

EN BANC

**JOSEPH PETER SISON,
ROSEMARIE SIOTING, FE P.
VALENZUELA, ROBERTO L.
BAUTISTA, MARIO P.
ESCOBER, ARLENE PUZON,
DANILO G. GERONA,
NECITAS B. CLEMENTE,
RAMON MACATANGAY and
NEOFITO HERNANDEZ,**
Petitioners,

- versus -

**ROGELIO TABLANG, Director
IV, Commission on Audit;
ELIZABETH S. ZOSA, Assistant
Commissioner – Legal
Adjudication and Settlement
Board Chairperson; EMMA M.
ESPINA, JAIME P. NARANJO,
AMORSONIA B. ESCARDA and
CARMELA S. PEREZ, Members
of the Commission on Audit Legal
Adjudication and Settlement
Board,**

Respondents.

G.R. No. 177011

Present:

PUNO, C.J.,
QUISUMBING,
YNARES-SANTIAGO,
CARPIO,
CORONA,
CARPIO MORALES,*
CHICO-NAZARIO,*
VELASCO, JR.,
NACHURA,
LEONARDO-DE CASTRO,
BRION,
PERALTA, and
BERSAMIN, JJ.

Promulgated:

June 5, 2009

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DECISION

NACHURA, J.:

This is a petition for *certiorari* assailing the decision^[1] of the Adjudication and Settlement Board (ASB) of the Commission on Audit (COA) dated March 5, 2007, which affirmed the Notices of Disallowance (ND) issued by the Legal and Adjudication Office-Corporate (LAO-C),

disallowing the payment of honoraria in the amount of ₱364,299.31 made by the National Housing Authority (NHA) to petitioners, as members of the Bids and Awards Committee (BAC) and the Technical Working Group (TWG).

Audit Observation Memoranda^[21] were issued by the Supervising Auditor of the NHA, informing that there were excess/unauthorized payments of honoraria to members of the BAC and the TWG. Thus, three (3) separate NDs were issued by the LAO-C, to wit:

(1) Notice of Disallowance No. 2004-001 (04) dated November 22, 2004 disallowing in audit the amount of ₱73,768.00 as overpayment of honoraria covering the periods January and March 2004 for want of legal basis;

(2) Notice of Disallowance No. 2004-002 (03) dated December 2, 2004 disallowing in audit the amount of ₱290,531.31 for honoraria paid covering the periods from March to September 2003 for want of legal basis; and for the period covering October to December 2003, on the ground that they were paid in excess of the allowed rates, contrary to Section 4.1 of Budget Circular No. 2004-5 dated March 23, 2004 of the Department of Budget and Management (DBM); and

(3) Notice of Disallowance No. 2005-001 (04) dated May 24, 2005 disallowing in audit the amount of ₱68,096.00 for the period covering April to June 2004, together with the honoraria received by the regular and provisional members of the BAC for the months of January to June 2004, the same having been paid contrary to the allowed rates provided in DBM Circular No. 2004-5 dated March 23, 2004.

On January 3, 2005, petitioner Joseph Peter Sison, Assistant General Manager and Chairperson-BAC of the NHA, and the other petitioners, as members of the BAC and the TWG, sought reconsideration of the NDs on the following grounds:

1. That the payment of honoraria was based on the number of projects completed by the BAC and TWG's under their respective level of responsibility and on the rate provided for under the IRR of R.A. 9184, which should be in an amount not to exceed 25% of their respective basic monthly salary subject to availability of funds.
2. Since DBM has yet to issue the necessary Implementing Rules and Regulations for the grant of honoraria, the BAC and TWG members were given straight 25% of their basic monthly salary as honoraria for every month from March 2003-March 2004.
3. That the work of BAC and its TWG is up to the Recommendation of Award to the NHA General Manager. It is Management's responsibility to present such recommendation to the Board for notation/confirmation/approval. The payment of honoraria should not be based on the Notice of Award but should be reckoned on the date of Recommendation of Award, as it sometimes takes several months before an award is approved by the Board.
4. That they should not be made to refund immediately whatever remaining disallowance after a computation of the same is made using the recommendation of Award as the reckoning date, but instead they request that the same be deducted from the remaining unpaid COLA which they are collecting from  NHA or from succeeding honoraria they are to receive as members of the BAC and TWG.^[3]

