



Republic of the Philippines
Supreme Court
Manila

EN BANC

SOCIAL SECURITY SYSTEM,
Petitioner,

G.R. No. 210940

Present:

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

- versus -

COMMISSION ON AUDIT,
Respondent.

Promulgated:

September 6, 2016

[Handwritten Signature]

X ----- X

DECISION

MENDOZA, J.:

This petition for review on *certiorari* under Rule 64 of the Rules of Court seeks to reverse and set aside the January 30, 2013 Decision¹ and the December 6, 2013 Resolution² of the Commission on Audit (COA), which affirmed Notice of Disallowance (ND) No. SSS-2207-02 (2004)³ relative to the payment of Extraordinary and Miscellaneous Expenses (EME), medical expenses, rice allowance, and provident fund (*other benefits*) to the members

* On Leave.

** On Official Leave.

*** No Part.

¹ Concurred in by Chairperson Ma. Gracia M. Pulido Tan, Commissioner Juanito G. Espino, Jr., and Commissioner Heidi L. Mendoza; *rollo*, pp. 26-33.

² *Id.* at 34-35.

³ *Id.* at 77-80.

of the Social Security Commission (SSC) in the total amount of ₱4,314,683.99.

The Antecedents

On May 14, 1997, the SSC of the Social Security System (SSS) approved Resolution No. 360⁴ granting a new compensation package for its members, including medical benefits, rice allowance, and a provident fund. These benefits were incorporated in the SSS Manual on Personnel Policies, Rules and Regulations or commonly known in the SSS as the “Blue Book.”⁵

On September 22, 1999, the SSC issued Resolution No. 790⁶ granting EME to its members at similar rates then given to members of the Government Service Insurance System (GSIS). EME included, but was not limited to, expenses incurred for meetings, seminars, conferences, official entertainment, and public relations. In the same resolution, the SSC further approved additional budgetary appropriations in the amount of approximately ₱ 4.49 million to cover the payment of EME. It also covered the increase in EME of its Chairman to ₱750,000.00 per year, which was the rate being given to his counterpart in the GSIS.

On July 4, 2007, the Legal and Adjudication Office-Corporate Government Sector (LAO-CGS) of the COA issued ND No. SSS-2007-02 (2004) disallowing the total amount of ₱4,314,683.99, broken down as follows:

₱ 3,877,199.96	-	EME
₱ 70,992.03	-	medical benefits
₱ 106,992.00	-	rice benefits
₱ 259,500.00	-	provident fund

The disallowance of the above amounts was anchored on these grounds:

1. For Extraordinary and Miscellaneous Expenses (EME) – The same is disallowed in audit for lack of legal authority of the SSC Commissioners to claim EME either under the SSS Charter (Section 3 of R.A. 8282) or under the General Appropriations Act as provided under COA Circular No. 2006-001, dated January 3, 2006. The General Appropriations Act (GAA) does not include members of the Board of Directors in the enumeration of persons allowed to claim the same. Hence, the payment is considered “irregular” expenditures, in violation of COA Circular No. 85-55 A dated September 8, 1985.

⁴ Id. at 62-64.

⁵ Id. at 6.

⁶ Id. at 75-76.

2. Medical expenses, rice allowances and provident fund – These allowances/benefits which are included in the Collective Negotiation Agreement (*CNA*) were disallowed in audit pursuant to Section 1 of Public Sector Labor Management Council Resolution (*PSLMC*) No. 2, s. 2003. Said Resolution provides that only rank and file employees of the GOCC are entitled to *CNA* Incentives. Members of the Commission are considered high-level employees, whose functions are normally considered as policy making or managerial, hence, they are not allowed to join the organization by virtue of Executive Order No. 180.⁷

Not in conformity, the SSS filed a Motion for Reconsideration⁸ of the disallowance and proffered the following arguments:

a) While there was no specific provision in Republic Act (*R.A.*) No. 8282, otherwise known as the Social Security Law (*SS Law*), which directly authorized the SSC to grant its members *EME*, its act was amply supported by other provisions therein. The power of the SSC to control and direct the SSS was based on Section 3 of the said law. In turn, Section 4 (a) (7) empowers the SSC “to approve, confirm, pass upon or review any and all actions of the SSS in the proper and necessary exercise of its powers and duties” and Section 4 (b) (5) provides that the SSC may “adopt, from time to time, a budget of expenditures including salaries of personnel, against all funds available to the SSS”;

b) Section 3 (c)⁹ thereof empowers the SSC to fix reasonable compensation, allowances and other benefits for its employees and officials, including those of the SSC. Further, Section 4 (a) (3)¹⁰ of the same law provides that the SSS and the SSC are authorized to maintain a provident fund for its employees and officials;

c) The SSC adopted its own position classification and compensation structure. Included in such compensation structure was a benefit package that granted medical benefits, rice allowance and provident fund to all employees of the SSS and SSC. Consistent with numerous rulings of the COA, the members of the SSC, as hearing officers, were full-time government officials, thus, entitling

⁷ Id. at 80.

