CHANROBLES PUBLISHING COMPANY

SUPREME COURT
EN BANC

HOME DEVELOPMENT MUTUAL FUND,
***Petitioner*,**

-versus-

G.R. No. 142297
June 15, 2004

COMMISSION ON AUDIT,
***Respondent*.**
x----------x

D E C I S I O N

AZCUNA, *J.*:

Before us is a Petition for Certiorari under Rule 65 of the Rules of Court alleging that the Commission on Audit acted in excess of its jurisdiction or with grave abuse of discretion amounting to lack of jurisdiction in issuing Resolution No. 2000-086 dated March 7, 2000, which affirmed COA Decision No. 98-245 dated June 16, 1998. COA Decision No. 98-245 affirmed the audit disallowance of payment of productivity incentive bonus by petitioner Home Development Mutual Fund (HDMF) to its personnel pursuant to Republic Act No. 6971, otherwise known as the "Productivity Incentives Act of 1990."

The facts are as follows:

Republic Act No. 6971, "An Act to Encourage Productivity and Maintain Industrial Peace by Providing Incentives to Both Labor and

Capital," was approved on November 22, 1990, and took effect on December 9, 1990.

Section 3 of said Act states:

> Sec. 3. Coverage.-- This Act shall apply to all business enterprises with or without existing and duly recognized or certified labor organizations, including government-owned and controlled corporations performing proprietary functions. It shall cover all employees and workers including casual, regular, supervisory and managerial employees.

The Secretary of Labor and Employment and the Secretary of Finance promulgated the Rules Implementing Republic Act No. 6971[1] on June 4, 1991. Rule II of said implementing rules provides:

> Section 1. Coverage. These Rules shall apply to:
>
> > (a) All business enterprises with or without existing duly recognized or certified labor organizations, including government-owned and controlled corporations performing proprietary functions;
> >
> > (b) All employees and workers including casual, regular, rank-and-file, supervisory and managerial employees.

On November 21, 1991, petitioner HDMF granted Productivity Incentive Bonus equivalent to one month salary plus allowance to all its personnel pursuant to Republic Act No. 6971, and its Implementing Rules.[2]

The HDMF granted said bonus despite the advice on August 26, 1991 of Undersecretary Salvador Enriquez of the Department of Budget and Management (DBM) to all government-owned and controlled corporations (GOCCs) and government financial institutions (GFIs) with original charters performing proprietary functions to defer payment of the productivity incentive bonus to their employees, pending the issuance of a definite ruling by the Office of the President on the matter.[3]

On December 27, 1991, the Department of Labor and Employment and the Department of Finance issued the Supplemental Rules Implementing Republic Act No. 6971, which provides, thus:

> Section 1.—Paragraph (a) Section 1, Rule II of the Rules Implementing RA 6971, shall be amended to read as follows:
>
> Coverage. These Rules shall apply to:
>
> > (a) All business enterprises with or without existing duly certified labor organizations including government-owned and controlled corporations performing proprietary functions which are established solely for business or profit or gain and accordingly excluding those created, maintained or acquired in pursuance of a policy of the state, enunciated in the constitution or by law, and those whose officers and employees are covered by the Civil Service. *(Emphasis supplied.)*

On November 29, 1996, the grant of productivity incentive bonus to the HDMF personnel in the total amount of P5,136,710.91 was disallowed in audit under Notice of Disallowance No. 96-006-101 (91).[4] The disallowance was based on COA Decision No. 96-288, dated June 4, 1996, stating that Republic Act No. 6971 does not apply to government-owned or controlled corporations or to government financial institutions with original charters performing proprietary functions, such as the HDMF.[5]

In a letter-request dated May 28, 1997, HDMF, through its President and Chief Executive Officer, Zorayda Amelia C. Alonzo, requested for the lifting of the disallowance.[6] Alonzo argued that Republic Act No. 6971 applies to the employees of HDMF since the coverage of the said law includes government-owned and controlled corporations performing proprietary functions, and the supplemental rules excluding it from coverage was issued after the HDMF had already granted the productivity incentive bonus to its employees.

In its Decision No. 98-245[7] dated June 16, 1998, the Commission on Audit affirmed the audit disallowance. It ruled, thus:

x x x x x x x x x

Appellant (petitioner herein) further averred that while the Supplemental Rules Implementing R.A. No. 6971 issued by the Department of Labor and Employment and the Department of Finance dated December 27, 1991, exclude from the coverage of R.A. No. 6971 GOCCs whose officers and employees are covered by the Civil Service Law (like the HDMF), payment of the incentive bonus have been effected prior to the issuance of the said supplemental rules. Simply stated, it is the position of the appellant that the supplemental rules should not be given retroactive effect.

