

## EN BANC

[ G.R. No. 213425, April 27, 2021 ]

**POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT CORPORATION (PSALM), REPRESENTED BY MR. EMMANUEL R. LEDESMA, JR., IN HIS CAPACITY AS PRESIDENT AND CHIEF EXECUTIVE OFFICER (CEO), AND THE CONCERNED AND AFFECTED OFFICERS OF PSALM, PETITIONERS, VS. COMMISSION ON AUDIT (COA), RESPONDENT.**

[G.R. No. 216606]

**POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT CORPORATION (PSALM), REPRESENTED BY MR. EMMANUEL R. LEDESMA, JR., IN HIS CAPACITY AS PRESIDENT AND CHIEF EXECUTIVE OFFICER (CEO), AND THE CONCERNED AND AFFECTED OFFICERS OF PSALM, PETITIONERS, VS. COMMISSION ON AUDIT (COA), RESPONDENT.**

**D E C I S I O N April 27, 2021 M. LOPEZ, J.:**

**LOPEZ, M., J.:**

Before this Court are the consolidated Petitions for *Certiorari*<sup>[1]</sup> under Rule 64, in relation to Rule 65, of the Revised Rules of Court docketed as G.R. No. 213425 and G.R. No. 216606. G.R. No. 213425 assails Decision No. 2013-228<sup>[2]</sup> dated December 23, 2013 and Resolution<sup>[3]</sup> dated April 4, 2014 of respondent Commission on Audit (COA) in COA CP Case No. 2011-144. On the other hand, G.R. No. 216606 questions the COA's Resolution<sup>[4]</sup> dated November 20, 2014 in COA CP Case No. 2010-362.

### **Facts**

Petitioner Power Sector Assets and Liabilities Management Corporation (PSALM) is a government-owned and controlled corporation (GOCC) created under Republic Act (RA) No. 9136,<sup>[5]</sup> also known as the "Electric Power Industry Reform Act of 2001" (EPIRA). Its principal purpose is to manage the orderly sale, disposition, and privatization of National Power Corporation (NPC) assets to liquidate all NPC financial obligations and stranded contract costs in an optimal manner.<sup>[6]</sup>

Since 2002, PSALM had been reimbursing Extraordinary and Miscellaneous Expenses (EME) to its officers and employees with certifications issued by the claimant as evidence of disbursement in accordance with Section 397(c)<sup>[7]</sup> of the Government Accounting and Auditing Manual (GAAM)<sup>[8]</sup> - Volume I and COA Circular No. 89-300<sup>[9]</sup> dated March 21, 1989.<sup>[10]</sup> In a Letter<sup>[11]</sup> dated August 28, 2008, however,

the COA Audit Team Leader reminded PSALM that COA Circular No. 2006-001<sup>[12]</sup> dated January 3, 2006 no longer allows the use of such certification as an alternative supporting document for reimbursement claims of EME and other similar expenses. Notably, PSALM and all its departments were furnished a copy of COA Circular No. 2006-001 on March 8, 2006,<sup>[13]</sup> Paragraph III(3) of which provides:

3. The claim for reimbursement of such expenses shall be supported by **receipts and/or other document evidencing disbursements**; x x x (Emphasis supplied.)

Despite such advice, PSALM continued to pay out EME in 2008 and 2009, supported merely by certifications. Consequently, the disbursed 2008 EME became the subject of Notice of Suspension (NS) No. 09-0001-000-(08)<sup>[14]</sup> dated March 16, 2009 on the ground that they were not supported by documents required under COA Circular No. 2006-001. The NS required PSALM to submit receipts corresponding to the 2008 EME reimbursements.

Still unwilling to comply, PSALM filed a motion for reconsideration (MR) for the lifting of the NS. Unmoved, the Auditor issued Notice of Disallowance (ND) No. 09-004-(08)<sup>[15]</sup> (*2008 EME ND*) on December 28, 2009, disallowing the 2008 EME, amounting to an aggregate of P2,385,334.06. The approving and certifying officers, as well as the individual payees were all made liable to settle the disallowed amount.<sup>[16]</sup>

On June 2, 2010, a Memorandum on Appeal<sup>[17]</sup> was filed before the COA Corporate Government Sector (CGS), Cluster B, questioning the *2008 EME ND*, which was denied in Decision No. 2010-012<sup>[18]</sup> dated November 25, 2010:

**WHEREFORE**, foregoing premises considered, the instant appeal is hereby **DENIED** for lack of merit. Accordingly, [ND] No. 09-004-(08) dated December 28, 2009 amounting to P2,385,334.06 is hereby **AFFIRMED**.<sup>[19]</sup> (Emphasis in the original.)

