Republic of the Philippines
Supreme Court
Manila

EN BANC

BRENDA L. NAZARETH, REGIONAL DIRECTOR, DEPARTMENT OF SCIENCE AND TECHNOLOGY, REGIONAL OFFICE NO. IX, ZAMBOANGA CITY,
Petitioner,

-versus-

THE HON. REYNALDO A. VILLAR, HON. JUANITO G. ESPINO, JR., (COMMISSIONERS OF THE COMMISSION ON AUDIT), and DIR. KHEM M. INOK,
Respondents.

G.R. No. 188635

Present:

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

Promulgated:

JANUARY 29, 2013

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DECISION

BERSAMIN, *J.*:

No money shall be paid out of the Treasury except in pursuance of an appropriation made by law.[1] A violation of this constitutional edict warrants the disallowance of the payment. However, the refund of the disallowed payment of a benefit granted by law to a covered person, agency or office of the Government may be barred by the good faith of the approving official and of the recipient.

Being assailed by petition for *certiorari* on the ground of its being issued with grave abuse of discretion amounting to lack or excess of

[1] Section 29(1), Article VI of the Constitution.

jurisdiction is the decision rendered on June 4, 2009 by the Commission on Audit (COA) in COA Case No. 2009-045 entitled *Petition of Ms. Brenda L. Nazareth, Regional Director, Department of Science and Technology, Regional Office No. IX, Zamboanga City, for review of Legal and Adjudication Office (LAO)-National Decision No. 2005-308 dated September 15, 2005 and LAO-National Resolution No. 2006-308A dated May 12, 2006 on disallowances of subsistence, laundry, hazard and other benefits in the total amount of ₱3,591,130.36*,[2] affirming the issuance of notices of disallowance (NDs) by the Audit Team Leader of COA Regional Office No. IX in Zamboanga City against the payment of benefits to covered officials and employees of the Department of Science and Technology (DOST) for calendar year (CY) 2001 out of the savings of the DOST.

The petitioner DOST Regional Director hereby seeks to declare the decision dated June 4, 2009 "null and void," and prays for the lifting of the disallowance of the payment of the benefits for CY 2001 for being within the ambit of Republic Act No. 8439 (R.A. No. 8439), otherwise known as the *Magna Carta for Scientists, Engineers, Researchers, and other Science and Technology Personnel in the Government* (*Magna Carta*, for short), and on the strength of the Memorandum of Executive Secretary Ronaldo B. Zamora dated April 12, 2000 authorizing the use of the savings for the purpose.

Antecedents

On December 22, 1997, Congress enacted R.A. No. 8439 to address the policy of the State to provide a program for human resources development in science and technology in order to achieve and maintain the necessary reservoir of talent and manpower that would sustain the drive for total science and technology mastery.[3] Section 7 of R.A. No. 8439 grants the following additional allowances and benefits (*Magna Carta* benefits) to the covered officials and employees of the DOST, to wit:

> (a) *Honorarium*. - S & T personnel who rendered services beyond the established irregular workload of scientists, technologists, researchers and technicians whose broad and superior knowledge, expertise or professional standing in a specific field contributes to productivity and innovativeness shall be entitled to receive honorarium subject to rules to be set by the Department;
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> (b) *Share in royalties*. - S & T scientists, engineers, researchers and other S & T personnel shall be entitled to receive share in royalties subject to guidelines of the Department. The share in royalties shall be on a sixty percent-forty percent (60%-40%) basis in favor of the Government and the personnel involved in the technology/ activity

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2 *Rollo*, pp. 18-22.

3 Section 2, RA No. 8439.

which has been produced or undertaken during the regular performance of their functions. For the purpose of this Act, share in royalties shall be defined as a share in the proceeds of royalty payments arising from patents, copyrights and other intellectual property rights;

If the researcher works with a private company and the program of activities to be undertaken has been mutually agreed upon by the parties concerned, any royalty arising therefrom shall be divided according to the equity share in the research project;

(c) *Hazard allowance*. - S & T personnel involved in hazardous undertakings or assigned in hazardous workplaces, shall be paid hazard allowances ranging from ten (10%) to thirty (30%) percent of their monthly basic salary depending on the nature and extent of the hazard involved. The following shall be considered hazardous workplaces:

(1) Radiation-exposed laboratories and service workshops;

(2) Remote/depressed areas;

(3) Areas declared under a state of calamity or emergency;

(4) Strife-torn or embattled areas;

(5) Laboratories and other disease-infested areas.

