839 Phil. 573

EN BANC

[G.R. No. 222838, September 04, 2018]

PHILIPPINE HEALTH INSURANCE CORPORATION, PETITIONER, VS. COMMISSION ON AUDIT, CHAIRPERSON MICHAEL G. AGUINALDO, DIRECTOR JOSEPH B. ANACAY, AND SUPERVISING AUDITOR ELENA L. AGUSTIN, RESPONDENTS.

D E C I S I O N

JARDELEZA, J.:

This petition for review on *certiorari*[1] under Rule 64,[2] with prayer for issuance of a temporary restraining order and/or writ of preliminary injunction, seeks to annul and set aside the Decision No. 2015-093[3] dated April 1, 2015 and Resolution[4] dated December 15, 2015, respectively, of the Commission on Audit (COA). The COA affirmed the disallowance of the Institutional Meeting Expenses (IME) for 2010 paid to members of the Board of Directors (BOD) of Philippine Health Insurance Corporation (PhilHealth) in the total amount of P2,965,428.59.

In October 2007, the PhilHealth BOD passed Board Resolution No. 1055 approving the entitlement of its members (or their authorized representatives) to the Board Extraordinary and Miscellaneous Expense (BEME) in the reimbursable amount of P30,000.00 each per month effective October 4, 2007. These allowances were intended to cover the expenses of said BOD members in the performance of their official functions, which they would otherwise personally shoulder.[5] Correspondingly, a supplemental budget in the amount of P1,560,000.00 was also appropriated for the purpose.[6]

In December 2007, the BOD amended Board Resolution No. 1055 through Board Resolution No. 1084. It allowed the unexpended balance of the monthly Extraordinary and Miscellaneous Expense (EME) to be carried over and expended in the succeeding months within the same calendar year, effective retroactively from October 5, 2007.[7]

In another Resolution[8] dated February 12, 2009, the BOD resolved to allocate the amount of P4,320,000.00 from the 2009 Corporate Operating Budget (COB) of the Office of the

Corporate Secretary and every year thereafter for the reimbursement of expenses incurred by the members of the BOD (or their authorized representatives) in the discharge of their official functions and duties outside board meetings.

On May 24, 2011, the COA Supervising Auditor issued an Audit Observation Memorandum[9] (AOM) which showed that reimbursements of EME totaling P19.95 million in calendar year 2010 were charged to the Representation Expenses account under the sub-accounts "Institutional Meeting Expenses (865-10) and Committee Meeting Expenses (865-20)." The AOM noted that PhilHealth had been using IME and Committee Meeting Expenses accounts to accommodate reimbursements of EME since charges to the EME account already far exceeded the General Appropriations Act (GAA) prescribed limitation for each official. The COA Supervising Auditor viewed the charging of EME against other accounts to be irregular because the nature and purpose of these expenses fall under the budgetary controls in the disbursement of EME as stated in the GAA and COA Circular No. 2006-01. The charging of EME against other accounts likewise increased the amount of the excess from the GAA-prescribed annual rate for EME.[10] The Supervising Auditor also observed that P5.63 million of the total amount was reimbursement of expenses made by members of the PhilHealth BOD and personnel whose positions were not entitled to EME.[11]

PhilHealth commented on the AOM, but its comment was found unsatisfactory. Consequently, Notice of Disallowance (ND) No. HO 12-004 (10) was issued on July 18, 2012 disallowing the payment for IME of the members of the PhilHealth BOD for the period January to December 2010 in the amount of P2,965,428.59 for lack of legal basis.[12]

PhilHealth filed an appeal before the COA-Corporate Government Sector (CGS), but the same was denied. The COA-CGS affirmed the ruling of the Supervising Auditor that Section 18(d) of Republic Act (RA) No. 7875[13] expressly provides that a *per diem* is precisely intended to be the compensation for members of the PhilHealth BOD. Nowhere in RA No. 7875 can it be found that PhilHealth is authorized to grant additional compensation, allowances or benefits to its BOD. Neither is the BOD authorized to grant compensation beyond what RA No. 7875 provides. Although the BOD is empowered to formulate the necessary rules and regulations pursuant to RA No. 7875, this power must be exercised within the scope of the authority given by the legislature. Thus, the COA-CGS found that the BOD exceeded its authority when it issued Board Resolution No. 1193 authorizing its members to receive EME contrary to Section 18(d) of RA No. 7875.[14]

