Republic of the Philippines
Supreme Court
Manila

EN BANC

DEVELOPMENT BANK OF THE PHILIPPINES, Petitioner,	**G.R. No. 202733**
	Present:
- *versus* -	SERENO,[*] *C.J.*, CARPIO,[**] VELASCO, JR., LEONARDO-DE CASTRO, BRION, PERALTA, BERSAMIN, DEL CASTILLO, VILLARAMA, JR., PEREZ,[*] MENDOZA, REYES, PERLAS-BERNABE,[*] LEONEN, and JARDELEZA,[***] *JJ.*
COMMISSION ON AUDIT, JANEL D. NACION, Director IV, Legal Services Sector of COA, and the Supervising Auditor of the Development Bank of the Philippines, Respondents.	**Promulgated:** SEPTEMBER 30, 2014

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D E C I S I O N

PERALTA, *J.*:

Before the Court is a petition for *certiorari* under Rule 65 in relation to Rule 64 of the Rules of Court, seeking to reverse and set aside Decision No. 2011-055[1] and Resolution No. 2012-099,[2] dated August 17, 2011 and July 12, 2012, respectively, of the Commission on Audit (*COA*).

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[*] On official leave.
[**] Acting Chief Justice.
[***] No part.
[1] Signed by Commissioner Ma. Gracia M. Pulido Tan, Chairperson, with Commissioners Juanito G. Espino, Jr. and Heidi L. Mendoza, concurring; *rollo*, pp. 36-41.
[2] *Id.* at 42-44.

The antecedent facts are as follows:

On April 5, 2005, the Corporate Auditor of the Development Bank of the Philippines (*DBP*), Adela L. Dondonilla, issued Audit Observation Memorandum No. HO-BOD-AO-2004-002,[3] noting that the following foreign travels of former DBP Chairman Vitaliano N. Nañagas II and former Director Eligio V. Jimenez were not cleared by the Office of the President as required by Section 1 of Administrative Order (*AO*) No. 103 (Directing the Continued Adoption of Austerity Measures in the Government) dated August 31, 2004:

Name	Country	Period
Chairman Vitaliano N. Nañagas II	Vietnam Japan Japan and Hongkong	October 5-9, 2004 October 18-23, 2004 November 1-7, 2004
Director Eligio V. Jimenez	USA	October 1-29, 2004

On March 28, 2006, the DBP Assistant Corporate Secretary, Maria L. Ramos, submitted its comments and actions taken on said foreign travels and stated that while the same did not have prior clearance from the Office of the President, they were made in good faith and in the discharge of the duties, functions, and responsibilities as directors of the Bank.[4]

On April 4, 2007, the DBP Supervising Auditor, Hilconeda P. Abril, issued Notice of Disallowance No. BOD-2006-003 (2005) disallowing the amount of ₱1,574,121.62 consisting of ₱678,992.76 and ₱895,128.86 for the reimbursement of travel expenses of Chairman Nañagas and Director Jimenez, respectively, on the basis of the absence of clearance thereon from the Office of the President.[5]

On October 10, 2007, Director Jimenez requested for a reconsideration of the disallowance arguing that the questioned travel took place before the effectivity of AO No. 103, at a time when presidential approval was not required. In support thereof, he submitted a copy of an Opinion dated September 23, 2007, issued by then Chief Presidential Legal Counsel, Sergio A. F. Apostol, the pertinent portions of which reads:

> **The law in force at the time of the said travel was Executive Order No. 298** dated March 23, 2004 which PRESCRIBES RULES AND REGULATIONS AND NEW RATES OF ALLOWANCES FOR

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3 *Id*. at 45-48.
4 *Id*. at 49-56.
5 *Id*. at 57.

> OFFICIAL LOCAL AND FOREIGN TRAVELS OF GOVERNMENT PERSONNEL. This E.O. amended the first paragraph of Section 5 of Executive Order 248. Therefore, the second paragraph of Section 5 of E.O. 248 remains the same and reads:
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> > For purposes of this Order, **approval of travels** of officials and employees of government-owned and/or controlled corporations and financial institutions that will last for not more than one (1) calendar month **shall be subject to the policies, rules and regulations that will be adopted by their respective governing Boards**, and by the Secretary of the Interior and Local Government in the case of officials and employees of local government units.
> >
> > x x x
> >
> > Therefore, **if at the time of the official travel of Mr. Vitaliano N. Nañagas II and Mr. Egilio V. Jimenez, the rules, policies and regulations of the governing board of the Development Bank of the Philippines allowed them to charge their travel expenses in their respective travel allowance as well as travel without the consent of the President of the Philippines, then such claims for reimbursements must be honored**.[6]