On September 13, 2005, the LAO-C denied the motions for reconsideration filed by petitioners in LAO-C Decision No. 2005-064.^[4] It also rejected petitioners' request for a set-off of the disallowed amount against future collectibles from the NHA, as this was not in accordance with law and jurisprudence.^[5]

A petition for review^[6] was then filed by petitioners before the ASB of the COA which was denied on March 5, 2007 for lack of merit. The LAO-C decision, covering the three (3) NDs, was affirmed.^[7]

Aggrieved, petitioners filed the instant petition maintaining that the grant of honoraria, not exceeding 25% of the basic monthly salaries of the BAC members, was justified. They aver that the payments were in

accordance with Republic Act (R.A.) No. 9184, which was the applicable law at that time, and stressed that they did not exceed the 25% limit provided under Section 15 thereof.

The petition is bereft of merit.

It must first be stressed that petitioners failed to appeal the decision of the ASB to the Commission on Audit Proper before filing the instant petition with this Court, in derogation of the principle of exhaustion of administrative remedies. The general rule is that before a party may seek the intervention of the court, he should first avail himself of all the means afforded him by administrative processes. The issues which administrative agencies are authorized to decide should not be summarily taken from them and submitted to the court without first giving such administrative agency the opportunity to dispose of the same after due deliberation.^[8]

On January 30, 2003, the COA issued Resolution No. 2003-001 delegating the authority to adjudicate and settle appeals from the decisions of the Directors involving suspensions and disallowances in amounts not exceeding five hundred thousand pesos (P500,000.00) to the ASB of the Commission. It also clearly provides that “appeals from the decision of the Board shall be brought before the Commission Proper in the same manner as other cases under the Commission’s existing rules and regulations.”^[9]

Correlatively, the 1997 Revised Rules of Procedure of the COA states that:

RULE VI
APPEAL FROM DIRECTOR TO COMMISSION PROPER

Section 1. *Who May Appeal and Where to Appeal.* – The party aggrieved by a final order or decision of the Director may appeal to the Commission Proper.

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RULE XI
JUDICIAL REVIEW

Section 1. *Petition for Certiorari*. – Any decision, order or resolution of the Commission may be brought to the Supreme Court on *certiorari* by the aggrieved party within thirty (30) days from receipt of a copy thereof in the manner provided by law, the Rules of Court and these Rules.

It is, therefore, imperative that the Commission Proper be first given the opportunity to review the decision of the ASB. Only after the Commission shall have acted thereon may a petition for *certiorari* be brought to the Court by the aggrieved party. While the principle of exhaustion of administrative remedies admits of exceptions, the Court does not find any cogent reason to apply the cited exceptions to the instant case.^[10] The non-observance of the doctrine results in the petition having no cause of action, thus, justifying its dismissal. In this case, the necessary consequence of the failure to exhaust administrative remedies is obvious: the disallowance as ruled by the LAO-C has now become final and executory.^[11]

But even if we were to disregard this patent infirmity, we still find sufficient bases to uphold the three (3) NDs issued by the LAO-C.

Section 15 of R.A. No. 9184, otherwise known as the Government Procurement Act,^[12] provides that:

Section 15. *Honoraria of BAC Members*. – The Procuring Entity may grant payment of honoraria to the BAC members in an amount not to exceed twenty five percent (25%) of their respective basic monthly salary subject to availability of funds. For this purpose, the Department of Budget and Management (DBM) shall promulgate the necessary guidelines.