The COA-CGS further ruled that PhilHealth cannot seek refuge on the previous rulings of the Court with regard to the non-refund of the disallowed benefits. Citing the AOM, the COA-CGS pointed out that the expenses in question were already disallowed in audit. As

such, the BOD members already knew, at the time they received the IME, that said benefits had no legal basis.[15]

PhilHealth filed a petition for review before the COA Proper. In its assailed Decision, however, the COA Proper dismissed the petition for being filed out of time, noting that the ND and the COA-CGS Decision were appealed only after 181 and 42 days, respectively, had lapsed from the dates of their receipt by PhilHealth. The COA Proper also found no compelling reason to relax its procedural rules because PhilHealth did not offer any justification for the belated filing of its petition. PhilHealth moved for reconsideration, but the same was also denied.[16]

Hence, this petition which raises grave abuse of discretion on the part of COA for denying the appeal on mere procedural grounds instead of deciding on the merits of the case in the interest of substantial justice.

We deny the petition.

I

Firstly, PhilHealth maintains that the term "month" in the six-month reglementary period to file an appeal under the 2009 Revised Rules of Procedure of COA should be understood to mean the 30-day month and should, accordingly, not use the equivalent of 180 days. We are not persuaded.

Section 4, Rule V of the 2009 Revised Rules of Procedure of the COA provides that an appeal before the Director of a Central Office Audit Cluster in the National, Local or Corporate Sector, or of a Regional Office of the Commission, must be filed within six months after receipt of the decision appealed from. The receipt by the Director of the appeal memorandum shall stop the running of the period to appeal; the period shall resume to run upon receipt by the appellant of the Director's decision. Section 3, Rule VII further provides that the appeal before the COA Proper shall be taken within the time remaining of the six-month period, taking into account the suspension of the running thereof. There is no dispute that PhilHealth received the ND on July 27, 2012 and filed an appeal before the COA-CGS on January 24, 2013. In ruling that the reglementary period had already lapsed by then, the COA employed 180 days as the equivalent of the six-month period, thereby making January 23, 2013 as the last date for PhilHealth to file its appeal.

PhilHealth, on the other hand, takes its cue from our Decision in *Commissioner of Internal Revenue v. Primetown Property Group, Inc.*[17] *(Primetown),* positing that the six-month reglementary period should be determined as the entire period from July 28, 2012 to January 27, 2013. This conclusion stemmed from our explanation in *Primetown* which

included a definition of a calendar month as one designated in the calendar without regard to the number of days it may contain.[18] Thus:

> It is the "period of time running from the beginning of a certain numbered day up to, but not including, the corresponding numbered day of the next month, and if there is not a sufficient number of days in the next month, then up to and including the last day of that month." To illustrate, one calendar month from December 31, 2007 will be from January 1, 2008 to January 31, 2008; one calendar month from January 31, 2008 will be from February 1, 2008 until February 29, 2008.[19] (Citations omitted.)

Glaringly, however, the issue in *Primetown* was with respect to the two-year prescriptive period within which to file for a tax refund or credit under the National Internal Revenue Code. In computing this legal period, the Court held that there was a manifest incompatibility with regard to the manner of computing legal periods, particularly as to what constitutes a year, under Article 13 of the Civil Code and Section 31, Chapter VIII, Book I of the Administrative Code of 1987. Under the Civil Code, a year is equivalent to 365 days, whether it be a regular year or a leap year. Under the Administrative Code of 1987, however, a year is composed of 12 calendar months, with the number of days being irrelevant. To address this incompatibility, the Court held that Section 31, Chapter VIII, Book I of the Administrative Code of 1987, being the more recent law, governs the computation of legal periods.[20]

What is at issue here, conversely, is the computation of the legal period for a "month." Unlike in *Primetown,* there is no incompatibility with respect to the definition of a month under the Civil Code and the Administrative Code. A month is understood under both laws to be 30 days. In ascertaining the last day of the reglementary period to appeal, one month is to be treated as equivalent to 30 days, such that six months is equal to 180 days. Thus, the period began to run on July 27, 2012 upon receipt of the ND and ended on January 23, 2013.[21] The COA was correct, therefore, in denying the appeal on the ground that the six-month period within which to file an appeal from the ND had already lapsed when PhilHealth filed its appeal to the COA-CGS on January 24, 2013.