PSALM then filed a Petition for Review<sup>[20]</sup> of COA CGS Decision No. 2010-012 before the COA Proper on December 28, 2010, which was also denied in **Decision No. 2013-229**<sup>[21]</sup> dated December 23, 2013:

**WHEREFORE**, the Petition for Review of [PSALM] and its concerned officers is hereby DENIED. Accordingly, [COA CGS]-Cluster B Decision No. 2010-012 dated November 25, 2010 and [*2008 EME ND*] dated December 28, 2009, on the payment of [EME] to [PSALM] officers for the year 2008 in the total amount of [P]2,385,334.06, are hereby **AFFIRMED**.<sup>[22]</sup> (Emphasis in the original.)

No MR or petition for *certiorari* was filed. Thus, **Decision No. 2013-229** became final and executory. A Notice of Finality of Decision<sup>[23]</sup> (NFD) dated March 6, 2014 was issued and served upon PSALM through a 1<sup>st</sup> Indorsement.<sup>[24]</sup> This prompted PSALM to file a Motion for Relief from Judgment and/or to Defer/Suspend Enforcement of Finality of Decision,<sup>[25]</sup> claiming that its failure to file an MR or a petition for *certiorari* was due to an honest mistake, inadvertence, or excusable

negligence. Unconvinced, the COA Proper *En Banc* issued Resolution<sup>[26]</sup> dated November 20, 2014, denying PSALM's motion:

"The [COA Proper] dismissed the Urgent Manifestation and Motion for having been filed out of time. The Notice of Finality of Decision dated March 6, 2014 shall remain in force and effect."<sup>[27]</sup>

**The COA Proper's Resolution dated November 20, 2014 is now the subject of the Petition for *Certiorari* in G.R. No. 216606.**

Meanwhile, pending resolution of the 2008 EME ND appeal, ND No. 10-005-(2009) (2009 EME ND)<sup>[28]</sup> dated August 9, 2010 was issued, similarly disallowing the 2009 EME reimbursements, amounting to an aggregate of P2,615,500.79, for failure to submit the documentary requirements under COA Circular No. 2006-001. All the approving/certifying officers and payees of the 2009 EME were likewise made liable for the disallowed transactions.<sup>[29]</sup>

On February 1, 2011, PSALM filed a Memorandum on Appeal<sup>[30]</sup> before the COA CGS, Cluster B, challenging the 2009 EME ND, but was denied in COA CGS Decision No. 2011-004<sup>[31]</sup> dated April 13, 2011:

**WHEREFORE**, foregoing premises considered, the instant appeal is hereby **DENIED** for lack of merit. Accordingly, [ND] No. 10-005-(2009) dated August 9, 2010 relative to the payment of CY 2009 [EME] to PSALM officials in the total amount of [P]2,615,500.79 is hereby **AFFIRMED**.<sup>[32]</sup> (Emphasis in the original.)

On May 4, 2011, PSALM filed a Petition for Review<sup>[33]</sup> of COA CGS Decision No. 2011-004 before the COA Proper, which was likewise denied in **Decision No. 2013-228**<sup>[34]</sup> dated December 23, 2013:

**WHEREFORE**, the Petition for Review of [PSALM] is hereby **DENIED**. Accordingly, [CGS]-Cluster B Decision No. 2011-004 dated April 13, 2011 and [2009 EME ND] dated August 9, 2010, on the payment of [EME] to its officials for the year 2009 in the total amount of [P]2,615,500.79, are hereby **AFFIRMED**.<sup>[35]</sup> (Emphasis in the original.)

Unlike with Decision No. 2013-229, PSALM was able to timely file an MR of the COA Proper's Decision No. 2013-228, but it was denied in a Resolution<sup>[36]</sup> dated April 4, 2014:

"The [COA Proper] denied the [MR] for lack of merit. The movants failed to raise a new matter or show sufficient ground to justify a reconsideration of COA Decision No. 2013-228 dated December 23, 2013."<sup>[37]</sup>

**The COA Proper's Decision No. 2013-228 and Resolution dated April 4, 2014 are now the subjects of the Petition for *Certiorari* in G.R. No. 213425.**