(d) *Subsistence allowance*. - S & T personnel shall be entitled to full subsistence allowance equivalent to three (3) meals a day, which may be computed and implemented in accordance with the criteria to be provided in the implementing rules and regulations. Those assigned out of their regular work stations shall be entitled to per diem in place of the allowance;

(e) *Laundry allowance*. - S & T personnel who are required to wear a prescribed uniform during office hours shall be entitled to a laundry allowance of not less than One hundred fifty pesos (₱150.00) a month;

(f) *Housing and quarter allowance*. - S & T personnel who are on duty in laboratories, research and development centers and other government facilities shall be entitled to free living quarters within the government facility where they are stationed: Provided, That the personnel have their residence outside of the fifty (50)-kilometer radius from such government facility;

(g) *Longevity pay*. - A monthly longevity pay equivalent to five percent (5%) of the monthly basic salary shall be paid to S & T personnel for every five (5) years of continuous and meritorious service as determined by the Secretary of the Department; and

(h) *Medical examination*. - During the tenure of their employment, S & T personnel shall be given a compulsory free medical examination once a year and immunization as the case may warrant. The medical examination shall include:

(1) Complete physical examination;

(2) Routine laboratory, Chest X-ray and ECG;

(3) Psychometric examination;

(4) Dental examination;

(5) Other indicated examination.

Under R.A. No. 8439, the funds for the payment of the *Magna Carta* benefits are to be appropriated by the General Appropriations Act (GAA) of the year following the enactment of R.A. No. 8439.[4]

The DOST Regional Office No. IX in Zamboanga City released the *Magna Carta* benefits to the covered officials and employees commencing in CY 1998 despite the absence of specific appropriation for the purpose in the GAA. Subsequently, following the post-audit conducted by COA State Auditor Ramon E. Vargas on April 23, 1999, October 28, 1999, June 20, 2000, February 27, 2001, June 27, 2001, October 10, 2001 and October 17, 2001, several NDs were issued disapproving the payment of the *Magna Carta* benefits. The justifications for the disallowance were stated in the post-audit report, as follows:

> a) ND Nos. 99-001-101 (98) to 99-105-101 (98) [Payment of Subsistence and Laundry Allowances and Hazard Pay for the months of February-November 1998] – The State Auditor claims that no funds were appropriated in the 1998 General Appropriations Act for the said purpose notwithstanding the effectivity of the Magna Carta, providing for payment of allowances and benefits, among others, to Science and Technology Personnel in the Government;
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> b) ND Nos. 2000-101-101 (99) to 2000-010-101 (99) [Payment of Subsistence and Laundry Allowances and Hazard Pay for the months of January-June 1999] – The State Auditor claims that no Department of Budget and Management (DBM) and Civil Service Commission (CSC) guidelines were issued by the said Departments on the payment thereof;
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> c) ND Nos. 2001-001-101 (00) to 2001-013-101 (00) [Payment of Subsistence and Laundry Allowances, Hazard Pay and Health Care Program for the month of October 1999 and January-September 2000] – The State Auditor claims that there was no basis for the payment of the said allowances because the President vetoed provisions of the General Appropriations Act (GAA) regarding the use of savings for the payment of benefits;
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> d) ND Nos. 2001-014-101(00) to 2001-025-101 (00) [Payment of Subsistence and Laundry Allowances, Hazard Pay and Medical Benefits for the months of January-October 2001] – The provision for the use of

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[4] Section 20. *Funding.* - The amount necessary to fully implement this Act shall be provided in the General Appropriations Act (GAA) of the year following its enactment into law under the budgetary appropriations of the DOST and concerned agencies.

> savings in the General Appropriations Act (GAA) was vetoed by the President; hence, there was no basis for the payment of the aforesaid allowances or benefits according to the State Auditor.[5]

The disallowance by the COA prompted then DOST Secretary Dr. Filemon Uriarte, Jr. to request the Office of the President (OP) through his Memorandum dated April 3, 2000 (*Request for Authority to Use Savings for the Payment of Magna Carta Benefits as provided for in R.A. 8439*) for the authority to utilize the DOST's savings to pay the *Magna Carta* benefits.[6] The salient portions of the Memorandum of Secretary Uriarte, Jr. explained the request in the following manner:

> x x x. However, the amount necessary for its full implementation had not been provided in the General Appropriations Act (GAA). Since the Act's effectivity, the Department had paid the 1998 MC benefits out of its current year's savings as provided for in the Budget Issuances of the Department of Budget and Management while the 1999 MC benefits were likewise sourced from the year's savings as authorized in the 1999 GAA.
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> The 2000 GAA has no provision for the use of savings. The Department, therefore, cannot continue the payment of the Magna Carta benefits from its 2000 savings. x x x. The DOST personnel are looking forward to His Excellency's favorable consideration for the payment of said MC benefits, being part of the administration's 10-point action program to quote "I will order immediate implementation of RA 8439 (the Magna Carta for Science and Technology Personnel in Government)" as published in the Manila Bulletin dated May 20, 1998.

Through the Memorandum dated April 12, 2000, then Executive Secretary Ronaldo Zamora, acting by authority of the President, approved the request of Secretary Uriarte, Jr.,[7] *viz*:

> With reference to your Memorandum dated April 03, 2000 requesting authority to use savings from the appropriations of that Department and its agencies for the payment of Magna Carta Benefits as provided for in R.A. 8439, please be informed that the said request is hereby approved.