II

Even if we were to relax the rules and entertain the appeal, we find that PhilHealth's case would still fail on its merits. The COA correctly disallowed the IME on the ground that its grant was without legal basis.

A

To begin with, we shall distinguish between the appointive and *ex officio* members of the BOD. The composition of the BOD under RA No. 9241,[22] which amended RA No. 7875 in 2004, is as follows:

> Sec. 3. Section 18 of the Law shall be amended to read as follows:
>
> "Sec. 18. *The Board of Directors.* –
>
> a) *Composition* – The Corporation shall be governed by a Board of Directors hereinafter referred to as the Board, composed of the following members:
>
> The Secretary of Health;
>
> The Secretary of Labor and Employment or his representative;
>
> The Secretary of the Interior and Local Government or his representative;
>
> The Secretary of Social Welfare and Development or his representative;
>
> The President of the Corporation;
>
> A representative of the labor sector;
>
> A representative of employers;
>
> The SSS Administrator or his representative;
>
> The GSIS General Manager or his representative;
>
> The Vice Chairperson for the basic sector of the National Anti-Poverty Commission or his representative;
>
> A representative of Filipino overseas workers;
>
> A representative of the self-employed sector; and

> A representative of health care providers to be endorsed by the national associations of health care institutions and medical health professionals.
>
> The Secretary of Health shall be the *ex officio* Chairperson while the President of the Corporation shall be the Vice Chairperson of the Board.

As can be gleaned from above, there are members of the BOD who are appointed to the position, and there are those who are designated to serve by virtue of their office (or in other words, in an *ex officio* capacity). Appointment is the selection by the proper authority of an individual who is to exercise the functions of an office. Designation, on the other hand, connotes merely the imposition of additional duties, upon a person already in the public service by virtue of an earlier appointment or election.[23]

Section 18(d) of RA No. 7875, which allows the members of the BOD to receive *per diems* for every meeting they actually attend, must be understood to refer only to the appointive members and not to those who are designated in an *ex officio* capacity or by virtue of their title to a certain office. The *ex officio* position being actually and in legal contemplation part of the principal office, it follows that the official concerned has no right to receive any other form of additional compensation for his services in the said position; otherwise, it would run counter with the constitutional prohibitions against holding multiple positions in the government and receiving additional or double compensation.[24] We explained:

> The reason is that these services are already paid for and covered by the compensation attached to his principal office. It should be obvious that if, say, the Secretary of Finance attends a meeting of the Monetary Board as an *ex-officio* member thereof, he is actually and in legal contemplation performing the primary function of his principal office in defining policy in monetary and banking matters, which come under the jurisdiction of his department. **For such attendance, therefore, he is not entitled to collect any extra compensation, whether it be in the form of a *per diem* or an honorarium or an allowance, or some other such euphemism.** By whatever name it is designated, such additional compensation is prohibited by the Constitution.[25] (Emphasis supplied.)

Prescinding from above, the disallowance of the IME granted to the members of the BOD serving in an *ex officio* capacity is clearly warranted.[26] It would not be inaccurate to say that these members were already receiving these allowances from their respective departments in the form of EME and as appropriated in the GAA. As such, the additional allowances from PhilHealth were no longer necessary.[27]

In the same vein, PhilHealth erroneously invokes Department of Budget and Management (DBM)-National Budget Circular No. 2007-510[28] which provides in the last sentence of its Section 5.4 that department secretaries, department undersecretaries, and department assistant secretaries who are *ex officio* members of governing boards of collegial bodies may receive reimbursement for actual transportation and miscellaneous expenses incurred in attending board meetings. This provision must be understood to mean that members of the BOD serving in an *ex officio* capacity may, indeed, receive such allowances, but only as appropriated in the GAA of their own respective departments.

On the other hand, as far as the disallowance of the IME granted to the appointive members is concerned, the same is also proper.

