2.

69. *Id.* at 5 (citing Compensation and Position Classification Act of 1989, § 12).

70. *Id.* at 8.

71. *Id.* at 26-27 (emphasis omitted).

principles of unjust enrichment and *solutio indebiti* in cases involving unlawful expenditures —

Verily, excusing payees from return on the basis of good faith has been previously recognized as an exception to the laws on liability for unlawful expenditures. However, being civil in nature, the liability of officers and payees for unlawful expenditures provided in the Administrative Code of 1987 will have to be consistent with civil law principles such as *solutio indebiti* and unjust enrichment. These civil law principles support the propositions that[:] (1) the good faith of payees is not determinative of their liability to return; and (2) when the Court excuses payees on the basis of good faith or lack of participation, it amounts to a remission of an obligation at the expense of the government.

...

With the liability for unlawful expenditures properly understood, payees who receive undue payment, regardless of good faith, are liable for the return of the amounts they received. Notably, in situations where officers are covered by Section 38 of the Administrative Code of 1987 either by presumption or by proof of having acted in good faith, in the regular performance of their official duties, and with the diligence of a good father of a family, payees remain liable for the disallowed amount unless the Court excuses the return.

...

In the ultimate analysis, the Court, through these new precedents, has returned to the basic premise that the responsibility to return is a civil obligation to which fundamental civil law principles, such as unjust enrichment and *solutio indebiti* apply regardless of the good faith of passive recipients. This, as well, is the foundation of the rules of return that the Court now promulgates.<sup>72</sup>

In doing so, the Court — situating the civil liability of passive recipients of illegal compensation under the aforementioned sources of obligations — declared that: “(1) the good faith of payees is not determinative of their liability to return; and (2) when the Court excuses payees on the basis of good faith or lack of participation, it amounts to a remission of an obligation at the expense of the government.”<sup>73</sup> Accordingly, a general rule of return was established, such that, “*payees who receive undue payment, regardless of good faith, are liable for the return of the amounts they received.*”<sup>74</sup>

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72. *Id.* at 27-33.

73. *Madera, et al.*, G.R. No. 244128, at 27.

74. *Id.* at 29 (emphasis supplied).

Further expounding on this significant shift, Senior Associate Justice Estela M. Perlas-Bernabe, through a Separate Concurring Opinion in *Madera, et al.*,<sup>75</sup> also acknowledged the “skewed paradigm” and “fiscal leakage” propagated by the “*Good Faith Rule*” and underscored the said doctrine’s irrelevancy insofar as a *solutio indebiti* obligation is concerned.<sup>76</sup> Particularly, she pointed out that “good faith cannot be appreciated as a defense against an obligation under *solutio indebiti* as it is forced by operation of law upon the parties, not because of any intention on their part but in order to prevent unjust enrichment,” viz. —

[I]t is crucial to underscore that good faith cannot be appreciated as a defense against an obligation under *solutio indebiti* as it is ‘forced’ by operation of law upon the parties, not because of any intention on their part but in order to prevent unjust enrichment.’ Moreover, it is discerned that the complete absolution of passive recipients from liability may indeed significantly reduce the funds to be recovered by the COA and as a result, cause great losses, or ‘fiscal leakage,’ to the detriment of the government. In other words, if non-return of passive recipients is the norm, then the COA’s ability to recover may be greatly hampered. This skewed paradigm recognized in earlier jurisprudence should not anymore be propagated.<sup>77</sup>

Justice Perlas-Bernabe also took a further step in delineating a marked distinction between the civil liability of the passive recipients, on the one hand, and the authorizing officers, on the other. In her Separate Concurring Opinion, she likewise made an in-depth discussion on the two separate frameworks of law that govern the return of disallowed compensation: (1) the Civil Code in the case of the passive recipients; and (2) the Administrative Code in the case of the authorizing officers.<sup>78</sup>

Anent the passive recipients, Justice Perlas-Bernabe pointed out that, since these personalities are not active participants in the illegal transaction, they cannot be deemed engaged in the performance of their official duties in connection therewith.<sup>79</sup> As such, they should not be treated as state functionaries under the Administrative Code, but rather, as ordinary civil persons governed by the principles of unjust enrichment and *solutio indebiti*

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75. *Madera, et al.*, G.R. No. 244128, at 11 (J. Perlas-Bernabe, concurring opinion).