⁸ Id. at 81-93.

⁹ The Commission, upon the recommendation of the SSS President, shall appoint an actuary and such other personnel as may be deemed necessary; fix their reasonable compensation, allowances and other benefits; prescribe their duties and establish such methods and procedures as may be necessary to insure the efficient, honest and economical administration of the provisions and purposes of this Act: Provided, however, That the personnel of the SSS below the rank of Vice - President shall be appointed by the SSS President: Provided, further, That the personnel appointed by the SSS President, except those below the rank of assistant manager, shall be subject to the confirmation by the Commission: Provided, further, That the personnel of the SSS shall be selected only from civil service eligibles and be subject to civil service rules and regulations: Provided, finally, That the SSS shall be exempt from the provisions of Republic Act No. 6758 and Republic Act No. 7430.

¹⁰ To maintain a Provident Fund which consists of contributions made by both the SSS and its officials and employees and their earnings, for the payment of benefits to such officials and employees or their heirs under such terms and conditions as it may prescribe;

them to the benefits accorded to SSS employees and officials. Besides, the functions and operations of the SSC were so closely intertwined with those of SSS, so that both of them were governed by the same charter and thus accorded the same benefits. Besides, no law provided for an express prohibition against the receipt of additional allowance for the members of the SSC;

d) Section 25¹¹ of the SS Law reinforces the fiscal autonomy of the office which is authorized by law to spend a certain percentage of the annual collections, in order to adopt its own budget of expenditures including the compensation and benefits of its own personnel. The mandate of this provision coupled with the exemption of the SSS from the Salary Standardization Law (*SSL*), should be taken to mean that it is fully empowered to manage its own funds so long as it conforms with statutory requirements and general principles of budgetary allocations. Simply put, the authority of the SSC to grant EME to its members emanates from the SS Law and not from the GAA, thus, putting it beyond the ambit of COA Circular No. 2006-001. Had it been the intention of Congress to place the SSS and the SSC under the coverage of the GAA, it would have expressly provided therefor. In any case, the SSS and the SSC do not depend upon the national government for its budget but they instead rely on the very funds generated from contributions and other sources of income;

e) Applying the plain meaning of COA Circular No. 2006-001, the GAA is applicable only to Government-Owned and Controlled Corporations (*GOCCs*) and Government Financial Institutions (*GFI*s) whose authority to grant EME is derived merely from the GAA. Its authority to fix the questioned allowance being derived from its own charter, independently of the GAA, the SSC should not be covered by the ceilings provided therein;

f) The SSS also disputed the COA's ground for disallowance, arguing that the 2000-2002 CNA between the management and ACCESS, the labor organization in SSS, did not include a provision granting medical benefits, rice allowance, and provident fund to either the employees or the officials of the SSS. In other words, the CNA was not the source of the benefits which were disallowed by the COA. While Sections 1 and 3, Article II of the CNA, require the SSS to continue extending all benefits existing during the signing thereof and to implement all government legislated wages and benefits covering the employees in the civil service, such existing benefits referred to were those provided under the benefits and compensation package adopted by the SSS and the SSC, pursuant to law.

¹¹ Deposit and Disbursements – All money paid to or collected by the SSS every year under this Act, and all accruals thereto, shall be deposited, administered and disbursed in the same manner and under the same conditions and requirements as provided by law for other public special funds: Provided, That not more than twelve (12%) percent of the total yearly contributions plus three (3%) percent of other revenues shall be disbursed for administrative and operational expenses such as salaries and wages, supplies and materials, depreciation, and the maintenance of offices of the SSS: Provided, further, That if the expenses in any year are less than the maximum amount permissible, the difference shall not be availed of as additional expenses in the following years.

The COA-LSS Decision

In its August 10, 2009 Decision,¹² the COA-Legal Services Sector (COA-LSS) denied the motion for reconsideration filed by the SSS. It ruled that while it may be argued that the power of the SSC to grant EME emanated from the SS Law itself, it was undeniable that the SSC was still bound by the provisions of COA Circular No. 2006-001. The COA-LSS explained that the said circular was issued to serve as audit guidelines on the disbursements for EME in GOCCs/GFIs and their subsidiaries, without any distinction whatsoever. Further, it stressed that COA Circular No. 2006-001 applied even if it was issued after SSC Resolution No. 790 because its repealing clause categorically stated that any and all issuances inconsistent therewith were amended or repealed. The COA-LSS averred that SSC members were not entitled to other allowances except for those specifically provided in Section 3(a) of the SS Law.