Contrary to the posturing of PhilHealth, its charter does not authorize the grant of additional allowances to the BOD beyond *per diems*. For one, while Section 18(d) of RA No. 7875 is entitled "allowances and *per diems,"* its body significantly fails to mention any other allowances or benefits besides *per diems*. It is a basic precept of statutory construction that the express mention of one person, thing, act, or consequence excludes all others, as expressed in the oft-repeated maxim *expressio unius est exlusio alterius*. Elsewise stated, *expressium facit cessare tacitum*—what is expressed puts an end to what is implied.[29] *Casus omissus pro omisso habendus est.* A person, object or thing omitted must have been omitted intentionally.[30] If the legislature intended to give PhilHealth the authority to grant allowances to the BOD other than the *per diems,* it could have facilely mentioned so. Our ruling in *Bases Conversion and Development Authority v. COA*[31] *(BCDA)* is instructive:

> *First,* the BCDA claims that the Board can grant the year-end benefit to its members and full-time consultants because, under Section 10 of RA No. 7227, the functions of the Board include the adoption of a compensation and benefit scheme.
>
> The Court is not impressed. The Board's power to adopt a compensation and benefit scheme is not unlimited. Section 9 of RA No. 7227 states that Board members are entitled to a *per diem:*

> **"Members of the Board shall receive a *per diem* of not more than Five thousand pesos (P5,000) for every board meeting: *Provided, however,* That the *per diem* collected per month does not exceed the equivalent of four (4) meetings:** *Provided, further,* That the amount of *per diem* for every board meeting may be increased by the President but such amount shall not be increased within two (2) years after its last increase." x x x

Section 9 specifies that Board members shall receive a *per diem* for every board meeting; limits the amount of *per diem* to not more than P5,000; and limits the total amount of *per diem* for one month to not more than four meetings. In *Magno v. Commission on Audit, Cabili v. Civil Service Commission, De Jesus v. Civil Service Commission, Molen, Jr. v. Commission on Audit,* and *Baybay Water District v. Commission on Audit,* the Court held that the specification of compensation and limitation of the amount of compensation in a statute indicate that Board members are entitled only to the *per diem* authorized by law and no other. In *Baybay Water District,* the Court held that:

> "By specifying the compensation which a director is entitled to receive and by limiting the amount he/she is allowed to receive in a month, x x x the law quite clearly indicates that directors x x x are authorized to receive only the *per diem* authorized by law and no other compensation or allowance in whatever form."

x x x x

Fourth, the BCDA claims that the Board can grant the year-end benefit to its members and the full-time consultants because RA No. 7227 does not expressly prohibit it from doing so.

The Court is not impressed. A careful reading of Section 9 of RA No. 7227 reveals that the Board is prohibited from granting its members other benefits. x x x

x x x x

Section 9 specifies that Board members shall receive a *per diem* for every board meeting; limits the amount of *per diem* to not more than P5,000; limits the total amount of *per diem* for one month to not more than four meetings; and does not

state that Board members may receive other benefits. In *Magno, Cabili, De Jesus, Molen, Jr.,* and *Baybay Water District,* the Court held that **the specification of compensation and limitation of the amount of compensation in a statute indicate that Board members are entitled only to the *per diem* authorized by law and no other.**

The specification that Board members shall receive a *per diem* of not more than P5,000 for every meeting and the omission of a provision allowing Board members to receive other benefits lead the Court to the inference that Congress intended to limit the compensation of Board members to the *per diem* authorized by law and no other. ***Expressio unius est exclusio alterius.*** **Had Congress intended to allow the Board members to receive other benefits, it would have expressly stated so.** For example, Congress' intention to allow Board members to receive other benefits besides the *per diem* authorized by law is expressly stated in Section 1 of RA No. 9286:

> "SECTION 1. Section 13 of Presidential Decree No. 198, as amended, is hereby amended to read as follows:
>
> > "SEC. 13. *Compensation.–Each* director shall receive *per diem* to be determined by the Board, for each meeting of the Board actually attended by him, but no director shall receive *per diems* in any given month in excess of the equivalent of the total per diem of four meetings in any given month.
> >
> > Any *per diem* in excess of One hundred fifty pesos (P150.00) shall be subject to the approval of the Administration. **In addition thereto, each director shall receive allowances and benefits as the Board may prescribe subject to the approval of the Administration." x x x**

The Court cannot, in the guise of interpretation, enlarge the scope of a statute or insert into a statute what Congress omitted, whether intentionally or unintentionally.[32] (Emphasis supplied; citations omitted.)

Secondly, PhilHealth, cannot take refuge behind its assertion that it may grant additional benefits on the strength of its fiscal autonomy under Section 16(n)[33] of RA No. 7875, as tempered by the limitations provided in Section 26(b).[34] We have already ruled on this same argument in *PhilHealth v. COA,*[35] where it was posited that it is the intent of the legislature to limit the determination and approval of allowances to the PhilHealth BOD alone, subject only to the 12% to 13% limitation. We have declared in that case that PhilHealth does not have unbridled discretion to issue any and all kinds of allowances, limited only by the provisions of its charter:

> 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 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.**[36] (Emphasis supplied; citations omitted.)