76. *Id.* at 11.

77. *Id.* (citing *Philippine National Bank v. Court of Appeals*, 291 Phil. 356, 367 (1993)).

78. *Id.* at 1 (citing ADMIN. CODE & An Act to Ordain and Institute the Civil Code of the Philippines [CIVIL CODE], Republic Act No. 386 (1950)).

79. *Madera, et al.*, G.R. No. 244128, at 10 (J. Perlas-Bernabe, concurring opinion).

under the broad paradigm of the Civil Code.<sup>80</sup> This distinction is crucial since Section 43 of the Administrative Code, as earlier discussed, provides for the *solidary liability* of public officers in cases of unlawful expenditures.<sup>81</sup> Thus, the absence of any official participation on the part of the passive recipients as public officers extricates them from the exacting coverage of the Administrative Code.<sup>82</sup>

For another, it bears highlighting that it is also the Administrative Code which provides for the statutory bases for the problematic “*Good Faith Rule*.” This is under Sections 38 and 39, Chapter 9, Book I of the law which relevantly 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*.

...

Section 39. Liability of Subordinate Officers. — *No subordinate officer or employee shall be civilly liable for acts done by him in good faith in the performance of his duties*. However, he shall be liable for *willful or negligent* acts done by him which are *contrary to law, morals, public policy[,] and good customs even if he acted under orders or instructions of his superiors*.<sup>83</sup>

Hence, by situating the civil liability of the passive recipients under the Civil Code and not the Administrative Code, the foregoing provisions are removed from their range of available defenses. Notably, this fundamental distinction was later adopted by the Court in a Resolution penned by Justice Perlas-Bernabe herself in *Abellonosa, et al. v. Commission on Audit*, where it was elucidated that

when a public officer is to be held civilly liable not in his or her capacity as an approving/authorizing officer but merely as a payee-recipient innocently receiving a portion of the disallowed amount, the liability is to be viewed not from the public accountability framework of the Administrative Code but instead, from the lens of unjust enrichment and the principle of *solutio indebiti* under a purely civil law framework. The reason for this is because the civil liability of such payee-recipient — in contrast to an approving/authorizing officer — has no direct substantive relation to the performance of one’s official duties or functions, particularly in terms of approving/authorizing the unlawful expenditure. As such, the payee-

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80. *Id.* (citing CIVIL CODE, tit. XVII, ch. 1, § 2).

81. *Id.* at 8–9 (citing ADMIN. CODE, bk. VI, ch. 5, § 43).

82. *Id.*

83. ADMIN. CODE, bk. VI, ch. 5, § 43 (emphases supplied).

recipient is treated as a debtor of the government whose civil liability is based on *solutio indebiti*, which is a distinct source of obligation.

When the civil obligation is sourced from *solutio indebiti*, good faith is inconsequential. Accordingly, previous rulings absolving passive recipients solely and automatically based on their good faith contravene the true legal import of a *solutio indebiti* obligation and, hence, as per *Madera*, have now been abandoned.<sup>84</sup>

Meanwhile, with respect to the authorizing officers, considering that they are undeniably engaged in the performance of their official duties relative to the eventually disallowed expenditure, *Madera, et al.* retains the twin presumptions of good faith and regularity in their favor, as sourced from the aforementioned Sections 38 and 39 of the Administrative Code, by hinging their civil liability on a clear showing of bad faith, malice, or gross negligence

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By the very language of these provisions, the liability for unlawful expenditures is civil. Nonetheless, since these provisions are situated in Chapter 9, Book I of the Administrative Code of 1987 entitled 'General Principles Governing Public Officers,' the liability is inextricably linked with the administrative law sphere. Thus, *the civil liability provided under these provisions is hinged on the fact that the public officers performed his official duties with bad faith, malice, or gross negligence.*

...