Likewise, it opined that the power of the SSS to adopt its own position, classification and compensation structure was not absolute as it was required to comply with administrative issuances or directives related to compensation or employees benefits. The COA-LSS noted that Memorandum Order (M.O.) No. 20 required all GOCCs and GFIs exempted from the SSL to immediately suspend the grant of any salary increase and new or increased benefits to all senior officer level positions and to secure approval from the President for any increase in salary or compensation of GOCCs/GFIs that was not in accordance with the SSL.

Aggrieved, the SSS appealed before the COA.

The COA Decision

In its January 30, 2013 decision, the COA upheld the disallowance of the disbursements in question. It explained that the SS Law did not grant an authority to the SSC to fix the compensation, allowances and other benefits of its members. The COA posited that if Congress intended to grant the SSC the authority to fix the compensation, allowances and other benefits of its members, then Section 3(a) of the SS Law would not have stated the amounts which the members of the SSC may receive. Likewise, it opined that it had been long settled that pursuant to Section 13 of Presidential Decree (P.D.) No. 198,¹³ members of the board were prohibited to receive compensation other than the *per diems* they received.

¹² Issued by Director IV Janet D. Nacion; *rollo*, pp. 94-99.

¹³ Provincial Water Utilities Act of 1973.

The COA further stated that whether the other benefits were CNA incentives was immaterial because the grant had no legal basis, notwithstanding the SSS Blue Book. It elucidated that the SS Law set the limit on the amount of the compensation which the members of the SSC could receive, and the said benefits were not among those included.

Aggrieved, the SSS moved for reconsideration of the decision but its motion was denied by the COA in its December 6, 2013 resolution.

Hence, this present petition raising this

SOLE ISSUE

Whether the members of the SSC are entitled to the EME, medical benefit, rice allowance and the provident fund.

The SSS insists that the SS Law empowers the SSC to grant EME and other benefits to SSC members. It explains that pursuant to the pertinent provisions of the SS Law, the SSS enjoys fiscal autonomy having been vested with the power to spend a certain percentage of the amount it annually collects and being exempted from the SSL coverage. Thus, the SSS posits that as long as it conforms to the requirements of the SS Law and the general principles of budgetary allocations, it is fully authorized to manage its own funds and fix its own budget—including the grant of EME and other benefits to SSC members. It concludes that it is not necessary for the SSC to refer to the GAA for legal basis and funding because it generates its own income and it does not rely on the national government for funding.

Moreover, the SSS argues that the other benefits granted to SSC members are not covered by M.O. No. 20 as they are neither new nor increased benefits. It cited *GSIS v. CSC and Dr. Manuel Baradero*¹⁴ (*Baradero*), where the Court ruled that the *per diem*, which then SSC member Inocencio V. Ferrer (*Commissioner Ferrer*) received as hearing officer, was considered as compensation for purposes of retirement benefits. Hence, the SSS claims that the COA cannot disallow the other benefits subject of the ND when it has been previously ruled that former SSC members were entitled to retirement benefits, year-end bonus and leave credits.

In its Comment,¹⁵ dated May 19, 2014, the COA countered that Section 3(a) of the SS Law specified the benefits which SSC members may receive. It emphasized that the limitation on benefits was not subject to any

¹⁴ 315 Phil. 159 (1995).

¹⁵ *Rollo*, pp. 141-162.

exception and, as such, EME and other benefits were without legal basis as they were not included in Section 3(a) of the said law. The COA expounded that the reliance on Section 3(c) of the SS Law by the SSS was misplaced because it merely granted to the SSC the authority to fix the reasonable compensation, allowances and other benefits of the employees it may appoint. The COA reiterated that there was no showing that the other benefits were approved by the President, as required by M.O. No. 20.

On its claimed fiscal autonomy, the COA disagreed with the SSS that it had fiscal autonomy as only the Court, the Constitutional Commissions and the Ombudsman enjoyed fiscal autonomy. It opined that the SSS having no fiscal autonomy, it was not free from outside control in allocating and utilizing funds.

In its Reply,¹⁶ dated August 27, 2014, the SSS asserted that the cited provisions of the SS Law were enough bases for the grant of additional benefits other than those provided in Section 3(a) thereof. It reiterated that M.O. No. 20 was inapplicable as it was issued after the other benefits were granted to SSC members. Further, the SSS averred that it had complied with the DBM reportorial requirement because the latter issued a certification stating that the SSS was no longer required to seek prior approval for its salary structure from the DBM. Lastly, it stressed that the other benefits granted to SSC members were not CNA incentives as they were granted after the SSS was exempted from the SSL and without intervention from the employees' union.

The Court's Ruling

*Compensation and/or
benefits which may be
received by SSC
members*

The crux of the controversy is the extent of the SSC's authority to grant allowances and benefits to its members pursuant to the SS Law. The COA posits that Section 3(a) of the SS Law limits the benefits which may be received by SSC members. Section 3(a) reads:

SECTION 3. *Social Security System.* — (a) To carry out the purposes of this Act, the Social Security System, hereinafter referred to as 'SSS', a corporate body, with principal place of business in Metro Manila, Philippines, is hereby created. The SSS shall be directed and controlled by a Social Security Commission, hereinafter referred to as 'Commission', composed of the Secretary of Labor and Employment or his duly designated undersecretary,

¹⁶ Id. at 166-175.