On July 28, 2003, the petitioner, in her capacity as the DOST Regional Director in Region IX, lodged an appeal with COA Regional Cluster Director Ellen Sescon, urging the lifting of the disallowance of the *Magna Carta* benefits for the period covering CY 1998 to CY 2001 amounting to ₱4,363,997.47. She anchored her appeal on the April 12, 2000

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5 *Rollo*, p. 6.
6 Id. at 132-133.
7 Id. at 7.

Memorandum of Executive Secretary Zamora, and cited the provision in the GAA of 1998,[8] to wit:

> Section 56. *Priority in the Use of Savings*.– In the use of savings, priority shall be given to the augmentation of the amounts set aside for compensation, bonus, retirement gratuity, terminal leave, old age pension of veterans and other personnel benefits authorized by law and those expenditure items authorized in agency Special Provisions and in Sec. 16 and in other sections of the General Provisions of this Act.[9]

In support of her appeal, the petitioner contended that the DOST Regional Office had "considered the subsistence and laundry allowance as falling into the category 'other personnel benefits authorized by law,' hence the payment of such allowances were charged to account 100-900 for Other Benefits (Honoraria), which was declared to be the savings of our Office."[10] She argued that the April 12, 2000 Memorandum of Executive Secretary Zamora not only ratified the payment of the *Magna Carta* benefits out of the savings for CY 1998 and CY 1999 and allowed the use of the savings for CY 2000, but also operated as a continuing endorsement of the use of savings to cover the *Magna Carta* benefits in succeeding calendar years.

The appeal was referred to the Regional Legal and Adjudication Director (RLAD), COA Regional Office IX in Zamboanga City, which denied the appeal and affirmed the grounds stated in the NDs.

Not satisfied with the result, the petitioner elevated the matter to the COA Legal and Adjudication Office in Quezon City

On September 15, 2005, respondent Director Khem N. Inok of the COA Legal and Adjudication Office rendered a decision in LAO-N-2005-308,[11] denying the petitioner's appeal with the modification that only the NDs covering the *Magna Carta* benefits for CY 2000 were to be set aside in view of the authorization under the Memorandum of April 12, 2000 issued by Executive Secretary Zamora as the *alter ego* of the President. The decision explained itself as follows:

> In resolving the case, the following issues should first be resolved:
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> 1. Whether or not the "approval" made by the Executive Secretary on April 12, 2000 on the request for authority to use savings of the agency to pay the benefits, was valid; and

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[8] Republic Act No. 8522 (*An Act Appropriating Funds for the Operation of the Government of the Republic of the Philippines from January 1 to December 31, Nineteen Hundred and Ninety-Eight, and for Other Purposes*).

[9] The provision is a *recurrent* provision in subsequent GAAs like Republic Act No. 8745 (GAA of 1999) and Republic Act No. 8760 (GAA of 2000).

[10] *Rollo*, p. 27.

[11] Id. at 34-37.

2. Whether or not the payments of the benefits made by the agency using its savings for the years 1998 and 1999 based on Section 56 of RA 8522 (General Appropriations Act of 1998 [GAA]) were legal and valid.

Anent the first issue, the law in point is Article VI, Section 25(5) of the 1987 Constitution, which aptly provides that:

> *"(5) No law shall be passed authorizing any transfer of appropriations, however, the PRESIDENT, x x x may by law, be authorized to augment any item in the general appropriations law for their respective offices from savings in other items of their respective appropriations."*

Simply put, it means that only the President has the power to augment savings from one item to another in the budget of administrative agencies under his control and supervision. This is the very reason why the President vetoed the Special Provisions in the 1998 GAA that would authorize the department heads to use savings to augment other items of appropriations within the Executive Branch. Such power could well be extended to his Cabinet Secretaries as alter egos under the "doctrine of qualified political agency" enunciated by the Supreme Court in the case of Binamira v. Garrucho, 188 SCRA 154, where it was pronounced that the official acts of a Department Secretary are deemed acts of the President unless disapproved or reprobated by the latter. Thus, in the instant case, the authority granted to the DOST by the Executive Secretary, being one of the alter egos of the President, was legal and valid but in so far as the use of agency's savings for the year 2000 only. Although 2000 budget was reenacted in 2001, the authority granted on the use of savings did not necessarily extend to the succeeding year.

On the second issue, the payments of benefits made by the agency in 1998 and 1999 were admittedly premised on the provisions of the General Appropriations Acts (GAA) for CY 1998 and 1999 regarding the use of savings which states that:

> *"In the use of savings, priority shall be given to the* ***augmentation*** *of the amount set aside for compensation, bonus, retirement gratuity, terminal leave, old age pensions of veterans and other personal benefits x x x."* (Underscoring ours.)

It can be noted, however, that ***augmentation*** was likewise a requisite to make payments for such benefits which means that Presidential approval was necessary in accordance with the above-cited provision of the 1987 Constitution. Therefore, the acts of the agency in using its savings to pay the said benefits without the said presidential approval were illegal considering that during those years there was no appropriations provided in the GAA to pay such benefits.