As mentioned, *the civil liability under Sections 38 and 39 of the Administrative Code of 1987, including the treatment of their liability as solidary under Section 43, arises only upon a showing that the approving or certifying officers performed their official duties with bad faith, malice[,] or gross negligence.* For errant approving and certifying officers, the law justifies holding them solidarily liable for amounts they may or may not have received considering that the payees would not have received the disallowed amounts if it were not for the officers' irregular discharge of their duties, as further emphasized by ... Justice [Perlas-Bernabe].<sup>85</sup>

As observed, notwithstanding the recipients' individual liability to return the amounts they respectively received on the basis of the Civil Code, the authorizing officers who had acted with bad faith, malice, or gross negligence are, *concurrently*, held solidarily liable for the entire unlawfully disbursed sum

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84. *Abellanos, et al.*, G.R. No. 185806, at 8-9.

85. *Madera, et al.*, G.R. No. 244128, at 18-19 & 21 (emphases omitted and supplied).

as per Section 43 of the Administrative Code.<sup>86</sup> This heavy imposition is borne out in case law, such as when:

- (1) the authorizing officers have patently disregarded existing laws or rules in the granting the unlawful allowances or benefits;<sup>87</sup>
- (2) there was clearly no legal basis for the benefits or allowances;<sup>88</sup>
- (3) the amount disbursed is so exorbitant that the officers were alerted to its validity and legality;<sup>89</sup> and
- (4) the officers knew that they had no authority over such disbursement.<sup>90</sup>

Conversely, in the absence of a clear showing of bad faith, malice, or gross negligence, the authorizing officers are relieved from any monetary accountability for the illegal expenditure. The practical reason for this was succinctly explained by Justice Caguioa in *Madera, et al.* —

As the Court has previously held, government employment should be seen as an opportunity for individuals of good will to render honest-to-goodness public service, and not a trap for the unwary. It should be an attractive alternative to private employment, not an undesirable undertaking grudgingly accepted, to therefore regret. While the Court supports the mandate of the COA in ensuring that the funds of the government are properly utilized and the return to the government of funds unduly spent, the same must not be at the expense of public officials and employees who are directly tasked to discharge and render public service — especially when the presumptions of good faith and regularity in the performance of their duties have not been rebutted or overturned. Otherwise, the Court would unintentionally sanction the discouragement of competent and well-meaning individuals from joining the government. When service in the government is seen as unattractive and unappealing, it is the public that suffers.<sup>91</sup>

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86. *Id.* at 21.

87. *See Casal*, 509 SCRA at 149 & *Sambo*, 827 SCRA at 563.

88. *See Manila International Airport Authority*, 665 SCRA & *Oriondo, et al. v. Commission on Audit*, G.R. No. 211293, June 4, 2019, at 30, *available at* <https://sc.judiciary.gov.ph/5170> (last accessed July 31, 2021).

89. *See Maritime Industry Authority*, 745 SCRA at 360.

90. *See Silang*, 770 SCRA at 129.

91. *Madera*, G.R. No. 244128, at 39-40 (citing *Philippine Economic Zone Authority (PEZA)*, 805 SCRA at 621).

This pragmatic view echoes the observation of the Court in the earlier case of *Philippine Economic Zone Authority v. Commission on Audit*<sup>92</sup> —

[I]t is unfair to penalize public officials based on overly stretched and strained interpretations of rules which were not that readily capable of being understood at the time such functionaries acted in good faith. If there is any ambiguity, which is actually clarified years later, then it should only be applied prospectively. A contrary rule would be counterproductive. It could result in paralysis, or lack of innovative ideas getting tried. In addition, it could dissuade others from joining the government. When government service becomes unattractive, it could only have adverse consequences for society.<sup>93</sup>

Consequently, in the foregoing scenario where the authorizing officers are cleared from fault, only the recipients, which may include the authorizing officers if they have likewise received any portion of the disallowed amount, are civilly liable for the disallowance under the aforementioned general rule of return. This appreciation of good faith on the part of the authorizing officers often occurs when there is a reasonable colorable basis for the grant of amounts later found to be unlawful. Nonetheless, to avoid any feigned pretense of good faith on the part of the authorizing officers to escape liability, *Madera, et al.* suitably adopted the following badges, which was proposed by Associate Justice Marvic M.V.F. Leonen, as an aid in the determination of the same —

For one to be absolved of liability the following requisites [may be considered]: (1) Certificates of Availability of Funds pursuant to Section 40 of the Administrative Code, (2) In-house or Department of Justice legal opinion, (3) that there is no precedent disallowing a similar case in jurisprudence, (4) that it is traditionally practiced within the agency and no prior disallowance has been issued, [or] (5) with regard the question of law, that there is a reasonable textual interpretation on its legality.<sup>94</sup>

Going back to the civil liability of the recipients, it also well to note that *Madera, et al.* likewise recognized certain exceptions to the general rule of return.