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the SSS president and seven (7) appointive members, three (3) of whom shall represent the workers' group, at least one (1) of whom shall be a woman; three (3), the employers' group, at least one (1) of whom shall be a woman; and one (1), the general public whose representative shall have adequate knowledge and experience regarding social security, to be appointed by the President of the Philippines. The six (6) members representing workers and employers shall be chosen from among the nominees of workers' and employers' organizations, respectively. The Chairman of the Commission shall be designated by the President of the Philippines from among its members. The term of the appointive members shall be three (3) years: *Provided*, That the terms of the first six (6) appointive members shall be one (1), two (2) and three (3) years for every two (2) members, respectively: *Provided, further*, That they shall continue to hold office until their successors shall have been appointed and duly qualified. All vacancies, prior to the expiration of the term, shall be filled for the unexpired term only. **The appointive members of the Commission shall receive at least two thousand five hundred pesos (₱2,500.00) per diem for each meeting actually attended by them, but not to exceed Ten thousand pesos (P10,000.00) a month: *Provided*, That members of the Commission who hear and evaluate cases pending before the Commission shall also receive a per diem of at least Two thousand five hundred pesos (₱2,500.00), but not to exceed Fifteen thousand pesos (₱15,000.00) a month: *Provided, further*, That said members of the Commission shall also receive reasonable transportation and representation allowances as may be fixed by the Commission, but not to exceed Ten thousand pesos (₱10,000.00) a month. [Emphasis supplied]**

Because the benefits for SSC members are specifically enumerated, the COA concludes that the said benefits are exclusive in consonance with the principle of *expressio unius est exclusio alterius*. Thus, it contends that SSC members cannot receive any amount other than the *per diems* and reasonable transportation and representation allowances (*RATA*), as stated in the above-cited provision.

On the other hand, the SSS argues that, when taken as a whole, the SS Law authorizes the SSC to grant additional benefits to its members. In support of its position, it cites the following provisions:

SECTION 3. *Social Security System.*

X X X X

(c) The Commission, upon the recommendation of the SSS President, shall appoint an actuary and such other personnel as may be deemed necessary; fix their reasonable compensation, allowances and other benefits; prescribe their duties and establish such methods and procedures as may be necessary to insure the efficient, honest and economical administration of the provisions and purposes of this Act: *Provided, however*, That the personnel of the SSS below the rank of Vice-President shall be appointed by the SSS President: *Provided, further*, That the personnel appointed by

the SSS President, except those below the rank of assistant manager, shall be subject to the confirmation by the Commission: *Provided, further*, That the personnel of the SSS shall be selected only from civil service eligibles and be subject to civil service rules and regulations: *Provided, finally*, That the SSS shall be exempt from the provisions of Republic Act No. 6758 and Republic Act No. 7430.

SECTION 4. *Powers and Duties of the Commission and SSS.* —

(a) *The Commission.* — For the attainment of its main objectives as set forth in Section 2 hereof, the Commission shall have the following powers and duties:

x x x x

(7) To approve, confirm, pass upon or review any and all actions of the SSS in the proper and necessary exercise of its powers and duties hereinafter enumerated.

(b) *The Social Security System.* — Subject to the provision of Section four (4), paragraph seven (7) hereof, the SSS shall have the following powers and duties:

x x x x

(5) To adopt, from time to time, a budget of expenditures including salaries of personnel, against all funds available to the SSS under this Act; xxx

SECTION 25. *Deposit and Disbursements.* — All money paid to or collected by the SSS every year under this Act, and all accruals thereto, shall be deposited, administered and disbursed in the same manner and under the same conditions and requirements as provided by law for other public special funds: *Provided*, That not more than twelve percent (12%) of the total yearly contributions plus three percent (3%) of other revenues shall be disbursed for administrative and operational expenses such as salaries and wages, supplies and materials, depreciation, and the maintenance of offices of the SSS: *Provided, further*, That if the expenses in any year are less than the maximum amount permissible, the difference shall not be availed of as additional expenses in the following years.

The SSS believes that it may grant additional benefits to SSC members because the SS Law empowers it to adopt its own budget within the limits provided by the said law and because it was exempted from the coverage of the SSL.

After a judicious study of the acts and relevant laws, the Court upholds the position of the COA.