It may not be amiss to point out that even on the fair assumption that RA No. 7875 grants PhilHealth the power to fix compensation, the same is limited to; as expressly worded in Section 16(n); the personnel of PhilHealth. In *BCDA*[37] the Court upheld DBM Circular Letter No. 2002-2 which states that "[m]embers of the Board of Directors of agencies are not salaried officials of the government. As non-salaried officials they are not entitled to PERA, ADCOM, YEB and retirement benefits unless expressly provided by law."[38]

It appears that the consistent rule, therefore, is that the organic law must expressly provide the allowances and benefits due the BOD; entitlement thereto can never be implied.

Neither can PhilHealth find solace in the alleged approval or confirmation by former President Gloria Macapagal-Arroyo of PhilHealth's fiscal autonomy through two executive communications relative to its request to exercise fiscal authority in line with the PhilHealth Rationalization Plan.[39] We observe that the alleged presidential approval was merely on the marginal note of the said communications and was never reduced in any

formal memorandum.[40] So, too, the Court has previously held in *BCDA* that the presidential approval of a new compensation and benefit scheme which included the grant of allowances found to be unauthorized by law shall not estop the State from correcting the erroneous application of a statute.[41]

Equally important, we are reminded of our recent ruling in *Social Security System (SSS) v. COA,*[42] where similarly, issues on the grant of EME to the appointive members of the SSS and the alleged fiscal autonomy of a government-owned and controlled corporation were put into fore. In said case, the COA disallowed the EME on the ground that the Social Security Law (SS Law) only mentions the grant of *per diems* and representation and transportation allowances. The SSS countered that the SS Law, when taken as a whole, authorizes the SSS to grant additional allowances to its members. The SSS believed, in particular, that it may grant additional benefits to its members because the SS Law allegedly empowers it to adopt its own budget within the limits provided by the said law. In ruling against the SSS, we took significant note of the nature of the funds possessed by the SSS, citing our previous ruling that the funds of the SSS were merely held in trust for the benefit of workers and employees in the private sector. As such, the provisions of the SS Law empowering the Social Security Commission to allocate its funds to pay for the salaries and benefits of its officials and employees are not absolute and unrestricted because the SSS is a mere trustee of the said funds. In other words, the salaries and benefits to be endowed by the SSS must always be reasonable so that the funds, which it holds in trust, will be devoted to its primary purpose of servicing workers and employees from the private sector.[43]

This foregoing analysis is applicable in the instant case. RA No. 7875 was enacted pursuant to the constitutional policy to create a National Health Insurance Program (Program) that would grant discounted medical coverage to all citizens, with priority to the needs of the underprivileged, sick, elderly, disabled, women and children, and free medical care to paupers.[44] The Program is designed to be compulsory, universal in coverage, affordable, acceptable, available, and accessible for all citizens of the Philippines.[45] In order to achieve this noble goal, RA No. 7875 created the National Health Insurance Fund which consists of contributions from members; current balances of the Health Insurance Funds of the SSS and Government Service Insurance System (GSIS) collected under the Philippine Medical Care Act of 1969, as amended, including arrearages of the Government of the Philippines with the GSIS for the said Fund; other appropriations earmarked by the national and local governments purposely for the implementation of the Program; subsequent appropriations; donations and grants-in-aid; and all accruals thereof.[46] The National Health Insurance Fund is managed by PhilHealth through its BOD, subject to certain limitations.[47] In line with managing the Program, RA No. 7875 speaks of ensuring fund viability, as well as carrying out a fiduciary responsibility such that the Program shall

provide effective stewardship, funds management, and maintenance of reserves.[48] In a lot of ways, therefore, it is also imperative for PhilHealth to utilize funds for the salaries and allowances of its BOD members with as much circumspection and restraint as the SSS. Like the latter, the funds under the PhilHealth's stewardship need to be devoted primarily to providing universal and affordable health care to all Filipinos.