In addition to the Opinion cited above, Chairman Nañagas also asserted in his Appeal Brief/Memorandum dated October 3, 2007 that the disallowed disbursement is not a liquidation of a prior travel cash advance but, rather, a reimbursement of expenses chargeable against an expense allowance to which all members of the DBP Board are entitled. Moreover, he invoked the denial of due process since the disallowance was arrived at without giving him opportunity to address any negative audit observation before the same ripened into a disallowance.[7]

In a letter dated October 30, 2007, Supervising Auditor Abril denied the Motion for Reconsideration filed by Jimenez on the ground that Section 5 of E.O. No. 248 is under Title I: Official Local Travel of Government Personnel, which is inapplicable to the case at bar. Thereafter, on January 31, 2008, she submitted her Answer to the appeal of Chairman Nañagas arguing that his appeal did not address the substance of the disallowance, to which he replied reiterating his arguments in his appeal.[8]

On October 13, 2009, the Legal Services Sector of the COA rendered LSS Decision No. 2009-334[9] denying the appeal of Chairman Nañagas. It held that notwithstanding the DBP's exemption from the Salary Standardization Law, it is still required to comply with administrative

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6 *Id*. at 58-59. (Emphasis ours; citations omitted)
7 *Id*. at 37.
8 *Id*. at 38.
9 *Id*. at 65-70.

directives, such as the AO No. 103, which was clearly violated when the DBP directors travelled abroad without prior approval of the Office of the President. Moreover, contrary to Chairman Nañagas' contention, the LSS found that there was no denial of due process since before the Notice of Disallowance was issued, the DBP Supervising Auditor, through the Audit Observation Memorandum, informed the DBP Directors of their foreign travels without the required clearance and gave the parties concerned a chance to explain, as reflected in the comments of DBP's Assistant Corporate Secretary.

Consequently, Chairman Nañagas filed a Motion for Reconsideration on November 23, 2009, which was consolidated and resolved by the COA together with the Petition for Review[10] filed by the DBP on February 23, 2010. In its Decision[11] dated August 17, 2011, the COA denied petitioner's appeals and ruled that while EO No. 248,[12] as amended by EO No. 298,[13] likewise applies to the foreign travels in question, prior approval of the President is nonetheless required since the applicable provision in the case at hand is Section 8 of the said orders, not Section 5, as opined by the Chief Presidential Legal Counsel. Hence, in consonance with said Section 8 of EO No. 248, as amended by EO No. 298, the COA ruled in the following wise:

> In his September 23, 2007 opinion, Chief Presidential Legal Counsel Apostol said that Section 5 of EO No. 248, as amended by EO No. 298, provides that approval of travels of officials and employees of GOCCs lasting not more than one calendar month shall be subject to policies, rules and regulations adopted by their respective governing boards.
>
> **However, the said Section 5 of EO No. 248 covers official <u>domestic</u> travels only. Official foreign travels are governed by Title II of EO No. 248, Section 8 of which expressly requires prior approval by the President of all official travels abroad of Department Secretaries, Undersecretaries, Assistant Secretaries, heads, senior assistant heads and assistant heads of GOCCS.**
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> x x x x
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> **Actually, the reimbursement referred to by Secretary Apostol was made dependent on his view that the foreign travels did not require prior presidential approval supposedly pursuant to the second paragraph of Section 5, EO No. 248. But as earlier discussed, such view is erroneous as it cited the wrong provision of EO No. 248, which**

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10 *Id*. at 71-83.

11 *Id*. at 36-41.

12 Executive Order No. 248, Prescribing Rules and Regulations and New Rates of Allowances for Official and Foreign Travels of Government Personnel (May 29, 1995).

13 Executive Order No. 298, Amending Further Executive Order No. 248 dated May 29, 1995 as Amended by Executive Order No. 248-A dated August 14, 1995, which Prescribes Rules and Regulations and New Rates of Allowances for Official Local and Foreign Travels of Government Personnel (March 23, 2004).