### **Issues**

In G.R. No. 213425, PSALM contends that the COA Proper erred in upholding the

2009 EME ND. It claims that its officials and employees' right to due process was violated when the 2009 EME ND was issued without first issuing an Audit Observation Memorandum (AOM).<sup>[38]</sup> PSALM also argues that COA Circular No. 2006-001 is not applicable to it because it derives its authority to disburse EME from the General Appropriations Act (GAA).<sup>[39]</sup> As such, it disburses EME in accordance with Section 397(c)<sup>[40]</sup> of the GAAM,<sup>[41]</sup> Volume I, citing Paragraph III(4)<sup>[42]</sup> of COA Circular No. 89-300,<sup>[43]</sup> which allows national government agencies (NGA) to use certifications, in lieu of receipts, as proof of disbursement. Hence, PSALM posits that the evil sought to be prevented by the stricter requirement under COA Circular No. 2006-001 is already addressed by the ceiling amounts provided under the GAA. In any case, PSALM contends that the certifications supporting the claims should be considered sufficient as they fall under the "other document evidencing disbursements" contemplated under paragraph III(3) of COA Circular No. 2006-001.<sup>[44]</sup> Violation of the equal protection clause was also raised because of the alleged preferential treatment given to the NPC and the National Transmission Commission (TransCo) when no disallowance was issued to the EMEs that they disbursed, which were merely supported by certifications;<sup>[45]</sup> and also due to the difference in treatment between NGAs and GOCCs as NGAs are allowed to use certifications under COA Circular No. 89-300.<sup>[46]</sup> Lastly, PSALM invokes good faith on the part of its officials in approving and receiving the 2009 EME reimbursements.<sup>[47]</sup>

In G.R. No. 216606, PSALM argues that the COA gravely abused its discretion in denying its motion for relief from judgment and sustaining the finality of Decision No. 2013-229. PSALM beseeches the Court to brush aside the technical rules of procedure and to review the merits of the case.<sup>[48]</sup> On the merits, PSALM maintains that the COA Proper committed grave abuse of discretion in affirming the 2008 EME ND, raising the same substantive issues stated above.<sup>[49]</sup> To synthesize, the issues for our resolution are the following:

- I. Whether the COA committed grave abuse of discretion in ruling that due process was not disregarded when the 2009 EME ND was issued without first issuing an AOM;
- II. Whether the COA committed grave abuse of discretion in denying PSALM's motion for relief from judgment and declaring Decision No. 2013-229 as final and executory;
- III. Whether the COA committed grave abuse of discretion in affirming the 2008 EME ND and 2009 EME ND or specifically:
  - A. Did the COA err in ruling that COA Circular No. 2006-001 applies to PSALM?
  - B. Did the COA err in ruling that certifications cannot be considered as substantial compliance with the documentary requirement under COA Circular No. 2006-001?
  - C. Did the COA err in ruling that there was no violation of the equal protection clause when COA auditors allegedly failed to apply COA Circular No. 2006-001 to the NPC and TransCo?

Was the principle of equal protection violated by the difference in treatment between NGAs and GOCCs?

D. Did the COA err in affirming the liability of PSALM's officers and employees to settle the disallowed amounts?

### **Ruling**

We find no merit in both Petitions.

The COA's audit power is among the constitutional mechanisms structured to ensure the check-and-balance system inherent in our form of government. Under the 1987 Constitution,<sup>[50]</sup> the COA is vested with broad powers over all accounts pertaining to government revenues and expenditures, including the exclusive authority to promulgate accounting and auditing rules and regulations for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable uses of government funds and properties.<sup>[51]</sup> As a necessary consequence, the COA's interpretation of its own auditing rules and regulations, as enunciated in its decisions, should be accorded great weight and respect.<sup>[52]</sup> It is the general policy of the Court to sustain the decisions of the COA, unless it acted without or in excess of jurisdiction or with grave abuse of discretion. Congruent with this precept is the limited scope of the Court's review under the extraordinary remedy of *certiorari*, wherein the Court is confined solely to questions of jurisdiction whenever a tribunal, board or officer exercising judicial or quasi-judicial function acts without jurisdiction or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction.<sup>[53]</sup> Grave abuse of discretion speaks of an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law as when the judgment rendered is not based on law and evidence but on caprice, whim and despotism.<sup>[54]</sup> As will be discussed, we do not find any COA action in these cases done beyond its jurisdiction or with grave abuse of discretion.

#### **I. Right to due process**

In G.R. No. 213425, PSALM laments that the Auditor's failure to issue an AOM before the issuance of the 2009 EME ND is a breach of the right to due process. This argument has no legal basis.

We agree with the COA that COA Circular No. 2009-006<sup>[55]</sup> or the COA Rules and Regulations on Settlement of Accounts (RRSA) does not require the issuance of an AOM before a disallowance may be issued. Paragraph 5.3 of the RRSA states that an AOM shall be issued only "[i]n case an audit decision cannot as yet be reached due to incomplete documentation/information, or if the deficiencies noted refer to financial or operational matters which do not involve pecuniary loss[]"<sup>[56]</sup> Considering the clear violation of a COA regulation as stated in the 2009 EME ND, and the disallowance of a previous similar transaction,<sup>[57]</sup> the COA correctly observed that the transaction subject of the 2009 EME ND was "already ripe for auditorial determination."<sup>[58]</sup>

Correspondingly, under paragraph 10.1 of the RRSA, an ND shall issue, without the