Further, COA Decision Nos. 2003-060 dated March 18, 2003 and 2002-022 dated January 11, 2002, where this Commission lifted the DOST disallowance on the payments of similar benefits in 1992 to 1995, can not be applied in the instant case. The disallowances therein dealt more on the classification of the agency as health related or not while the instant case

> deals mainly on the availability of appropriated funds for the benefits under RA 8439 and the guidelines for their payments.
>
> Likewise, the certification of the DOST Secretary declaring work areas of S and T personnel as hazardous for purposes of entitlement to hazard allowance is not valid and may be considered as self-serving. Under RA 7305 and its Implementing Rules and Regulation[s] (Magna Carta of Public Health Workers), the determination which agencies are considered health-related establishments is within the competence of the Secretary of Health which was used by this Commission in COA Decision No. 2003-060, supra, to wit:
>
> *x x x x*
>
> *"It bears emphasis to state herein that it is within the competence of the Secretary of Health as mandated by RA 7305 and its IRR to determine which agencies are health-related establishments. Corollary thereto, the certifications dated October 10, 1994 issued by then DOH Secretary Juan M. Flavier that certain DOST personnel identified by DOST Secretary Padolina in his letter dated September 29, 1994 to be engaged in health and health-related work and that of Secretary Hilarion J. Ramiro dated December 12, 1996 confirming the staff and personnel of the DOST and its attached agencies to be engaged in health-related work and further certified to be a health-related establishment were sufficient basis for reconsideration of the disallowance on subsistence and laundry allowances paid for 1992, 1993 and 1995."*
>
> *x x x x*
>
> Assuming that the situation in the DOST and its attached agencies did not change as to consider it health-related establishment for its entitlement to magna carta benefits, still the payments of the benefits cannot be sustained in audit not only for lack of said certification from the Secretary of Department of Health for the years 1998 and 1999 but more importantly, for lack of funding.
>
> **WHEREFORE**, premises considered, the herein Appeal is **DENIED** with modification. NDs Nos. 2001-001-101 (00) to 2001-013-101 (00) issued for the payments of benefits for CY 2000 are hereby **SET ASIDE** while NDs pertaining to benefits paid for CY 1998, 1999 and 2001 shall **STAY**.

On December 1, 2005, the petitioner filed her motion for reconsideration in the COA Legal and Adjudication Office-National in Quezon City.

By resolution dated May 12, 2006,[12] the COA Legal and Adjudication Office-National denied the motion for reconsideration.

Thence, the petitioner filed a petition for review in the COA Head Office, insisting that the payment of *Magna Carta* benefits to qualified

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[12] Id. at 38-39.

DOST Regional Office No. IX officials and employees had been allowed under R.A. No. 8349.

On June 4, 2009, the COA rendered the assailed decision, further modifying the decision of respondent Director Inok by also lifting and setting aside the NDs covering the *Magna Carta* benefits for CY 1998 and CY 1999 for the same reason applicable to the lifting of the NDs for CY 2000, but maintaining the disallowance of the benefits for CY 2001 on the ground that they were not covered by the authorization granted by the Memorandum of April 12, 2000 of Executive Secretary Zamora.

The pertinent portions of the decision are quoted below, to wit:

> Hence, the appellant filed the instant petition for review with the main argument that the payment of Magna Carta benefits to qualified DOST Regional Office No. IX employees is allowed pursuant to RA No. 8439.
>
> **ISSUE**
>
> The sole issue to be resolved is whether or not the payment of Magna Carta benefits for CYs 1998, 1999 and 2001 is valid and legal.
>
> **DISCUSSION**
>
> It is clear that the funds utilized for the payment of the Magna Carta benefits came from the savings of the agency. The approval by the Executive Secretary of the request for authority to use the said savings for payments of the benefits was an affirmation that the payments were authorized. The Memorandum dated April 3, 2000 of the DOST Secretary requested for the approval of the payment out of savings of the CY 2000 benefits. Likewise, the same Memorandum mentioned the 1998 Magna Carta benefits which were paid out of its current year's savings as provided for in the budget issuances of the DBM and the 1999 Magna Carta benefits which were sourced from the year's savings as authorized in the 1999 GAA. When such memorandum request was approved by the Executive Secretary in a Memorandum dated April 12, 2000, it was clear that the approval covered the periods stated in the request, which were the 1998, 1999 and 2000 Magna Carta benefits.
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> Thus, this Commission hereby affirms LAO-National Decision No. 2005-308 dated September 15, 2005 which lifted ND Nos. 2001-001-101 (00) to 2001-013-101 (00) for the payments of Magna Carta benefits for CY 2000 and which sustained the NDs for payments in 2001. However, for the disallowances covering payments in 1998 and 1999, this Commission is inclined to lift the same. This is in view of the approval made by the Executive Secretary for the agency to use its savings to pay the benefits for the years covered. Thus, when the Executive Secretary granted the request of the DOST Secretary for the payment of the Magna Carta benefits to its qualified personnel, the said payments became lawful for the periods covered in the request, that is, CYs 1998, 1999 and 2000. Since the Magna Carta benefits paid in 2001 were not covered by the approval, the same were correctly disallowed in audit.