The nature of the funds possessed by the SSS is crucial in the resolution of the present issue. In *SSS v. COA*,¹⁷ the Court expounded that

¹⁷ 433 Phil. 946 (2002).

the funds of the SSS were merely held in trust for the benefit of workers and employees in the private sector, to wit:

This Court has been very consistent in characterizing the funds being administered by SSS as a trust fund for the welfare and benefit of workers and employees in the private sector. In *United Christian Missionary v. Social Security Commission*, we were unequivocal in declaring the funds contributed to the Social Security System by compulsion of law as funds belonging to the members which were merely held in trust by the government, and resolutely imposed the duty upon the trustee to desist from any and all acts which would diminish the property rights of owners and beneficiaries of the trust fund. Consistent with this declaration, it would indeed be very reasonable to construe the authority of the SSC to provide for the compensation of SSS personnel in accordance with the established rules governing the remuneration of trustees —

. . . the modern rule is to give the trustee a reasonable remuneration for his skill and industry . . . In deciding what is a reasonable compensation for a trustee the court will consider the amount of income and capital received and disbursed, the pay customarily given to agents or servants for similar work, the success or failure of the work of the trustee, any unusual skill which the trustee had and used, the amount of risk and responsibility, the time consumed, the character of the work done (whether routine or of unusual difficulty) and any other factors which prove the worth of the trustee's services to the *cestuis* . . . The court has power to make extraordinary compensation allowances, but will not do so unless the trustee can prove that he has performed work beyond the ordinary duties of his office and has engaged in especially arduous work.

On the basis of the foregoing pronouncement, we do not find the signing bonus to be a truly reasonable compensation. The gratuity was of course the SSC's gesture of good will and benevolence for the conclusion of collective negotiations between SSC and ACCESS, as the CNA would itself state, but for what objective? Agitation and propaganda which are so commonly practiced in private sector labor-management relations have no place in the bureaucracy and that only a peaceful collective negotiation which is concluded within a reasonable time must be the standard for interaction in the public sector. This desired conduct among civil servants should not come, we must stress, with a price tag which is what the signing bonus appears to be.¹⁸
[Emphases supplied]

Thus, the provisions of the SS Law empowering the SSC 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

¹⁸ Id. at 962-963.

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.

Under Section 3(a) of the SS Law, the appointive members of the SSC may be entitled to: (a) ₱2,500.00 *per diem* for each meeting actually attended but not to exceed ₱10,000.00 per month; (b) ₱2,500.00 *per diem* for members who hear and evaluate cases but not to exceed ₱15,000.00 per month; and (c) RATA as fixed by the SSC but not to exceed ₱10,000.00 per month. The question now is whether the benefits provided under the said provision are reasonable compensation, so that the grant of additional benefits, such as the disallowed disbursements, is precluded.

The deliberations of the Committee on Government Enterprises and Privatization of the House of Representatives regarding the SS Law are enlightening. Thus:

Representative Wilfredo LL. Enverga (*The Chairman*): Ah, with regard to the draft proposal which we will be presenting to the Committee on Rules in relation to the GSIS, it's 2,500 per diem but in no case will it be more than 10,000 pesos per month. Iyon ang nandoon sa ano... sa GSIS it will be a total of 12,000. Eight meetings. Iyon ang difference.

Representative Carlos M. Padilla (*Rep. Padilla*): Ah, aside from GSIS, what other corporations can we cite, Mr. Chairman? May we know from... so, it would be between SSS and GSIS lang ang comparison.

The Chairman: No. But... (interrupted)

Rep. Padilla: How about the other government corporation not necessarily a provident or a corporation whose function or business is similar or related?

SSS Administrator Renato C. Valencia (*Mr. Valencia*): The difference, Sir, is that in many boards the directors are just directors. In the case of SSS and GSIS they exercise quasi-judicial function.

Rep. Padilla: Yeah. But I am just asking the rate. Let's say PNB, how much does a director of PNB receive?

Mr. Valencia: In the case of PNB, Sir, they have I think bonuses. In other words, it is not only the per diem. This is a total package that they get.

Rep. Padilla: How about the SSS commissioners?

Mr. Valencia: Wala ho sila. They just get basically the per diem.

Rep. Padilla: But under this proposal it's flexible enough that should they... because you know... **let's be realistic. I think these are the people who make decisions for the system and, so, it's also unfair**

if we will just limit them to that much. So, if there is a way that we can also give them bigger emolument, honorarium or whatever, including bonuses, we should. Malaki iyan eh. Precisely, that's the reason why we are not being able to compete with the private sector. Because while the directors of the private companies would get siguro as much as 20, 30 or I don't know monthly, baka mayroon pang 50,000 diyan, you are only limited to 10,000 a month. So may I know if in the event such privilege if you call them privileges, would be provided, they have authority to do so under this proposal, Mr. Chairman?

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Mr. Valencia: Okay, maybe we can align our per diem to that of the GSIS. It's 2,500 but not to exceed 10,000. We will just align it to GSIS so that there'll be less of a problem.

Rep. Padilla: Mr. Chairman, may I know if based on your practice, you could really meet as... I mean you could meet eight times a month? I mean based on practice.