> **governed domestic travels. Since the foreign travels of Chairman Nañagas II and Director Jimenez required presidential approval, necessarily all expenses incurred in connection therewith which were reimbursed to them during said travels should also be considered as unauthorized by the President, although these expenses may have the approval by the DBP Board of Directors.[14]**

Moreover, the COA refused to consider petitioner's invocation of good faith given the sheer clarity of the applicable law, which clearly differentiated local travels in Title I thereof from foreign travels in Title II. According to the COA, petitioner's senior officials could not have mistaken one for the other as they are expected to update their knowledge on whatever laws that may affect the performance of their functions.

In a Resolution[15] dated July 12, 2012, the COA further denied petitioner's Motion for Reconsideration and added that the Opinion of the Chief Presidential Legal Counsel cannot be equated to the required presidential approval, since the same is not a definitive decision which sufficiently excluded DBP officials from the required clearance.

Unfazed, petitioner filed the instant petition before this Court raising the following grounds:

> I.
> PUBLIC RESPONDENT COMMISSION ON AUDIT GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DENYING DBP'S PETITION FOR REVIEW FOR NO LESS THAN THE CHIEF PRESIDENTIAL LEGAL COUNSEL HAD ISSUED AN OPINION THAT THE CLEARANCE OF THE PRESIDENT IS NOT REQUIRED IN THE FOREIGN TRAVELS OF MESSRS. NAÑAGAS AND JIMENEZ. THE OPINION OF THE CHIEF PRESIDENTIAL LEGAL COUNSEL, A CABINET SECRETARY AND AN ALTER-EGO OF THE PRESIDENT, SHOULD BE ACCORDED CONSIDERABLE WEIGHT AND RESPECT.
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> II.
> ASSUMING THE NECESSITY OF PRESIDENTIAL APPROVAL ON FOREIGN TRAVELS OF GFI OFFICIALS, THE OPINION OF THE CHIEF PRESIDENTIAL LEGAL COUNSEL MAY BE DEEMED TO BE THE ACT OF THE PRESIDENT IN EXCUSING THE OFFICIALS CONCERNED FROM THE REQUIREMENTS OF THE SUBJECT ADMINISTRATIVE ISSUANCES.
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> III.
> THE PURPORTED MISTAKEN INTERPRETATION ON THE NECESSITY OF A PRESIDENTIAL CLEARANCE COMMITTED BY THE CHIEF PRESIDENTIAL LEGAL COUNSEL, WHO IS

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14 *Rollo*, pp. 39-40. (Emphasis ours; citations omitted)
15 *Id*. at 42-44.

KNOWLEDGEABLE OF VARIOUS PRESIDENTIAL ISSUANCES, ONLY SHOWS THAT DBP OFFICIALS, WHO ARE EXPECTED TO KNOW THE ADMINISTRATIVE ISSUANCES AFFECTING THEIR FUNCTIONS ARE VULNERABLE TO COMMITTING THE SAME MISTAKE IN GOOD FAITH.

IV.

THE FOREIGN TRAVELS OF MESSRS. NAÑAGAS AND JIMENEZ REDOUNDED TO THE BENEFIT OF THE BANK AND THE COUNTRY AS WELL. COMPELLING THE REFUND OF THE AMOUNT SUBJECT OF THE DISALLOWANCE WOULD BE UNFAIR, UNJUST AND ABSURD.

Petitioner contends that since the law in force at the time of travel was EO No. 248, as amended by EO No. 298, as opined by the Chief Presidential Legal Counsel, there was no need to secure prior clearance from the President on the respective travels as provided by Section 5 thereof.

Petitioner's argument is misplaced.

Section 5 under Title I of EO No. 248, as amended by EO No. 298, provides:

TITLE I: OFFICIAL **LOCAL** TRAVEL OF GOVERNMENT PERSONNEL

x x x x

Section 5. Approval of Travel and Payment of Travel Expenses. Travels of officials and employees of National Government Agencies for less than thirty (30) days and payment of travel expenses therefore shall be approved by the head of office/bureau or equivalent. Travels that will last thirty (30) days or more and payment of travel expenses therefore shall be approved by the Department Secretary or his equivalent. The approval of the Department Secretary concerned shall be construed as equivalent to the approval of the Secretary of Budget and Management.