> In a previous COA Decision-No. 2006-015 dated January 31, 2006, the payment of hazard, subsistence and laundry allowances given to personnel of the DOST, Regional Office No. VI, Iloilo City, was granted. The same decision also stated that in (sic) no doubt the DOST personnel, who are qualified, are entitled to receive the Magna Carta benefits. The 1999 GAA did not prohibit the grant of these benefits but merely emphasized the discretion of the agency head, upon authority of the President, to use savings from the Department's appropriation, to implement the payment of benefits pursuant to the DOST Charter.
>
> **RULING**
>
> **WHEREFORE**, premises considered, the instant appeal on the payment of Magna Carta benefits for CYs 1998 and 1999 which were disallowed in ND Nos. 99-001-101 (98) to 99-015-101 (98) and 2000-001-101 (99) to 2000-010-101 (99), is hereby **GRANTED**. Likewise, the lifting of ND Nos. 2001-001-101 (00) to 2001-013-101 (00) as embodied in LAO-National Decision No. 2005-308 dated September 15, 2005 is hereby **CONFIRMED**. While the disallowances on the payment of said benefits for 2001 as covered by ND Nos. 2001-014-101 (01) to 2001-032-101 (01) are hereby **AFFIRMED**.

Issues

Hence, this special civil action for *certiorari*, with the petitioner insisting that the COA gravely abused its discretion amounting to lack or excess of jurisdiction in affirming the disallowance of the *Magna Carta* benefits for CY 2001 despite the provisions of R.A. No. 8439, and in ruling that the Memorandum of April 12, 2000 did not cover the payment of the *Magna Carta* benefits for CY 2001.

Did the COA commit grave abuse of discretion in issuing ND No. 2001-014-101(01) to ND No. 2001-032-101(01)?

Ruling

The petition for *certiorari* lacks merit.

R. A. No. 8439 was enacted as a manifestation of the State's recognition of science and technology as an essential component for the attainment of national development and progress. The law offers a program of human resources development in science and technology to help realize and maintain a sufficient pool of talent and manpower that will sustain the initiative for total science and technology mastery. In furtherance of this objective, the law not only ensures scholarship programs and improved science and engineering education, but also affords incentives for those pursuing careers in science and technology. Moreover, the salary scale of science and technology personnel is differentiated by R. A. No. 8439 from the salary scales of government employees under the existing law.

As earlier mentioned, Section 7 of R. A. No. 8439 confers the *Magna Carta* benefits consisting of additional allowances and benefits to DOST officers and employees, such as honorarium, share in royalties, hazard, subsistence, laundry, and housing and quarter allowances, longevity pay, and medical examination. But the *Magna Carta* benefits will remain merely paper benefits without the corresponding allocation of funds in the GAA.

The petitioner urges the Court to treat the authority granted in the April 12, 2000 Memorandum of Executive Secretary Zamora as a continuing authorization to use the DOST's savings to pay the *Magna Carta* benefits.

We cannot agree with the petitioner.

The April 12, 2000 Memorandum was not a blanket authority from the OP to pay the benefits out of the DOST's savings. Although the Memorandum was silent as to the period covered by the request for authority to use the DOST's savings, it was clear just the same that the Memorandum encompassed only CY 1998, CY 1999 and CY 2000. The limitation of its applicability to those calendar years was based on the tenor of the request of Secretary Uriarte, Jr. to the effect that the DOST had previously used its savings to pay the *Magna Carta* benefits in CY 1998 and CY 1999; that the 2000 GAA did not provide for the use of savings; and that the DOST personnel were looking forward to the President's favorable consideration. The Memorandum could only be read as an authority covering the limited period until and inclusive of CY 2000. The text of the Memorandum was also bereft of any indication that the authorization was to be indefinitely extended to any calendar year beyond CY 2000.

As we see it, the COA correctly ruled on the matter at hand. Article VI Section 29 (1) of the 1987 Constitution firmly declares that: "No money shall be paid out of the Treasury except in pursuance of an appropriation made by law." This constitutional edict requires that the GAA be purposeful, deliberate, and precise in its provisions and stipulations. As such, the requirement under Section 20[13] of R.A. No. 8439 that the amounts needed to fund the *Magna Carta* benefits were to be appropriated by the GAA only meant that such funding must be purposefully, deliberately, and precisely included in the GAA. The funding for the *Magna Carta* benefits would not materialize as a matter of course simply by fiat of R.A. No. 8439, but must initially be proposed by the officials of the DOST as the concerned agency for submission to and consideration by Congress. That process is what complies with the constitutional edict. R.A. No. 8439 alone could not fund the payment of the benefits because the GAA did not mirror every provision of law that referred to it as the source of funding. It is worthy to note that the DOST itself acknowledged the absolute need for the appropriation in the GAA. Otherwise, Secretary Uriarte, Jr. would not have

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[13] *Supra* note 4.

needed to request the OP for the express authority to use the savings to pay the *Magna Carta* benefits.