Particularly, in cases where the disallowed compensation is either: (1) *genuinely given in consideration of services rendered*; or (2) excused by the Court to be returned on the *equitable basis* of undue prejudice, social justice considerations, and other bona fide exceptions to be determined on a case-to-case basis — the *payees are excused from refunding the amounts they respectively*

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92. *Philippine Economic Zone Authority (PEZA)*, 805 SCRA.

93. *Id.* at 645-46.

94. *Madera, et al.*, G.R. No. 244128 (J. Perlas-Bernabe, separate concurring opinion, at 8) (citing J. Leonen, separate concurring opinion).



received.<sup>95</sup> As later clarified by the Court, these exceptions were crafted “bearing in mind [the] underlying premise [of the general rule of return], which is the ancient principle that no one shall enrich himself unjustly at the expense of another.”<sup>96</sup> Hence, it ruled that, in the aforementioned exceptional cases, *solutio indebiti* finds no application as the enrichment of the recipients, although at the expense of the government, was just.

Notably, aside from the excuse of the recipients from civil liability under the Civil Code, the appreciation of any of the aforementioned exceptions also has a direct bearing on the civil liability of the authorizing officers under the Administrative Code. Acting on the views of Justice Perlas-Bernabe and Justice Leonen, the Court in *Madera, et al.* also ruled that “any amounts allowed to be retained by payees shall *reduce* the solidary liability of officers found to have acted in bad faith, malice, and gross negligence,” who are made civilly liable only to the extent of the “*net disallowed amount*,” (i.e., the total disallowed amount *minus* the amounts excused to be returned by the payees), viz. —

[A]ny amounts allowed to be retained by payees shall reduce the solidary liability of officers found to have acted in bad faith, malice, and gross negligence. In this regard, Justice [Perlas-]Bernabe coins the term ‘net disallowed amount’ to refer to the total disallowed amount minus the amounts excused to be returned by the payees. Likewise, Justice Leonen is of the same view that the officers held liable have a solidary obligation only to the extent of what should be refunded and this does not include the amounts received by those absolved of liability. In short, the net disallowed amount shall be solidarily shared by the approving/authorizing officers who were clearly shown to have acted in bad faith, with malice, or were grossly negligent.<sup>97</sup>

The forgoing discounting mechanism, conceptualized by Justice Perlas-Bernabe under the term “*net disallowed amount*,” was further explained in her Separate Concurring Opinion —

When passive recipients are excused to return disallowed amounts for the reason that they were genuinely made in consideration for rendered services, or for some other bona fide exceptions determined by the Court on a case to case basis, the erring approving/authorizing officers’ solidary obligation for the disallowed amount is net of the amounts excused to be returned by the recipients (net disallowed amount). The justifiable exclusion of these

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95. *Abellanosa, et al.*, G.R. No. 185806, at 9 (citing *Madera, et al.*, G.R. No. 244128, at 36).

96. *Abellanosa, et al.*, G.R. No. 185806, at 9.

97. *Madera, et al.*, G.R. No. 244128, at 29.

amounts signals that no proper loss should be recognized in favor of the government, and thus, bars recovery of civil liability to this extent. Accordingly, since there is a justified reason excusing the return, the State should not be allowed a double recovery of these amounts from the erring public officials and individuals notwithstanding their bad faith, malice[,] or gross negligence. Besides, even if the amount to be recovered is limited in this sense, these erring public officers and those who have confederated and conspired with them are subject to the appropriate administrative and criminal actions which may be separately and distinctly pursued against them.<sup>98</sup>

Accordingly, since there is a justified reason for the recipients' retention of the amounts falling under the two recognized exceptions, they are completely excused to be refunded on the part of both the recipients as well as the authorizing officers. This exceptional treatment squares with *Madera, et al.*'s intent of balancing the competing pecuniary interests of the "government whose interest is safeguarded by the COA, on the one hand, and to the government employees who approved, certified, and received the disallowed benefits, on the other."<sup>99</sup>

For proper guidance, the above-discussed pronouncements in *Madera, et al.* were encapsulated by the Court into the following rules on return —

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 return only the net disallowed amount which, as discussed herein, excludes amounts excused under the following sections 2[ (c)] and 2[ (d)].