For purposes of this Order, approval of travel of officials and employees of government-owned and/or controlled corporations and financial institutions that will last for not more than one (1) calendar month shall be subject to the policies, rules and regulations that will be adopted by their respective governing Boards, and by the Secretary of the Interior and Local Government in the case of officials and employees of local government units.[16]

It is clear from the above that Section 5 of the subject Executive Order pertains to local travels of government employees and not to the foreign

[16] *Supra* notes 12 and 13. (Emphasis ours)

travels of the DBP officials herein. Accordingly, as correctly observed by respondent COA, the provision applicable to the case at hand is not Section 5, as asserted by petitioner, but Section 8 under Title II, EO No. 248, as amended by EO No. 298, which provides:

> TITLE II: OFFICIAL TRAVEL **ABROAD** OF GOVERNMENT PERSONNEL
>
> SECTION 8. APPROVAL OF THE PRESIDENT. All official travels **abroad** of Department Secretaries, Undersecretaries, Assistant Secretaries, heads, senior assistant heads and assistant heads of government-owned and/or controlled corporations and **financial institutions,** and heads of local government units like Provincial Governors and Mayors of highly urbanized cities or independent component cities, and other officials of equivalent rank whose nature of travel falls under the categories prescribed in this Order **shall be subject to the prior approval of the President of the Philippines**. All other positions concerned shall be with prior approval of their respective Department Secretaries and their equivalent; *Provided*, That, travel that will last for more than one (1) calendar month shall also be subject to the approval of the President of the Philippines.
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> For this purpose, official foreign travel that will last for one (1) calendar month and below of other officials and employees of government-owned and/or controlled corporations and financial institutions shall be approved by the Department Secretaries or their equivalent to which such government-owned and/or controlled corporations and financial institutions are attached, and by the Secretary of the Interior and Local Government in the case of other officials and employees of local government units.
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> Prior clearance from the Office of the president shall also be required for foreign trips of delegations or groups of two or more persons regardless of the rank of participants.[17]

The language of the aforequoted section appears to be quite explicit that all official travels abroad of heads of financial institutions, such as the DBP officials herein, are subject to prior approval of the President, regardless of the duration of the subject travel.

It is rather evident, therefore, that EO No. 248, as amended by EO No. 298, is clear and precise and leaves no room for interpretation. We agree with respondent COA in finding that the subject orders clearly distinguished local from foreign travels by specifically placing them in separate titles. Indeed, where the words of a statute are clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted

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17 *Id*. (Emphasis ours)

interpretation.[18] Thus, EO No. 248, as amended by EO No. 298, should be applied according to its express terms, and interpretation would be resorted to only where a literal interpretation would be either impossible or absurd or would lead to an injustice. Verily, while the opinion of the Chief Presidential Legal Counsel is accorded great weight and respect, this Court will not hesitate to set the same aside as it is clearly erroneous; the law it attempts to interpret having no ambiguity, easily understandable to any ordinary reader.[19]

The above, notwithstanding, petitioner argues that assuming the necessity of presidential approval of foreign travels, the opinion of the Chief Presidential Legal Counsel may be deemed as an act which excuses the concerned DBP officials from the requirements imposed by the subject orders. Stated differently, petitioner asserts that the President had effectively given its approval when the Chief Presidential Legal Counsel issued its opinion.

A reading of said opinion, however, negates the contention of petitioner. In the first place, the particular provision on which the opinion is based is erroneous. As earlier discussed, while the same was able to cite the applicable law, it applied the wrong section thereof. In the second place, nowhere in the Presidential Counsel's opinion was it stated, either expressly or impliedly, that the travels of the DBP officials concerned were exempt from the requirements of the law. In fact, it even conditioned its ruling on what may be required by the law's particular, albeit incorrect, provision, in stating that if at the time of travel, the rules of the DBP allow the reimbursement of travel expenses without prior consent of the President thereon, then petitioner's claims must be honored.[20] Had the Presidential Counsel intended that its opinion be deemed as the required prior presidential approval, despite the fact that it was rendered almost three (3) years after the travels in question, it should have declared the same therein. Hence, in the absence of any indication in the Presidential Counsel's opinion intending to exempt the DPB officials from the requirements of the law, We refrain from sustaining petitioner's argument. The belated issuance of an erroneous opinion cannot be deemed to have effectively cured the defect in the subject foreign travels.

In an effort to recover from its non-compliance with the requirements of the law, petitioner invoked good faith as a defense due to the fact that it was faced with a doubtful or difficult question of law on which even the Presidential Counsel erred.