In the funding of current activities, projects, and programs, the general rule should still be that the budgetary amount contained in the appropriations bill is the extent Congress will determine as sufficient for the budgetary allocation for the proponent agency. The only exception is found in Section 25 (5),[14] Article VI of the Constitution, by which the President, the President of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court, and the heads of Constitutional Commissions are authorized to transfer appropriations *to augment* any item in the GAA for their respective offices from the savings in other items of their respective appropriations. The plain language of the constitutional restriction leaves no room for the petitioner's posture, which we should now dispose of as untenable.

It bears emphasizing that the exception in favor of the high officials named in Section 25(5), Article VI of the Constitution limiting the authority to transfer savings only to augment another item in the GAA is strictly but reasonably construed as exclusive. As the Court has expounded in *Lokin, Jr. v. Commission on Elections*:[15]

> When the statute itself enumerates the exceptions to the application of the general rule, the exceptions are strictly but reasonably construed. The exceptions extend only as far as their language fairly warrants, and all doubts should be resolved in favor of the general provision rather than the exceptions. Where the general rule is established by a statute with exceptions, none but the enacting authority can curtail the former. Not even the courts may add to the latter by implication, and it is a rule that an express exception excludes all others, although it is always proper in determining the applicability of the rule to inquire whether, in a particular case, it accords with reason and justice.
>
> The appropriate and natural office of the exception is to exempt something from the scope of the general words of a statute, which is otherwise within the scope and meaning of such general words. Consequently, the existence of an exception in a statute clarifies the intent that the statute shall apply to all cases not excepted. Exceptions are subject to the rule of strict construction; hence, any doubt will be resolved in favor of the general provision and against the exception. Indeed, the liberal construction of a statute will seem to require in many circumstances that

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[14] Section 25.

x x x x

(5) No law shall be passed authorizing any transfer of appropriations; however, the President, the President of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court, and the heads of Constitutional Commissions may, by law, be authorized to augment any item in the general appropriations law for their respective offices from savings in other items of their respective appropriations.

x x x x

[15] G.R. Nos. 179431-32 and 180443, June 22, 2010, 621 SCRA 385, 409-410; see also *Samson v. Court of Appeals*, G.R. No. L-43182, November 25, 1986, 145 SCRA 654, 659; and *Commissioner of Internal Revenue v. Court of Appeals*, G.R. No. 107135, February 23, 1999, 303 SCRA 508, 515.

> the exception, by which the operation of the statute is limited or abridged, should receive a restricted construction.

The claim of the petitioner that the payment of the 2001 *Magna Carta* benefits was upon the authorization extended by the OP through the 12 April 2000 Memorandum of Executive Secretary Zamora was outrightly bereft of legal basis. In so saying, she inexplicably, but self-servingly, ignored the important provisions in the 2000 GAA on the use of savings, to wit:

> Sec. 54. *Use of Savings*. The President of the Philippines, the President of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court, the Heads of Constitutional Commissions under Article IX of the Constitution, the Ombudsman and the Chairman of the Commission on Human Rights are hereby **authorized to augment any item in this Act** for their respective offices from savings in other items of their respective appropriations.
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> Sec. 55. *Meaning of Savings and Augmentation.* **Savings refer to portions or balances of any programmed appropriation in this Act free of any obligation or encumbrance still available** after the completion or final discontinuance or abandonment of the work, activity or purpose for which the appropriation is authorized, or arising from unpaid compensation and related costs pertaining to vacant positions and leaves of absence without pay.
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> **Augmentation implies the existence in this Act of an item, project, activity or purpose with an appropriation which** upon implementation or subsequent evaluation of needed resources **is determined to be deficient. In no case, therefore, shall a non-existent item, project, activity, purpose or object of expenditure be funded by augmentation from savings** or by the use of appropriations authorized otherwise in this Act. (Bold emphases added)

Under these provisions, the authority granted to the President was subject to two essential requisites in order that a transfer of appropriation from the agency's savings would be validly effected. The first required that there must be savings from the authorized appropriation of the agency. The second demanded that there must be an existing item, project, activity, purpose or object of expenditure with an appropriation to which the savings would be transferred for augmentation purposes only.

At any rate, the proposition of the petitioner that savings could and should be presumed from the mere transfer of funds is plainly incompatible with the doctrine laid down in *Demetria v. Alba*,[16] in which the petition challenged the constitutionality of paragraph 1 of Section 44[17] of Presidential Decree No. 1177 (*Budget Reform Decree of 1977*) in view of the express

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[16] G.R. No. L-71977, February 27, 1987, 148 SCRA 208, 214-215.