Mr. Valencia: Four lang ho talga.

Rep. Padilla: Four lang talga.

Mr. Valencia: Weekly lang ho talga. So we are willing to align with the GSIS so there'll be no questions at least on the per diem. But they don't have hearing on this (?). Our commissioners do hear cases.

Rep. Padilla: **How about the bonuses?** Do you think the... You know, the reason why I am taking the cudgels, I know it is so difficulty that the initiative will come from them, Mr. Chairman. Parang self-serving naman, but I do realize na kailangan naman. Mga Board of Directors yan, o commissioner yan – something very decent naman – **that's what I'm trying to say, that's why if there's nothing on this, I would want that let it be provided in the law so that they don't have to come to Congress every now and then in the event that thing happens.**

Mr. Valencia: Mr. Chairman, this is actually what our Commissioners have been complaining because their per diem and their hearing fees are really not enough, sometimes not even enough to cover their transportation costs. **So our suggestion is, if it is okay with the Honorable Committees, we will adopt the per diem of 2,500 per meeting but not to exceed 10,000 a month. But on the hearing, because our experience is that the Commissioners spend more time in reviewing cases rather than hearing, so our recommendation is maybe we can give them fees for hearing and evaluating cases, and then we can put a cap on the total amount.**

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Rep. Padilla: Would the Congressman from Paranaque consider 25,000 ... That's the maximum monthly in the event ... Because the formula is 2,500 per board meeting but maximum of 4 ... 2,500.

Mr. Valencia: If I may clarify, Sir. The board meeting will be 2,500 per meeting but not to exceed 10,000.

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Mr. Valencia: And then we are recommending ... because they do quasi-judicial functions and they really do spend a lot of time evaluating cases, writing opinion. So they are just like almost like line personnel, so we are recommending that they should also be given some kind of compensation, so instead of just hearing, we are saying "hearing and evaluation of cases".

Rep. Padilla: Not to exceed 25?

Mr. Valencia: Not to exceed... Well, maybe 15, Your Honor, so then you talk of 25,000 as total.

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The Chairman: Pero, Administrator, there's also a proviso here with regard to the per diem on travelling and gasoline expenses. That will be separate from the 15,000?

Mr. Valencia: Normally ho, we give them when they travel but just basically to cover the cost.

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The Chairman: So, what will be the suggestion or opinion of the SSS with regard to these allowances? That will be 10,000 cap plus 15,000 for hearing cases and then actual?

Mr. Valencia: **Our ... Our proposal is like this: For Board meetings, which is once a week, Two Thousand Five Hundred (2,500.00) per meeting but with a cap of Four ... ah, of Ten Thousand (10,000.00) per month. That... That means four (4) meetings. Yes.**

Then, hearing and evaluation of cases – Two Thousand Five Hundred (2,500) but not to exceed Fifteen Thousand (15,000.00). So, there's a cap.

So, in effect, they will receive maximum of Twenty-Five Thousand (25,000) plus actual expenses if they travel out which is not very often.

The Chairman: Oh, any objection? (Silence) There being none, we will make the necessary amendment to this.¹⁹ [Emphases supplied]

As can be gleaned from the Committee deliberations, Section 3(a) of the SS Law was passed with the purpose of providing reasonable compensation to appointive members of the SSC. It was crafted in such a manner that the specific benefits be laid out so that there would be no need for Congress to later pass a law providing for additional benefits. In addition, the benefits included in Section 3(a) of the said law were the same benefits recommended by then SSS Administrator Valencia when asked about the reasonable allowances provided to the SSC members.

¹⁹ *Deliberations of the Committee on Government Enterprises and Privatization*, August 7, 1996, pp. 13-22.

Following the maxim *expressio unius est exclusio alterius*, which means the express mention of one person, thing, act or consequence excludes all others,²⁰ the COA was correct in disallowing the disbursements in question as they were not among those enumerated in Section 3(a) of the SS Law. Thus, if Congress had intended to grant additional benefits to SSC members, it would have expressly provided the same in the SS Law on top of the benefits already suggested by the SSS administrator himself. It must be reiterated that Congress crafted the SS Law to spell out the specific benefits and/or allowances to be received by SSC members.

Verily, the SSS cannot grant additional benefits to SSC members other than the reasonable allowances specified by the law. To do so would be contrary to the intentions of Congress for the SS Law to categorically enumerate the benefits to be received by SSC members. It must be remembered that the objective of the law was to provide reasonable and adequate compensation to SSC members. Guided by the recommendations of the SSS administrator, Congress specifically provided for the benefits to be received by SSC members. Thus, Congress deemed the said amounts to be reasonable compensation to SSC members as they were the same benefits suggested by the former SSS administrator.