The Commission finds the appellant's arguments untenable. It must be noted that the grant of the Productivity Incentive Bonus was made on November 21, 1991 or after receipt of the advice of the Department of Budget and Management Undersecretary dated August 26, 1991 to defer payment of Productivity Incentive Bonus to all GOCCs/GFIs with original charters performing proprietary functions, pending definite ruling of the Office of the President. Despite the said notice, management proceeded with the payment.

Likewise, the issue as to whether or not GOCCs/GFIs with original charters which are performing proprietary functions are covered by R.A. No. 6971 had been resolved by the Secretary of Justice in his letter dated November 8, 1995, stating that GOCCs with original charter, being covered by the Civil Service Law, and not by the labor laws, are clearly outside the ambit of R.A. No. 6971.

Verily, the grant of the incentive bonus is contrary to the Supplemental Rules Implementing R.A. No. 6971 issued by the Department of Labor and Employment and the Department of Finance dated December 27, 1991, portion of which pertinently reads as follows:

> 'All business enterprises established solely for business of profit or gain and accordingly, excluding those created,

maintained or acquired in pursuance of a policy of the state, enunciated in the constitution or by law, and those whose officers and employees are covered by the Civil Service (underscoring supplied).'

Moreover, the issue raised by the appellant that the supplemental rules excluding GOCCs/GFIs from the coverage of R.A. No. 6971 should not be given retroactive effect is not tenable since the HDMF from the very beginning is not covered by the aforesaid law.

Premises considered, the audit disallowance is hereby affirmed, and the refund of the amount of P5,136,710.91 granted as Productivity Incentive Bonus to HDMF personnel based on the provisions of R.A. No. 6971 shall be enforced accordingly.

HDMF filed a motion for reconsideration that was denied by the Commission on Audit in Resolution No. 2000-086 dated March 7, 2000.[8]

Hence, this petition.

Petitioner raises three issues:[9]

1. What is the applicable rule at the time of the grant of the Productivity Incentive Bonus?

2. Whether the Memorandum from the Department of Finance signed by Secretary Jesus P. Estanislao dated January 16, 1992 constitutes appropriate authorization for the grant of Productivity Incentive Allowance for 1991.

3. Whether the Supplemental Implementing Rules are valid? If so, whether it may be given retroactive effect?

Petitioner contends that when it granted the productivity incentive bonus to its personnel on November 21, 1991, no other rule but the Implementing Rules of Republic Act No. 6971 dated June 4, 1991 was in existence. Said Rule includes in its coverage government-owned and controlled corporations performing proprietary functions,

without any qualification. The Supplementary Rules, which excluded petitioner from coverage, was issued only after it had already granted the productivity incentive bonus to its personnel. Hence, the employees already acquired a vested right over the productivity incentive bonus.

The contention is without merit.

Association of Dedicated Employees of the Philippine Tourism Authority (ADEPT) vs. Commission on Audit, [295 SCRA 366 (1998)][10], held that the legislature intended Republic Act No. 6971 to cover only government-owned and controlled corporations incorporated under the general corporation law, thus:

Petitioner cites an entry in the journal of the House of Representatives to buttress its submission that PTA is within the coverage of RA 6971, to wit:

> "Chairman Veloso: The intent of including government-owned and controlled corporations within the coverage of the Act is the recognition of the principle that when government goes into business, it (divests) itself of its immunity from suit and goes down to the level of ordinary private enterprises and subjects itself to the ordinary laws of the land just like ordinary private enterprises. Now, when people work therefore in government-owned or controlled corporations, it is as if they are also, just like in the private sector, entitled to all the benefits of all laws that apply to workers in the private sector. In my view, even including the right to organize, bargain." VELOSO (Bicameral Conference committee on Labor and Employment, pp. 15-16).
>
> After a careful study, the Court is of the view, and so holds, that contrary to petitioner's interpretation, the government-owned and controlled corporations Mr. Chairman Veloso had in mind were government-owned and controlled corporations incorporated under the general corporation law. This is so because only workers in private corporations and government-owned and controlled corporations, incorporated under the general corporation law, have the right to bargain (collectively). Those in government corporations with special charter, which

are subject to Civil Service Laws, have no right to bargain (collectively), except where the terms and conditions of employment are not fixed by law. Their rights and duties are not comparable with those in the private sector.