B

Having established that RA No. 7875 does not authorize the grant of additional allowances and benefits to the BOD, it does not follow (as we have already mentioned) that such grants are strictly and absolutely proscribed. The authority to grant EMEs may be derived from the GAA. The COA, in its Circular No. 2006-001,[49] recognizes this much, to wit:

> III. Audit Guidelines
>
> 1. The amount of extraordinary and miscellaneous expenses, as authorized in the corporate charters of GOCCs/GFIs, shall be the ceiling in the disbursement of these funds. **Where no such authority is granted in the corporate charter and the authority to grant extraordinary and miscellaneous expenses is derived from the General Appropriations Act (GAA), the amounts fixed thereunder shall be the ceiling in the disbursements;**
> 2. Payment of these expenditures shall be strictly on a non-commutable or reimbursable basis;
> 3. The claim for reimbursement of such expenses shall be supported by receipts and/or other documents evidencing disbursements; and
> 4. No portion of the amounts appropriated shall be used for salaries, wages, allowances, intelligence and confidential expenses which are covered by separate appropriations. (Emphasis supplied.)

Indeed, in its AOM, the Supervising Auditor acknowledged the authority of PhilHealth to grant EMEs derived from the GAA. Section 28 of RA No. 9970,[50] the 2010 GAA, on the other hand, provides for a ceiling of EMEs to be appropriated:

> Sec. 28. *Extraordinary and Miscellaneous Expenses.* Appropriations authorized herein may be used for extraordinary expenses of the following officials and those of equivalent rank as may be determined by the DBM, not exceeding:

(a) P220,000 for each Department Secretary;
(b) P90,000 for each Department Undersecretary;
(c) P50,000 for each Department Assistant Secretary;
(d) P38,000 for each head of bureau or organization of equivalent rank, and for each head of a Department Regional Office;
(e) P22,000 for each head of a Bureau Regional Office or organization of equivalent rank; and
(f) P16,000 for each Municipal Trial Court Judge, Municipal Circuit Trial Court Judge, and Shari'a Circuit Court Judge.

In addition, miscellaneous expenses not exceeding Seventy-Two Thousand Pesos (P72,000) for each of the offices under the above named officials are herein authorized.

x x x x

However, the Supervising Auditor observed that the EMEs granted were irregularly charged to other accounts of PhilHealth in order to accommodate reimbursements of EMEs which have already far exceeded the prescribed limitation set under the 2010 GAA. This act of charging was found to be irregular because it was conducted in a manner that deviated from the set standards, which in this case were the budgetary controls in the disbursement of the EME as stated in the GAA and COA Circular No. 2006-001. The irregular charging also resulted to an increase in the "excess from the GAA prescribed annual rate for EME."[51] There is no cogent reason to overturn these findings of the Supervising Auditor, which PhilHealth failed to refute squarely in their comment to the AOM.[52]

C

Finally, the defense of PhilHealth that its BOD members were reimbursed the IME in good faith and must, therefore, be not required to refund the disallowed amount, does not lie. Insofar as *ex officio* members are concerned, we reiterate our ruling in *Tetangco* that, by jurisprudence, patent disregard of case law and COA directives amounts to gross negligence; hence, good faith on the part of the the approving officers cannot be presumed: [53]

As the records bear out, the petitioners who approve the EMEs failed to observe the following: *first,* there is already a law, the GAA, that limits the grant of

EMEs; *second,* COA Memorandum No. 97-038 dated September 19, 1997 is a directive issued by the COA to its auditors to enforce the self-executing prohibition imposed by Section 13, Article VII of the Constitution on the President and his official family, their deputies and assistants, or their representatives from holding multiple offices and receiving double compensation; and *third,* the irregularity of giving additional compensation or allowances to *ex officio* members was already settled by jurisprudence, during the time that the subject allowances were authorized by the BSP.

Indeed, the petitioners-approving officers' disregard of the aforementioned case laws, COA issuances, and the Constitution, cannot be deemed as a mere lapse consistent with the presumption of good faith.

In line with this, We cannot subscribe to petitioner Favila's insistence that he should not be liable in the approving, processing and receiving of EMEs on the basis that he did not participate in the adoption of the resolutions authorizing the payment of the EMEs.

As pointed out during the deliberation by Our learned colleague, Hon. Justice Lucas P. Bersamin, the doctrine on the non-liability of recipients of disallowed benefits based on good faith did not extend to petitioner Favila for the following reasons: *first,* there was precisely a law (the relevant GAAs) that expressly limited the amounts of the EMEs to be received by the *ex officio* members; and *second,* insofar as ND No. 10-004GF (2007-2008) is concerned, his liability arose from his receipt of the subject allowances in 2008, when he was an *ex officio* member of the Board. Hence, good faith did not favor him not only because he had failed to exercise the highest degree of responsibility, but also because as a cabinet member he was aware of the extent of the benefits he was entitled to.