This conclusion is supported by the deliberations of the Bicameral Committee, to wit:

Senator Marcelo B. Fernan (*Chairman Fernan*): xxx Ah, is there any other change ... ah, no, in the matter now of the per diem, no, yung kuwan, yung ... the ... with ... the difference there, I think, is the approval of the President, no. Sa House version is "the rate per diem ... may increase the rate of per diems, subject to the approval of the President of the Philippines". That is found on page 3 – the House ... the House version.

Representative Wilfrido L. Enverga (*Chairman Enverga*): Mr. Chairman, we are agreeable with the Senate version.

xxx

Rep. Padilla: **Mr. Chairman, in the House version, in the event that the Two Thousand Five Hundred Pesos (P2,5000.00) is no longer tenable, there is no need for us to amend the law. So, it would just require the approval of the President. That was the intention!**

So, in light of this, I mean, I'm just offering this explanation but I would abide whatever decision agreed upon.

xxx

Rep Padilla: xxx **So, in other words, I was saying that after a few years, say ten (10) years, and the Two Thousand Five (sic) (2,500) is**

²⁰ *Dimakuta v. People*, G.R. No. 206513, October 20, 2015.

no longer tenable, no longer appropriate, so there is no need for the SSS to go back to Congress to amend the law in order that the Two Thousand Five (sic) (2,500) could be adjusted – the approval of the President would be necessary.

xxx

Chairman Fernan: But if we retain the present phraseology, you have no ... no objection?

Chairman Enverga: No objection.

Rep. Padilla: But then, I'm just hoping that this would ... the ... the Bicam will appreciate the ... the rationale behind that ...

Chairman Fernan: Yes, yes. We do, ano.

In fact, we ... discussed that in the floor of the Senate, no. And there were some, I think it was Senator Ponce Enrile because ... Do you recall that? Senator Ponce Enrile said that "Well, if it is so many years from now, you can always come back to Congress." I remember that! Although I ... I also see your point, no.²¹ [Emphases supplied]

Apparently, it was initially proposed that the SSS could increase the benefits received by SSC members subject to the approval of the President. The House of Representatives version of the bill allowed the SSS to increase the amount of RATA subject to the approval of the President.

The said version was, however, rejected and the present wording of the provision does not empower the SSS to increase the RATA of the members of the SSC. In the event that their existing compensation of members of the SSC is no longer reasonable under the present circumstances, the recourse is to lobby before Congress for the amendment of the SS law - not the unilateral grant or increase of benefits.

The House version of the bill only sought to authorize the SSS to increase the amount of RATA received by SSC members. It did not empower the SSS to provide for additional benefits other than those already explicitly indicated in the SS Law. It was still consistent with the intention to specifically provide the benefits to be received by SSS commissioners. Hence, the grant of EME and other additional benefits was improper considering that the only benefits which may be received by the members of the SSC are those enumerated under Section 3(a) of the SS Law.

The SSS cannot rely on Sections 3(c) and 25 of the SS Law either. A harmonious reading of the said provisions discloses that the SSC may merely fix the compensation, benefits and allowances of SSS appointive employees within the limits prescribed by the SS Law. Nothing in the

²¹ *Deliberations of the Bicameral Conference Committee on HB No. 775B and SB No. 1663*, April 28, 1997, pp. 9-11.

aforementioned provisions authorizes the SSS to grant additional benefits to its members.

Further, the reliance of the SSS on *Baradero* is misplaced. In the said case, the Court observed that then SSS Commissioner Ferrer was granted retirement benefits notwithstanding being paid on a *per diem* basis, as the service creditable in his favor was his full time service as a Officer, and not his attendance in board meetings. It was never stated that the SSS could grant additional benefits to SSC members. The Court merely agreed that the service rendered as hearing officer was included in the computation of retirement benefits granted by law to government employees. Hence, it was only a recognition of the benefits to which government employees were entitled under existing laws other than the SS Law, and not of the supposed power of the SSC to grant additional benefits to its members.

*Good faith absolves
liable officers from
refund*

Notwithstanding the disallowance of the questioned disbursements, the Court rules that the responsible officers under the ND need not refund the same on the basis of good faith. In relation to the requirement of refund of disallowed benefits or allowances, good faith is 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.”²²

In *Zamboanga City Water District v. COA (ZCWD)*,²³ the Court held that approving officers could be absolved from refunding the disallowed amount if there was a showing of good faith, to wit:

Further, a thorough [reading] of *Mendoza* and the cases cited therein would lead to the conclusion that ZCWD officers who approved the increase of GM Bucoy's are also not obliged either to refund the same. In *de Jesus v. Commission on Audit*, the Court absolved the petitioner therein from refunding the disallowed amount on the basis of good faith, pursuant to *de Jesus and the Interim Board of Directors, Catbalogan Water District v. Commission on Audit*. In the latter case, the Court absolved the Board of Directors from refunding the allowances they received because at the time they were disbursed, no ruling from the Court prohibiting the same had been made. Applying the ruling in *Blaquera v. Alcala (Blaquera)*, the Court reasoned that the

²² *PEZA v. COA*, 690 Phil. 104, 115 (2012), as cited in *Maritime Industry Authority v. COA*, G.R. No. 185812, January 13, 2015, 745 SCRA 300.