Since the terms and conditions of government employment are fixed by law, government workers cannot use the same weapons employed by workers in the private sector to secure concessions from their employers. The principle behind labor unionism in private industry is that industrial peace cannot be secured through compulsion by law. Relations between private employers and their employees rest on an essentially voluntary basis. Subject to the minimum requirements of wage laws and other labor and welfare legislation, the terms and conditions of employment in the unionized private sector are settled through the process of collective bargaining. In government employment, however, it is the legislature and, where properly given delegated power, the administrative heads of government which fix the terms and conditions of employment. And this is effected through statutes or administrative circulars, rules and regulations, not through collective bargaining agreements. (Alliance of Government Workers vs. Minister of Labor and Employment, 124 SCRA 1).

The legislative intent to place only government-owned and controlled corporations performing proprietary functions under the coverage of RA 6971 is gleanable from the other provisions of the law. For instance, section 2 of said law envisions "industrial peace and harmony" and "to provide corresponding incentives to both labor and capital"; section 4 refers to "representatives of labor and management", section 5 mentions of "collective bargaining agent(s) of the bargaining unit(s); section 6 relates to "existing collective bargaining agreements," and "labor and management"; section 7 speaks of "strike or lockout"; and section 9 purports to "seek the assistance of the National Conciliation and Mediation Board of the Department of Labor and Employment" and "include the name(s) of the voluntary arbitrator or panel of voluntary arbitrators." All the aforecited provisions of law apply only to private corporations and government-owned and controlled corporations organized

> under the general corporation law. Only they have collective bargaining agents, collective bargaining units, collective bargaining agreements, and the right to strike or lockout. (Emphasis supplied.)

To repeat, employees of government corporations created by special charters have neither the right to strike nor the right to bargain collectively, as defined in the Labor Code. The case of Social Security System Employees Association [SSSEA] vs. Court of Appeals, 175 SCRA 686, indicates the following remedy of government workers not allowed to strike or bargain collectively, to wit:

> "*Government employees may, therefore, through their unions or associations, either petition the Congress for the betterment of the terms and conditions of employment which are within the ambit of legislation or negotiate with the appropriate government agencies for the improvement of those which are not fixed by law*. If there be any unresolved grievances, the dispute may be referred to the Public Sector Labor-Management Council for appropriate action. But employees in the civil service may not resort to strikes, walkouts and other temporary work stoppages, like workers in the private sector, to pressure the Government to accede to their demands." (supra, footnote 14, p. 698; italics ours)

It is a rule in statutory construction that every part of the statute must be interpreted with reference to the context, i.e., that every part of the statute must be considered together with the other parts, and kept subservient to the general intent of the whole enactment. The provisions of RA 6971, taken together, reveal the legislative intent to include only government-owned and controlled corporations performing proprietary functions within its coverage.

Petitioner is a government-owned and controlled corporation performing proprietary functions with original charter or created by special law, specifically Presidential Decree (PD) No. 1752,[11] amending PD No. 1530. As such, petitioner HDMF is covered by the Civil Service pursuant to Article IX, Section 2(1)[12] of the 1987 Constitution, and, therefore, excluded from the coverage of Republic Act No. 6971.

Since Republic Act No. 6971 intended to cover only government-owned and controlled corporations incorporated under the general corporation law, the power of administrative officials to promulgate rules in the implementation of the statute is necessarily limited to what is intended and provided for in the legislative enactment.[13] Hence, the Supplemental Rules clarified that government-owned and controlled corporations performing proprietary functions which are "created, maintained or acquired in pursuance of a policy of the state, enunciated in the constitution or by law, and those whose officers and employees are covered by the Civil Service" are excluded from the coverage of Republic Act No. 6971.

Therefore, even if petitioner HDMF granted the Productivity Incentive Bonus before the Supplemental Rules were issued clarifying that petitioner was excluded from the coverage of Republic Act No. 6971, the employees of HDMF did not acquire a vested right over said bonus because they were not entitled to it under Republic Act No. 6971.

Moreover, the DBM advised petitioner herein, HDMF, on August 26, 1991, to defer payment of the productivity incentive bonus to their employees, pending the issuance of a definite ruling by the Office of the President on the matter. Despite said advice, the Board of Trustees of HDMF opted to grant the said bonus on a voluntary basis as stated in its Resolution No. 91-549, Series of 1991.[14] It expressed its "concern over the welfare of the officers and employees of the Fund rather than adhering to the stringent technicality of the law." The Board, therefore, was aware that possibly HDMF may not be covered by Republic Act No. 6971. It should have exercised prudence by awaiting the definite ruling on the coverage to prevent legal problems.