Section 15 of the Implementing Rules and Regulations (IRR) of R.A. No. 9184, issued on October 8, 2003, reads as follows:

Section 15. *Honoraria of BAC and TWG Members*

The procuring entity may grant payment of honoraria to the BAC members in an amount not to exceed twenty five percent (25%) of their

respective basic monthly salary subject to availability of funds. For this purpose, the [Department of Budget and Management] DBM shall promulgate the necessary guidelines. The procuring entity may also grant payment of honoraria to the TWG members, subject to the relevant rules of the DBM.

There is no dispute that petitioners can be paid honoraria for the services they rendered as BAC and TWG members. However, the payment of honoraria is subject to the availability of funds and shall follow the guidelines and relevant rules which are promulgated by the DBM.

For this purpose, DBM Budget Circular No. 2004-5 was issued on March 23, 2004, prescribing the guidelines for the grant of honoraria to government personnel involved in government procurement, in accordance with the R.A. No. 9184. Paragraphs 4.1 and 4.2 of the budget circular provide that:

- 4.1 The chairs and members of the Bids and Awards Committee (BAC) and the Technical Working Group (TWG) may be paid honoraria only for successfully completed procurement projects. The honoraria shall not exceed the rates indicated below per procurement project:

	Honorarium Rate Per Procurement Project
BAC Chair	3,000.00
BAC Members	2,500.00
TWG Chair and Members	2,000.00

- 4.2 The total amount of honoraria received in a month may not exceed twenty-five percent (25%) of the monthly basic salary. ^[131]

Given the foregoing provisions, it was, therefore, error for petitioners to remunerate themselves the amount equivalent to 25% of their basic monthly salaries as honoraria for their services rendered as BAC members even before the DBM guidelines were promulgated. We quote with favor the ASB's rationale for the disallowance:

A reading of the above-quoted provision would reveal that the first sentence sets the limit as to the amount of honoraria that may be granted to BAC members, that is 25% of their respective basic monthly salary subject to availability of funds. Further reading of the same would reveal that an enabling rule, a DBM guideline, is needed for its implementation as contained in the second sentence thereof. Thus, the “provision of Sec. 15 of the GPRA authorizing procuring entities or agencies to grant honoraria to BAC members is not self-executing, as it still needs an implementing guideline to be promulgated by the DBM” (Government Procurement Tool Kit, Sofronio B. Ursal, 2004 ed., p. 90).^[14]

Petitioners contend that it would be unjust if the BAC and the TWG members were not paid their honoraria for work already performed just because the DBM had not yet promulgated the necessary guidelines.^[15]

This contention is untenable.

An honorarium is defined as something given not as a matter of obligation but in appreciation for services rendered, a voluntary donation in consideration of services which admit of no compensation in money.^[16] Section 15 of R.A. No. 9184 uses the word “may” which signifies that the honorarium cannot be demanded as a matter of right.^[17]

The government is not unmindful of the tasks that may be required of government employees outside of their regular functions. It agrees that they ought to be compensated; thus, honoraria are given as a recompense for their efforts and performance of substantially similar duties, with substantially similar degrees of responsibility and accountability.^[18] However, the payment of honoraria to the members of the BAC and the TWG must be circumscribed by applicable rules and guidelines prescribed by the DBM, as provided by law. Section 15 of R.A. No. 9185 is explicit as it states: “For this purpose, the DBM *shall* promulgate the necessary guidelines.” The word “shall” has always been deemed mandatory, and not merely directory. Thus, in this case, petitioners should have first waited for the rules and guidelines of the DBM before payment of the honoraria. As the rules and guidelines were still forthcoming, petitioners could not just award

themselves the straight amount of 25% of their monthly basic salaries as honoraria. This is not the intendment of the law.

Furthermore, albeit in hindsight, the DBM Budget Circular provides that the payment of honoraria should be made only for “successfully completed procurement projects.” This phrase was clarified in DBM Budget Circular No. 2004-5A dated October 7, 2005, to wit:

- 5.1 The chairs and members of the Bids and Awards Committee (BAC) and the Technical Working Group (TWG) may be paid honoraria only for successfully completed procurement projects. In accordance with Section 7 of the Implementing Rules and Regulations Part A (IRR-A) of RA No. 9184, a procurement project refers to the entire project identified, described, detailed, scheduled and budgeted for in the Project Procurement Management Plan prepared by the agency.