Verily, petitioners Tetangco, Jr., Favila, Amatong, Favis-Villafuerte, Antonio, and Bunye, who were members of the Monetary Board were expected to keep abreast of the laws that may affect the performance of their functions. The law, jurisprudence and COA issuances subject of this case are of such clearness that the concerned officials could not have mistaken their meaning. It was incumbent upon them to instruct Petitioners Ong, Prudencio, Reyes and Catarroja who participated in the processing of the EMEs, to comply with these laws. Unfortunately, they did not. Thus, they cannot find shelter in the defense of good faith.[54] (Citations omitted.)

Neither can good faith be appreciated with respect to the appointive members of the BOD. The Court can understand that the BOD might have merely relied on, albeit erroneously: (1) PhilHealth's power to fix the compensation of its personnel and for the BOD to exercise fiscal management; and (2) the fact that RA No. 7875 does not expressly prohibit Board members from receiving benefits other than the *per diem* authorized by law.[55] There are findings, however, from the COA-CGS that the BOD members already knew at the time of their receipt of the IMEs that said benefits had no legal basis.[56] This findings remain unrebutted by PhilHealth. As correctly held by the COA-CGS:

> As can be read from AOM No. 2011-10(10) dated May 24, 2011 and issued by the Supervising Auditor, PhilHealth:
>
> > "Claims for reimbursement of EME by the PhilHealth Board of Directors and those holding position titles with SG+ were already disallowed in audit as these reimbursements were not in conformity with the above stated provisions in the GAA that only positions of equivalent rank as may be determined by the DBM are entitled to reimbursements of EME.[57] (Underscoring in the original.)

Good faith, in relation to the requirement of refund of disallowed benefits or allowances, is "that 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 though technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render transactions unconscientious."[58] In this regard, therefore, this Court finds that the PhilHealth BOD members failed to earn the presumption of good faith.

WHEREFORE, the petition is **DENIED.** The Decision No. 2015-093 dated April 1, 2015 of the Commission on Audit disallowing the Institutional Meeting Expenses for 2010 paid to members of the Board of Directors of Philippine Health Insurance Corporation in the total amount of P2,965,428.[59] is **AFFIRMED.**

SO ORDERED.

Leonardo-De Castro, C.J., Carpio, Peralta, Bersamin, Perlas-Bernabe, Leonen, Caguioa, Tijam, A. Reyes, Jr., Gesmundo, and *J. Reyes, Jr., JJ.,* concur.
Del Castillo, J., on official leave.

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on September 4, 2018 a Decision, copy attached herewith, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on October 4, 2018 at 3:30 p.m.

Very truly yours,

(SGD.) EDGAR O. ARICHETA
Clerk of Court

---

[1] *Rollo,* pp. 3-41.

[2] In relation to Rule 65 of the Rules of Court.

[3] *Rollo,* pp. 52-55.

[4] *Id.* at 57.

[5] *Id.* at 6-7.

[6] *Id.* at 113-115.

[7] *Id.* at 116-118.

[8] Board Resolution No. 1215, id. at 119-121.

[9] *Id.* at 122-125.

[10] *Id.* at 122-123.

[11] *Id.* at 122.

[12] *Id.* at 59.

[13] An Act Instituting a National Health Insurance Program for All Filipinos and Establishing the Philippine Health Insurance Corporation for the Purpose.

[14] *Rollo,* pp. 61-62.

[15] *Id.* at 63-64.

[16] *Id.* at 52-55, 57.

[17] G.R. No. 162155, August 28, 2007, 531 SCRA 436.

[18] *Rollo,* pp. 11-12.

[19] *Commissioner of Internal Revenue v. Primetown Property Group, Inc., supra* at 443.

[20] *Id.* at 444.

[21] See *Radaza v. Court of Appeals,* G.R. No. 177135, October 15, 2008, 569 SCRA 223, 236-237.

[22] An Act Amending Republic Act No. 7875, otherwise known as "An Act Instituting a National Health Insurance Program for all Filipinos and Establishing the Philippine Health Insurance Corporation for the Purpose."

[23] *Sevilla v. Court of Appeals,* G.R. No. 88498, June 9, 1992, 209 SCRA 637, 642.