Regarding the validity of the Supplemental Rules Implementing Republic Act No. 6971, ADEPT vs. Commission on Audit held that said rules issued by the Secretary of Labor and Employment and the Secretary of Finance were in accord with the intendment and provisions of Republic Act No. 6971.[15]

Petitioner further claims that it is covered by a memorandum,[16] dated January 16, 1992, which was allegedly issued by Secretary Jesus P. Estanislao, Department of Finance, stating that "as authorized by the President, the GFIs are to pay the traditional PIA at the year-end 1991, following the standard formulas that have been observed by the GFIs over the years." Petitioner raises as an issue whether or not said memorandum constitutes appropriate authorization for its grant of productivity incentive allowance for 1991.

Parenthetically, the decision of the Commission on Audit subject of the petition herein, never discussed the aforesaid memorandum. The same, in any case, cannot prevail over the law.

Petitioner finally asserts that its payment of the productivity incentive bonus to its personnel and the latter's acceptance of the same was in good faith and cites ADEPT vs. Commission on Audit as precedent against a refund of said bonus.

In ADEPT vs. Commission on Audit, docketed as G.R. No. 119597, the Court sustained the decision of the Commission on Audit affirming the disallowance by the Corporate Auditor of the productivity incentive bonus granted to ADEPT (an association of employees of the Philippine Tourism Authority) for calendar year 1992 pursuant to Republic Act No. 6971. ADEPT vs. Commission on Audit was consolidated with four other cases, which did not involve the application of Republic Act No. 6971. It was in the other cases, docketed as G.R. Nos. 109406, 110642, 111494 and 112056, that the Court enjoined further deductions from the salaries and allowances of petitioners therein.

In view of the foregoing, the respondent Commission on Audit did not commit grave abuse of discretion amounting to lack of jurisdiction in affirming the audit disallowance.

WHEREFORE, the petition is **DISMISSED**. Respondent Commission on Audit's Resolution No. 2000-086, dated March 7, 2000, which affirmed COA Decision No. 98-245, dated June 16, 1998, is hereby **AFFIRMED**.

Costs de oficio.

SO ORDERED.

Davide, Jr., *C.J.*, Puno, Panganiban, Quisumbing, Sandoval-Gutierrez, Carpio, Austria-Martinez, Carpio-Morales, Callejo, Sr., and Tinga, *JJ.*, concur.
Vitug and Corona, *JJ.*, on official leave.
Ynares-Santiago, *J.*, on leave.

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[1] Republic Act No. 6971, Sec. 10. Rule Making Power. The Secretary of Labor and Employment and the Secretary of Finance, after due notice and hearing, shall jointly promulgate and issue within six (6) months from the effectivity of this Act such rules and regulations as are necessary to carry out the provisions hereof.
[2] Rollo, p. 4.
[3] COA Decision No. 98-245, Rollo, p. 115.
[4] Annex "G," Rollo, p. 32.
[5] COA Decision No. 98-245, Rollo, p. 13.
[6] Rollo, p. 5.
[7] Annex "A," Rollo, p. 13.
[8] Annex "B," Rollo, p. 16.
[9] Rollo, p. 103.
[10] [295 SCRA 366 (1998)]
[11] Entitled "Amending the Act Creating the Home Development Mutual Fund."
[12] "The Civil Service embraces all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned and controlled corporations with original charters."
[13] ADEPT vs. Commission on Audit, supra, note 10, at 436.
[14] Annex "E," Rollo, p. 26:

APPROVAL FOR THE INITIAL PAYMENT OF
ONE (1) MONTH SALARY PLUS ALLOWANCES
FOR ALL OFFICERS AND EMPLOYEES OF
PAG-IBIG FUND PURSUANT TO
REPUBLIC ACT NO. 6971

RESOLVED: That in line with Republic Act No. 6971, otherwise known as the "Productivity Incentives Act of 1990" the Board hereby approves, as modified, the request of Labor-Management Committee (LMC) for the initial payment of the profit sharing, equivalent to one (1) month salary and allowances for the year 1991 to all officers and employees of the Fund x x x .

RESOLVED FURTHER: That the Board opted to grant the above request solely on a voluntary basis after taking into consideration the similar grant of other GFIs or GOCCs such as, the GSIS, SSS, DBP, PNB and NHMC. It has, therefore expressed its concern over the welfare of the officers and

employees of the Fund rather than adhering to the stringent technicality of the law;

RESOLVED FURTHERMORE: That the Board hereby authorizes Management to appropriate and set aside the necessary budgetary outlay for this purpose;

RESOLVED FINALLY: To authorize Management to issue and formulate the required guidelines for the implementation of this resolution.

APPROVED.

[15] ADEPT vs. Commission on Audit, supra, note 10, p. 436.

[16] Annex "C," Rollo, p. 117.

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