A procurement project shall be considered successfully completed once the contract has been awarded to the winning bidder.

No interpretation is needed for a law that is clear, plain and free from ambiguity. Now, the DBM has already set the guidelines for the payment of honoraria as required by law. Since the payment of honoraria to petitioners did not comply with the law and the applicable rules and guidelines of the DBM, the notices of disallowance are hereby upheld.

IN VIEW OF THE FOREGOING, the petition is **DISMISSED** for lack of merit.

SO ORDERED.

ANTONIO EDUARDO B. NACHURA
Associate Justice

WE CONCUR:

REYNATO S. PUNO
Chief Justice

LEONARDO A. QUISUMBING
Associate Justice

CONSUELO YNARES-SANTIAGO
Associate Justice

ANTONIO T. CARPIO
Associate Justice

RENATO C. CORONA
Associate Justice

(on official leave)
CONCHITA CARPIO MORALES
Associate Justice

(on official leave)
MINITA V. CHICO-NAZARIO
Associate Justice

PRESBITERO J. VELASCO, JR.
Associate Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

ARTURO D. BRION
Associate Justice

DIOSDADO M. PERALTA
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

C E R T I F I C A T I O N

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

REYNATO S. PUNO
Chief Justice

^{*} On official leave.
^[1] *Rollo*, pp. 15-22.

^[2] Audit Observation Memorandum (AOM) No. 2004-08-119 dated August 31, 2004; AOM No. 2004-10-127 dated October 4, 2004; and AOM No. 2004-11-138 dated November 18, 2004.

^[3] *Rollo*, p. 27.

^[4] *Id.* at 26-29.

^[5] *Id.* at 28.

^[6] *Id.* at 30-42.

^[7] Adjudication and Settlement Board Decision No. 2007-017, *id.* at 15-22.

^[8] *Republic v. Lacap*, G.R. No. 158253, March 2, 2007, 517 SCRA 255, 265.

^[9] Resolution No. 2003-001, dated January 30, 2003; SUBJECT: Delegating the Authority and Settle Appeals from Disallowances Involving Amounts not Exceeding P500,000.00.

^[10] Exceptions: **(1) when there is a violation of due process; (2) when the issue involved is a purely legal question;** (3) when the administrative action is patently illegal amounting to lack or excess of jurisdiction; (4) when there is estoppel on the part of the administrative agency concerned; (5) when there is irreparable injury; (6) when the respondent is a Department Secretary whose acts as an alter ego of the President bear the implied and assumed approval of the latter; **(7) when to require exhaustion of administrative remedies would be unreasonable;** (8) when it would amount to a nullification of a claim; (9) when the subject matter is a private land in land case proceedings; (10) when the rule does not provide a plain, speedy, adequate remedy; (11) when there are circumstances indicating the urgency of judicial intervention; (12) when no administrative review is provided by law; (13) where the rule of qualified political agency applies; and (14) when the issue of non-exhaustion of administrative remedies has been rendered moot. (Emphasis supplied; *rollo*, pp. 99-100.)

[\[11\]](#) *Bureau of Fisheries and Aquatic Resources Employees Union, Regional Office No. VII, Cebu City v. Commission on Audit*, G.R. No. 169815, August 13, 2008.

[\[12\]](#) Approved on July 22, 2002.

[\[13\]](#) *Rollo*, p. 19. (Underlining supplied.)

[\[14\]](#) Id. at 18.

[\[15\]](#) Id. at 103.

[\[16\]](#) *Santiago v. Commission on Audit*, G.R. No. 92284, July 12, 1991, 199 SCRA 125, 130.

[\[17\]](#) See *Allarde v. Commission on Audit*, G.R. No. 103578, January 29, 1993, 218 SCRA 227, 232.

[\[18\]](#) Rationale (for the grant of honoraria), see DBM Circular No. 2004-5, March 23, 2004.