²³ G.R. No. 213472, January 26, 2016.

Board of Directors need not make a refund on the basis of good faith, because they had no knowledge that the payment was without a legal basis.

In *Blaquera*, the Court did not require government officials who approved the disallowed disbursements to refund the same on the basis of good faith, to wit:

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.

XXX XXX XXX

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

A careful reading of the above-cited jurisprudence shows that even approving officers may be excused from being personally liable to refund the amounts disallowed in a COA audit, provided that they had acted in good faith. Moreover, lack of knowledge of a similar ruling by this Court prohibiting a particular disbursement is a badge of good faith. [Emphases supplied]

On the other hand, approving officers are bound to return the disallowed amount when they have acted in bad faith or were grossly negligent amounting to bad faith.²⁴

In *ZCWD*, the approving officers were ordered to refund the amounts corresponding the CNA incentives and the *per diems* awarded to the board of directors because the former was released without complying with the requirements under PSLMC Resolution No. 2 and the latter was in excess of the amount authorized by Administrative Order No. 103. In another case,²⁵ a refund was ordered for the payment by a local water district to private legal counsels without the necessary approval of the Office of the Government Corporate Counsel. In both instances, good faith was not appreciated because the disbursements were made in spite of the knowledge that the same were made in contravention of the law.

²⁴ *Maritime Industry Authority v. COA*, G.R. No. 185812, January 13, 2015, 745 SCRA 300, 346-347.

²⁵ *Almadovar v. COA*, G.R. No. 213330, November 16, 2015.

W

In *Silang v. COA*,²⁶ the Court ordered the city mayor, local sanggunian members, and officers of the collective bargaining representative of the rank-and-file employees of the local government to refund the disbursed CNA incentives. They were found to be in bad faith because the disallowed incentives was negotiated by the collective bargaining representative and approved by the local government in spite of the former's non-accreditation with the Civil Service Commission.

In the above-mentioned cases, the approving officers *had knowledge* of facts or circumstances which would render the disbursements illegal. Thus, they were bound to refund the same for acting in bad faith.

In contrast, the approving officers in the case at bench need not refund the disallowed amount because they acted in good faith. In *Mendoza v. COA*,²⁷ the Court held that the lack of a similar ruling is a basis of good faith. There has yet to be a jurisprudence or ruling that the benefits which may be received by members of the SSC are limited to those enumerated under Section 3(a) of the SS Law.

To reiterate, good faith may be appreciated because the approving officers were without knowledge of any circumstance or information which would render the transaction illegal or unconscientious. Neither could they be deemed to be grossly negligent as they believed that they could disburse the said amounts on the basis of the provisions of the SS Law.

WHEREFORE, the January 30, 2013 Decision and the December 6, 2013 Resolution of the Commission on Audit is **AFFIRMED** with **MODIFICATION** in that the Social Security System and its officers are absolved from refunding the amount covered by Notice of Disallowance No. SSS-2007-02 (2004).

SO ORDERED.


JOSE CATRAL MENDOZA
Associate Justice

²⁶ G.R. No. 213189, September 8, 2015.

²⁷ 717 Phil. 491 (2013).

WE CONCUR:



MARIA LOURDES P. A. SERENO
Chief Justice



ANTONIO T. CARPIO
Associate Justice

PRESBITERO J. VELASCO, JR.
Associate Justice

Terisita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice

(On Leave)
ARTURO D. BRION
Associate Justice

Diosdado M. Peralta
DIOSDADO M. PERALTA
Associate Justice

(On Official Leave)
LUCAS P. BERSAMIN
Associate Justice

Mariano C. del Castillo
MARIANO C. DEL CASTILLO
Associate Justice

Jose Portugal Perez
JOSE PORTUGAL PEREZ
Associate Justice

(On Official Leave)
BIENVENIDO L. REYES
Associate Justice

Estela M. Perlas-Bernabe
ESTELA M. PERLAS-BERNABE
Associate Justice

Marvic M.V.F. Leonen
MARVIC M.V.F. LEONEN
Associate Justice

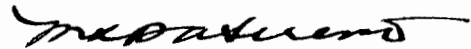
Francis H. Jardeleza
FRANCIS H. JARDELEZA
Associate Justice

Alfredo Benjamin S. Caguioa
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

*No part
prior OSG
action*

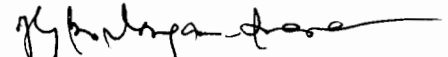
CERTIFICATION

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



MARIA LOURDES P. A. SERENO
Chief Justice

CERTIFIED XEROX COPY:


FELIPA B. ANAMA
CLERK OF COURT, EN BANC
SUPREME COURT