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98. *Madera, et al.*, G.R. No. 244128, at 12 (J. Perlas-Bernabe, separate concurring opinion) (emphases omitted).

99. *Madera, et al.*, G.R. No. 244128, at 40.

- (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>100</sup>

Finally, in resolving the petition in *Madera, et al.*, while the Court upheld the assailed disallowance as valid, it nonetheless sustained the COA's excuse of the recipients.<sup>101</sup> In so ruling, the Court observed that the disallowed amounts were given to the municipal personnel as financial assistance to alleviate the damage caused by typhoon *Yolanda*, and on this premise, deemed the case to be an exception to the general rule of return.<sup>102</sup> Specifically, the Court invoked the exception under the Rule 2 (d) of the forecited guidelines (i.e., considerations of undue prejudice and social justice), viz. —

As for the payees, the Court notes that the COA Proper already excused their return; hence, they no longer appealed. In any case, while they are ordinarily liable to return for having unduly received the amounts validly disallowed by COA, the return was properly excused not because of their good faith but because it will cause undue prejudice to require them to return amounts that were given as financial assistance and meant to tide them over during a natural disaster.<sup>103</sup>

For their part, the petitioners, as authorizing officers, were also excused from civil liability for the disallowed allowances on account of their honest belief that their disbursement was proper.<sup>104</sup> In appreciating good faith in their favor, the Court cited the existence of resolutions issued by the local *sanggunian* as a reasonable colorable basis for the grant of the said amounts, as well as the fact that they were customarily given over the years without any audit disallowance being issued.<sup>105</sup>

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100. *Id.* at 35-36.

101. *Id.* at 40.

102. *Id.* at 37.

103. *Id.* at 39.

104. *Id.* at 38.

105. *Madera, et al.*, G.R. No. 244128, at 38.

V. FURTHER REFINEMENTS OF THE *MADERA, ET AL.* EXCEPTIONS: THE CASE OF *ABELLANOSA, ET AL. V. COA*

A little over two months after the promulgation of *Madera, et al.*, the Court was again faced with a disallowance case, which, this time, demanded further clarification of the recognized exceptions to the general rule of return, i.e., the exceptions under Rule 2 (c) and 2 (d) of the *Madera* guidelines.<sup>106</sup> This was in response to a motion for reconsideration filed by petitioners in the case of *Abellanos, et al. v. Commission on Audit*,<sup>107</sup> in which the Court had initially held petitioners, who were employees of the National Housing Authority (NHA), civilly liable as authorizing officers and recipients of incentive allowances disallowed by the COA.<sup>108</sup>

In resolving the motion before it, the Court deemed it fit to issue a supplemental ruling through a resolution penned by Justice Perlas-Bernabe to constrain the exceptions under Rules 2 (c) and 2 (d) of the *Madera* rubric so as to prevent their indiscriminate and loose invocation.<sup>109</sup>

Building on the views of Justice Caguioa as expressed in his Concurring Opinion,<sup>110</sup> the Court in *Abellanos, et al.* formulated stringent requisites for the proper invocation of Rule 2 (c), (i.e., *amounts genuinely given in consideration of services rendered*).<sup>111</sup> In particular, for the foregoing amounts to be excused, the following requisites must 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.<sup>112</sup> Pertinent portions of the discussion read —

As a supplement to the *Madera* Rules on Return, the Court now finds it fitting to clarify that in order to fall under Rule 2[ (c)], i.e., amounts genuinely given in consideration of services rendered, the following requisites must concur:

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106. *Id.* 35-36.

107. *Abellanos, et al.*, G.R. No. 185806.

108. *Id.* at 14.

109. *Abellanos, et al.*, G.R. No. 185806.

110. *See id.* (J. Caguioa, concurring opinion).

111. *Abellanos, et al.*, G.R. No. 185806, at 9.