[17] Paragraph 1 of Section 44 states: "The President shall have the authority to transfer any fund, appropriated for the different departments, bureaus, offices and agencies of the Executive Department, which are included in the General Appropriations Act, to any program, project or activity of any department, bureau, or office included in the General Appropriations Act or approved after its enactment."

prohibition contained in Section 16(5)[18] of Article VIII of the 1973 Constitution against the transfer of appropriations except to augment out of savings,[19] with the Court declaring the questioned provision of Presidential Decree No. 1177 "null and void for being unconstitutional" upon the following reasoning, to wit:

> The prohibition to transfer an appropriation for one item to another was explicit and categorical under the 1973 Constitution. However, to afford the heads of the different branches of the government and those of the constitutional commissions considerable flexibility in the use of public funds and resources, the constitution allowed the enactment of a law authorizing the transfer of funds for the purpose of augmenting an item from savings in another item in the appropriation of the government branch or constitutional body concerned. The leeway granted was thus limited. The purpose and conditions for which funds may be transferred were specified, i.e., transfer may be allowed for the purpose of augmenting an item and such transfer may be made only if there are savings from another item in the appropriation of the government branch or constitutional body.
>
> Paragraph 1 of Section 44 of P.D. No. 1177 unduly overextends the privilege granted under said Section 16[5]. It empowers the President to indiscriminately transfer funds from one department, bureau, office or agency of the Executive Department to any program, project, or activity of any department, bureau or office included in the General Appropriations Act or approved after its enactment, without regard as to whether or not the funds to be transferred are actually savings in the item from which the same are to be taken, or whether or not the transfer is for the purpose of augmenting the item to which said transfer is to be made. It does not only completely disregard the standards set in the fundamental law, thereby amounting to an undue delegation of legislative powers, but likewise goes beyond the tenor thereof. Indeed, such constitutional infirmities render the provision in question null and void.

Clearly and indubitably, the prohibition against the transfer of appropriations is the general rule. Consequently, the payment of the *Magna Carta* benefits for CY 2001 without a specific item or provision in the GAA and without due authority from the President to utilize the DOST's savings in other items for the purpose was repugnant to R.A. No. 8439, the Constitution, and the re-enacted GAA for 2001.

The COA is endowed with sufficient latitude to determine, prevent, and disallow the irregular, unnecessary, excessive, extravagant, or unconscionable expenditures of government funds. It has the power to ascertain whether public funds were utilized for the purposes for which they

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[18] Section 16. x x x

[5] No law shall be passed authorizing any transfer of appropriations; however, the President, the Prime Minister, the Speaker, the Chief Justice of the Supreme Court, and the heads of constitutional commission may by law be authorized to augment any item in the general appropriations law for their respective offices from savings in other items of their respective appropriations.

[19] Section 16(5) of Article VIII of the 1973 Constitution is similar to Section 25(5) of Article VI of the current Constitution.

had been intended by law. The "Constitution has made the COA the guardian of public funds, vesting it with broad powers over all accounts pertaining to government revenue and expenditures and the uses of public funds and property, including the exclusive authority to define the scope of its audit and examination, to establish the techniques and methods for such review, and to promulgate accounting and auditing rules and regulations".[20] Thus, the COA is generally accorded complete discretion in the exercise of its constitutional duty and responsibility to examine and audit expenditures of public funds, particularly those which are perceptibly beyond what is sanctioned by law. Verily, the Court has sustained the decisions of administrative authorities like the COA as a matter of general policy, not only on the basis of the doctrine of separation of powers but also upon the recognition that such administrative authorities held the expertise as to the laws they are entrusted to enforce.[21] The Court has accorded not only respect but also finality to their findings especially when their decisions are not tainted with unfairness or arbitrariness that would amount to grave abuse of discretion.[22]

Only when the COA has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, may the Court entertain and grant a petition for *certiorari* brought to assail its actions.[23] Section 1 of Rule 65,[24] *Rules of Court*, demands that the petitioner must show that, *one*, the tribunal, board or officer exercising judicial or quasi-judicial functions acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction, and, *two*, there is neither an appeal nor any plain, speedy and adequate remedy in the ordinary course of law for the purpose of amending or nullifying the proceeding. Inasmuch as the sole office of the writ of *certiorari* is the correction of errors of jurisdiction, which includes the commission of grave abuse of discretion amounting to lack of jurisdiction, the petitioner should establish that the COA gravely abused its discretion. The abuse of discretion must be grave, which means either that the judicial or quasi-judicial power was exercised in an arbitrary or despotic manner by reason of passion or personal hostility, or that the respondent judge, tribunal or board evaded a positive duty, or virtually refused to perform the duty enjoined or to act in contemplation of law, such as when such judge, tribunal or board exercising judicial or quasi-judicial powers acted in a capricious or

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[20] *Yap vs. Commission on Audit*, G.R. No. 158562, April 23, 2010, 619 SCRA 154, 167-168.

[21] *Cuerdo v. Commission on Audit*, No. L-84592, October 27, 1988, 166 SCRA 657, 661; *Tagum Doctors Enterprises v. Apsay*, G.R. No. 81188, August 30, 1988, 165 SCRA 154.