[24] *Civil Liberties Union v. Executive Secretary,* G.R. No. 83896, February 22, 1991, 194 SCRA 317, 333-335.

[25] *Id.* at 335.

[26] *Rollo,* pp. 65-66. It does not clearly appear from the records, even from ND No. HO 12-004 (10), which among the members of the BOD as payees were appointed or designated (or their representatives).

[27] See *Tetangco, Jr. v. Commission on Audit,* G.R. No. 215061, June 6, 2017, 826 SCRA 179.

[28] Guidelines on the Grant of Honoraria to the Governing Boards of Collegial Bodies.

[29] *Canet v. Decena,* G.R. No. 155344, January 20, 2004, 420 SCRA 388, 393-394.

[30] *San Miguel Corporation Employees Union-Phil. Transport and General Workers Org. v. San Miguel Packaging Products Employees Union-Pambansang Diwa ng Manggagawang Pilipino,* G.R. No. 171153, September 12, 2007, 533 SCRA 125, 153.

[31] G.R. No. 178160, February 26, 2009, 580 SCRA 295.

[32] *Id.* at 300-306.

[33] Sec. 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;

[34] Sec. 26. *Financial Management.* – The use, disposition, investment, disbursement, administration and management of the National Health Insurance Fund, including any subsidy, grant or donation received for program operations shall be governed by resolution of the Board of Directors of the Corporation, subject to the following limitations:

x x x x

> b) The Corporation is authorized to charge the various funds under its control for the costs of administering the Program. Such costs may include administration, monitoring, marketing and promotion, research and development, audit and evaluation, information services, and other necessary

> activities for the effective management of the Program. The total annual costs for these shall not exceed twelve percent (12%) of the total contributions, including government contributions to the Program and not more than three (3%) of the investment earnings collected during the immediately preceding year.

[35] G.R. No. 213453, November 29, 2016, 811 SCRA 238.

[36] *Id.* at 261.

[37] *Supra* note 31.

[38] *Id.* at 301. Emphasis omitted.

[39] *Rollo,* pp. 21-22.

[40] *Id.* at 262-263.

[41] *Bases Conversion and Development Authority v. COA, supra* note 31 at 307-308.

[42] G.R. No. 210940, September 6, 2016, 802 SCRA 229.

[43] *Id.* at 243-245.

[44] CONSTITUTION, Art. XIII, Sec. 11; RA No. 7875, Sec. 2.

[45] RA No. 7875, Sec. 4(v).

[46] RA No. 7875, Sec. 24.

[47] RA No. 7875, Sec. 26. *Financial Management.* – The use, disposition, investment, disbursement, administration and management of the National Health Insurance Fund, including any subsidy, grant or donation received for program operations shall be governed by resolution of the Board of Directors of the Corporation, subject to the following limitations:

> a) All funds under the management and control of the Corporation shall be subject to all rules and regulations applicable to public funds.

> b) The Corporation is authorized to charge the various funds under its control for the costs of administering the Program. Such costs may include administration, monitoring, marketing and promotion, research and development, audit and evaluation, information services, and other necessary activities for the effective management of the Program. The total annual costs for these shall not exceed twelve percent (12%) of the total contributions, including government contributions to the Program and not more than three percent (3%) of the investment earnings collected during the immediately preceding year.

[48] RA No. 7875, Sec. 2(i).

[49] Guidelines on the Disbursement of Extraordinary and Miscellaneous Expenses and other Similar Expenses in Government-Owned and Controlled Corporations/Government Financial Institutions and Their Subsidiaries.

[50] An Act Appropriating Funds for the Operation of the Government of the Republic of the Philippines from January One to December Thirty-One, Two Thousand and Ten, and for Other Purposes.

[51] *Rollo,* p. 122.

[52] *Id.* at 126-129.

[53] *Tetangco, Jr. v. Commission on Audit, supra* note 27 at 187-188.

[54] *Id.* at 188-190.

[55] See *Bases Conversion and Development Authority v. COA, supra* note 31 at 308.

[56] *Rollo,* p. 63.

[57] *Id.*

[58] *Zamboanga City Water District v. COA,* G.R. No. 213472, January 26, 2016, 782 SCRA 78, 97, citing *Philippine Economic Zone Authority v. COA,* G.R. No. 189767, July 3, 2012, 675 SCRA 513 and *Maritime Industry Authority v. COA,* G.R. No. 185812,

January 13, 2015, 745 SCRA 300.