112. *Id.*

(a) the personnel incentive or benefit has proper basis in law but is only disallowed due to irregularities that are merely procedural in nature; and

(b) the personnel incentive or benefit must have a clear, direct, and reasonable connection to the actual performance of the payee-recipient's official work and functions for which the benefit or incentive was intended as further compensation.

Verily, these refined parameters are meant to prevent the indiscriminate and loose invocation of Rule 2 (c) of the *Madera* Rules on Return which may virtually result in the practical inability of the government to recover. To stress, Rule 2 (c) as well as Rule 2 (d) should remain true to their nature as exceptional scenarios; they should not be haphazardly applied as an excuse for non-return, else they effectively override the general rule which, again, is to return disallowed public expenditures.

With respect to the first requisite above mentioned, Associate Justice Alfredo Benjamin S. Caguioa (Justice Caguioa) — the ponente of *Madera* — aptly points out that the exception under Rule 2 (c) was not intended to cover compensation not authorized by law or those granted against salary standardization laws. Thus, amounts excused under the said rule should be understood to be limited to disbursements adequately supported by factual and legal basis, but were nonetheless validly disallowed by the COA on account of procedural infirmities. As the esteemed magistrate observes, these may include amounts, such as basic pay, fringe benefits, and other fixed or variable forms of compensation permitted under existing laws, which were granted without the due observance of procedural rules and regulations ([e.g.], matters of form, or inadequate documentation supplied/rectified later on).

...

Aside from having proper basis in law, the disallowed incentive or benefit must have a clear, direct, and reasonable connection to the actual performance of the payee-recipient's official work and functions. Rule 2[(c)] after all, excuses only those benefits 'genuinely given in consideration of services rendered;' in order to be considered as 'genuinely given,' not only does the benefit or incentive need to have an ostensible statutory/legal cover, there must be actual work performed and that the benefit or incentive bears a clear, direct, and reasonable relation to the performance of such official work or functions. To hold otherwise would allow incentives or benefits to be excused based on a broad and sweeping association to work that can easily be feigned by unscrupulous public officers and in the process, would severely limit the ability of the government to recover.<sup>113</sup>

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113. *Id.* at 9-11 (emphases omitted).

Meanwhile, with regard to the exception under Rule 2 (d), i.e., *the existence of undue prejudice, social justice considerations, and other bona fide exceptions*, the Court also highlighted that such exception should only be invoked *in highly exceptional circumstances* — after taking into account all relevant factors (e.g., the nature and purpose of the disbursement, and its underlying conditions) and solely to *prevent a clear inequity* arising from a directive to return, viz. —

The same considerations ought to underlie the application of Rule 2[ (d)] as a ground to excuse return. In *Madera*, the Court also recognized that the existence of undue prejudice, social justice considerations, and other bona fide exceptions, as determined on a case-to-case basis, may also negate the strict application of *solutio indebiti*. This exception was borne from the recognition that in certain instances, the attending facts of a given case may furnish an equitable basis for the payees to retain the amounts they had received. While Rule 2[ (d)] is couched in broader language as compared to Rule 2[ (c)], the application of Rule 2[ (d)] should always remain true to its purpose: it must constitute a bona fide instance which strongly impels the Court to prevent a clear inequity arising from a directive to return. Ultimately, it is only in highly exceptional circumstances, after taking into account all factors (such as the nature and purpose of the disbursement, and its underlying conditions) that the civil liability to return may be excused. For indeed, it was never the Court's intention for Rules 2[ (c)] and 2[ (d)] of *Madera* to be a jurisprudential loophole that would cause the government fiscal leakage and debilitating loss.<sup>114</sup>

The Court then resolved the merits of the case by excusing petitioners as recipients from civil liability on the equitable ground of Rule 2 (d).<sup>115</sup> In doing so, it found petitioners' receipt of the disallowed incentive allowances justified as a highly exceptional scenario, noting that, being akin to dislocation pay, the said amounts were “[given in] material consideration for [petitioners] to accede to their displacement and in so doing, risk their personal safety just so they could implement the NHA's mandate.”<sup>116</sup>

Moreover, this excuse of the entire disallowed amount in favor of petitioners, as recipients, was then held to be beneficial to the erring authorizing officers based on the concept of “*net disallowed amount*.”<sup>117</sup> Considering that some of petitioners were held liable for the disallowance in their concurrent roles as recipients and authorizing officers, their civil liability

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114. *Id.* at 11 (emphases omitted).