[22] *Sanchez v. Commission on Audit*, G.R. No. 127545, April 23, 2008, 552 SCRA 471, 489.

[23] *Reyes v. Commission on Audit*, G.R. No. 125129, March 29, 1999, 305 SCRA 512, 517.

[24] Section 1. *Petition for certiorari*. — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46. (1a)

whimsical manner as to be equivalent to lack of jurisdiction.[25] Mere abuse of discretion is not enough to warrant the issuance of the writ.[26]

The petitioner dismally failed to discharge her burden. We conclude and declare, therefore, that the COA's assailed decision was issued in steadfast compliance of its duty under the Constitution and in the judicious exercise of its general audit power conferred to it by the Constitution.

Nonetheless, the Court opines that the DOST officials who caused the payment of the *Magna Carta* benefits to the covered officials and employees acted in good faith in the honest belief that there was a firm legal basis for the payment of the benefits. Evincing their good faith even after receiving the NDs from the COA was their taking the initiative of earnestly requesting the OP for the authorization to use the DOST's savings to pay the *Magna Carta* benefits. On their part, the DOST covered officials and employees received the benefits because they considered themselves rightfully deserving of the benefits under the long-awaited law.

The Court declares and holds that the disallowed benefits received in good faith need not be reimbursed to the Government. This accords with consistent pronouncements of the Court, like that issued in *De Jesus v. Commission on Audit*,[27] to wit:

> Nevertheless, our pronouncement in *Blaquera v. Alcala*[28] supports petitioners' position on the refund of the benefits they received. In *Blaquera*, the officials and employees of several government departments and agencies were paid incentive benefits which the COA disallowed on the ground that Administrative Order No. 29 dated 19 January 1993 prohibited payment of these benefits. While the Court sustained the COA on the disallowance, it nevertheless declared that:
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> > 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.
> >
> > This ruling in *Blaquera* applies to the instant case. Petitioners here received the additional allowances and bonuses in good faith under the honest belief that LWUA Board Resolution No. 313 authorized such payment. At the

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25 *Delos Santos v. Metropolitan Bank and Trust Company*, G.R. No. 153852, October 24, 2012; *United Coconut Planters Bank v. Looyuko*, G.R. No. 156337, September 28, 2007, 534 SCRA 322, 331.

26 *Tan v. Antazo*, G.R. No. 187208, February 23, 2011, 644 SCRA 337, 342.

27 451 Phil. 812 (2003).

28 G.R. No. 109406, 11 September 1998, 295 SCRA 366.

> time petitioners received the additional allowances and bonuses, the Court had not yet decided *Baybay Water District [v. Commission on Audit].*[29] Petitioners had no knowledge that such payment was without legal basis. Thus, being in good faith, petitioners need not refund the allowances and bonuses they received but disallowed by the COA.

Also, in *Veloso v. Commission on Audit*,[30] the Court, relying on a slew of jurisprudence,[31] ruled that the recipients of the disallowed retirement and gratuity pay remuneration need not refund whatever they had received:

> **x x x because all the parties acted in good faith. In this case, the questioned disbursement was made pursuant to an ordinance enacted as early as December 7, 2000 although deemed approved only on August 22, 2002. The city officials disbursed the retirement and gratuity pay remuneration 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 reward.**

WHEREFORE, the Court **DISMISSES** the petition for *certiorari* for lack of merit; **AFFIRMS** the decision issued on June 4, 2009 by the Commission Proper of the Commission on Audit in COA Case No. 2009-045; and **DECLARES** that the covered officials and employees of the Department of Science and Technology who received the *Magna Carta* benefits for calendar year 2001 are not required to refund the disallowed benefits received.

No pronouncement on costs of suit.

SO ORDERED.

LUCAS P. BERSAMIN
Associate Justice

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[29] 425 Phil. 326 (2002).

[30] G.R. No. 193677, September 6, 2011, 656 SCRA 767, 782.

[31] To wit: *Singson v. Commission on Audit*, G.R. No. 159355, August 9, 2010, 627 SCRA 36; *Molen, Jr. v. Commission on Audit,* 493 Phil. 874 (2005); *Querubin v. Regional Cluster Director, Legal and Adjudication Office, COA Regional Office VI, Pavia, Iloilo City,* G.R. No. 159299, July 7, 2004, 433 SCRA 769; *De Jesus v. Commission on Audit*, 466 Phil. 912 (2004); *Philippine International Trading Corporation v. Commission on Audit*, 461 Phil. 737 (2003).

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice

ANTONIO T. CARPIO
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

MARIANO C. DEL CASTILLO
Associate Justice

ROBERTO A. ABAD
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

(ON LEAVE)
JOSE CATRAL MENDOZA
Associate Justice

BIENVENIDO L. REYES
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

MARVIC MARIO VICTOR F. LEONEN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VII 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.

MARIA LOURDES P. A. SERENO
Chief Justice