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[18] *Vicencio v. Hon. Villar*, G.R. No. 182069, July 03, 2012, 675 SCRA 468, 480, citing *National Federation of Labor v. National Labor Relations Commission*, 383 Phil. 910 (2000).

[19] *Nieves v. Blanco*, G. R. No. 190422, June 19, 2012, 673 SCRA 638, 645-646, citing *Melendres, Jr. v. Commission on Elections*, 377 Phil. 275, 291 (1999).

[20] *Rollo*, p. 15.

In support thereof, petitioner cited a string of cases[21] wherein we held that disallowed benefits need not be refunded to the government for having been received in good faith. In said cases, petitioners therein received benefits aside from their *per diem* compensation at a time when the validity of the payment thereof was still questionable. Because of their honest belief that they were entitled to the same, We ruled against the refund of the benefits received.[22]

We, however, agree with respondent COA in ruling that petitioner cannot find solace in the defense of good faith since not only are senior government officials, such as the petitioner's concerned officials herein, expected to update their knowledge on laws that may affect the performance of their functions, but the laws subject of this case are of such clarity that the concerned officials could not have mistaken one for the other. Unlike in the cases cited by the petitioner, there exists no question as to the applicability nor validity of the law herein.

Understanding the subject EO No. 248, as amended by EO No. 298, does not require a highly specialized knowledge of the law. The fact that it specifically separated local travels in Title I thereof from foreign travels in Title II leads to the logical conclusion that there are pertinent differences distinguishing one from the other. Had petitioner exerted some effort and diligence in reading the applicable law in full, it would not have missed the requirement imposed on foreign travels. We find it rather difficult to believe that officials holding positions of such rank and stature, as Chairman Nañagas and Director Jimenez in this case, would fail to comply with a plain and uncomplicated order, which has long been in effect as early as 1995, almost a decade before their respective travels.

We also find it quite impossible that petitioner approved the foreign travels honestly believing in the interpretation of the Presidential Counsel for said opinion was clearly issued three (3) years after the travels in question. Simply put, at the time when the concerned officials travelled abroad, there was no opinion to speak of. Had petitioner truly been as prudent as it claims, it should have exercised caution and sought the opinion of the Presidential Counsel prior to the DBP officials' travels. Thus, while there may be no findings of bad faith or malice in the actuations of petitioner, the same were conducted in such a careless and irresponsible manner tantamount to gross negligence. Consequently, We cannot deem this

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[21] Petition, *id*. at 22-23, citing *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).

[22] *Id*.

blatant disregard of the law as a mere lapse consistent with the presumption of good faith.

Hence, when government officials are found to have clearly committed an outright violation and disregard of the law, We will not hesitate in ordering the refund of incentive awards and allowances[23] for while the acts of public officials in the performance of their duties are presumed to be done in good faith, the presumption may be contradicted and overcome by evidence showing bad faith or gross negligence.[24]

Viewed in the foregoing light, since the disallowance was made pursuant to applicable law, this Court cannot find grave abuse of discretion on the part of respondent COA as its affirmance of Notice of Disallowance No. BOD-2006-003 (2005) was based on cogent legal grounds.

WHEREFORE, premises considered, the instant petition is **DENIED**. Decision No. 2011-055 and Resolution No. 2012-099, dated August 17, 2011 and July 12, 2012, respectively, of the Commission on Audit, are hereby **AFFIRMED**.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

On official leave
MARIA LOURDES P. A. SERENO
Chief Justice

ANTONIO T. CARPIO
Associate Justice
Acting Chief Justice

PRESBITERO J. VELASCO, JR.
Associate Justice

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[23] *Executive Director Casal v. Commission on Audit*, 538 Phil. 634 (2006); *Manila International Airport Authority v. Commission on Audit*, G.R. No. 194710, February 14, 2012, 665 SCRA 653; *Philippine Economic Zone Authority (PEZA) v. Commission on Audit*, G.R. No. 189767, July 3, 2012, 675 SCRA 513.

[24] *Philippine Agila Satellite Inc. v. Usec. Trinidad Lichauco*, 522 Phil. 565, 585 (2006).

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

ARTURO D. BRION
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

On official leave
JOSE PORTUGAL PEREZ
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

BIENVENIDO L. REYES
Associate Justice

On official leave
ESTELA M. PERLAS-BERNABE
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

No part
FRANCIS H. JARDELEZA
Associate Justice

CERTIFICATION

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

ANTONIO T. CARPIO
Acting Chief Justice