115. *Id.* at 14.

116. *Id.*

117. *Abellanosa, et al.*, G.R. No. 185806, at 14.

in the latter capacity under Section 43 of the Administrative Code was practically reduced to zero, effectively negating any liability on their part.<sup>118</sup> As explained by the Court —

It may not be amiss to point out that among the petitioners, two of them are approving/certifying officers. These are Laigo as certifying officer, and Abellanosa, as authorizing officer assigned as officer-in-charge of the NHA Iligan District Office. According to *Madera*, approving/authorizing officers are solidarily liable to return only the net disallowed amount, upon a showing that they had performed their official duties and functions in bad faith, with malice or gross negligence. To recount, the net disallowed amount is the total disallowed amount minus the amounts excused to be returned by the recipients either under Rules 2[ (c)] or 2[ (d)] of the *Madera* Rules on Return.

Here, since the civil liability for the disallowed amounts had already been completely excused under Rule 2[ (d)] of the *Madera* rules, there is nothing more to return.<sup>119</sup>

## VI. CONCLUSION

In instituting a general rule of return against the recipients of disallowed items of compensation, the Court has fittingly adopted a steadfast posture which preserves the public coffers and restores all improper leakage therefrom. This is consistent with legislative fiat declaring *void* all disbursements incurred in violation of applicable laws, rules and regulations —

SECTION 17. Use of Government Funds. — *Government funds shall be utilized in accordance with the appropriations authorized for the purpose and comply with applicable laws, rules[,] and regulations,*

...

SECTION 81. Incurrence or Payment of Unauthorized or Unlawful Obligation or Expenditure. — *Disbursements or expenditures incurred in violation of existing laws, rules and regulations shall be rendered void.* Any and all public officials and employees who will authorize, allow or permit, as well as those who are negligent in the performance of their duties and functions which resulted in the incurrence or payment of unauthorized and unlawful obligation or expenditure shall be, personally liable to the government for the full amount committed or expended and, subject to disciplinary actions

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<sup>118</sup>. *Id.*

<sup>119</sup>. *Id.* (emphases omitted) (citing ADMIN. CODE, bk. VI, ch. 5, § 43).

in accordance with Section 43, Chapter 5 and Section 80, Chapter 7, Book VI of E.O. No. 292.<sup>120</sup>

As all improper leakages from public coffers are deemed void, no rights can be recognized in favor of the beneficiaries. Therefore, the recovery of what has been unduly received is only proper. The Court's application of the civil law principles of unjust enrichment and *solutio indebiti* in *Madera, et al.* presents a creative affirmation of the COA's potent power to disallow misuses of public funds, one which cohesively aligns with the intent of the constitutional framers to confer upon the commission a more active role as "a dynamic, effective, efficient[,] and independent watchdog of the Government."<sup>121</sup>

Conversely, the Court's recognition of exceptions to the general rule of return and formulation of an elaborate discounting mechanism in connection therewith, reveals much wisdom and pragmatism in its approach to present-day realities. Surrounded with myriad technicalities, it is not easy for one to comprehend the laws and regulations governing the use of public funds. The operations of the bureaucracy will undoubtedly suffer if rigid adherence is demanded of public officers with regard to fiscal matters, and unyielding authority is asserted against noble civil servants. In this light, the meticulous framework ingeniously hewn by the Court from a diverse array of legal anchorage suitably balances the respective rights of all the parties involved. Ultimately, with the promulgation of *Madera, et al.* and *Abellanosa, et al.*, the Court definitively achieved what it sought out to do — the establishment of a clear set of rules which fosters a just and equitable outcome.<sup>122</sup>

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120. See Appropriating Funds for the Operation of the Government of the Republic of the Philippines from January 1 to December 31, 2021, Republic Act No. 11518, §§ 17 & 81 (2020) (emphases supplied).

121. *Caltex Philippines, Inc.*, 208 SCRA at 743-46.

122. *Madera, et al.*, G.R. No. 244128, at 1.