

EN BANC

[G.R. No. 245830, December 09, 2020]

**POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT
(PSALM) CORPORATION REPRESENTED BY IRENE J. BESIDO-
GARCIA, IN HER CAPACITY AS PRESIDENT AND CHIEF
EXECUTIVE OFFICER (CEO), THE OFFICERS AND EMPLOYEES OF
PSALM LISTED IN THE NOTICE OF DISALLOWANCE NO. 10-003-
(2009), PETITIONERS, VS. COMMISSION ON AUDIT,
RESPONDENT.**

D E C I S I O N

ZALAMEDA, J.:

Attempts to circumvent a law that requires certain conditions to be met before granting benefits demonstrates malice and gross negligence amounting to bad faith on the part of the government corporation's officers, who are well-aware of such law.

The Case

In this petition for *certiorari* under Rule 64, in relation to Rule 65, of the Rules of Court, petitioners seek the reversal of Decision No. 2015-085^[1] dated 26 March 2015 of the Commission on Audit (COA), which affirmed the Notice of Disallowance (ND) No. 10-003-(2009) dated 15 June 2010 issued against the grant of Corporate Performance Based Incentive (CPBI) to officials and employees of the Power Sector Assets and Liabilities Management Corporation (PSALM) in the total amount of Php56,604,286.37. Petitioners also ask the Court to review Decision No. 2018-301^[2] dated 15 March 2018, which partially granted petitioners' motion for reconsideration, and excluded some of the approving and certifying officers from solidary liability but held them liable as payees.

Antecedents

On 13 March 2002, pursuant to Republic Act No. (RA) 9136, the Office of the President, through the Department of Budget and Management (DBM), approved a Uniform Compensation Plan (UCP) for three (3) corporations, namely: the National Power Corporation; the National Transmission Commission; and PSALM. Subsequently, on 21 June 2007, these corporations requested the DBM's approval over a proposed Harmonized Power Sector Compensation Plan to increase the salary of their officials and employees pursuant to the UCP.^[3] The DBM denied their request. However, the DBM recommended that they may, instead, devise an equitable performance-based incentive package in lieu of the salary increase under their proposed harmonized compensation plan.^[4]

Starting calendar year (CY) 2008, the respective Board of Directors of the three (3)

aforementioned corporations agreed to base their proposed CPBI on a Corporate Action Plan and a Corporate Performance Matrix providing for a framework for assessing their corporate accomplishments.^[5] Pursuant to the said action plan, PSALM's Board of Directors approved Resolution No. 2009-1016-001 dated 16 October 2009^[6] establishing its Corporate Action Plan, Corporate Performance Metrics and Corporate Strategic Plan (CAP/CPM/CSP).

On 15 December 2009, or two (2) months after coming up with PSALM's CAP/CPM/CSP, its Board of Directors approved Resolution No. 2009-1215-006 granting an across-the-board CPBI equivalent to five and a half (5.1/2) months of basic pay, net of tax, in the total amount of Php56,604,286.37,^[7] to wit:

NOW, THEREFORE, BE IT RESOLVED, AS IT IS HEREBY RESOLVED that, as recommended by PSALM Management and as endorsed by the Board Review Committee (BRC), the Board, in recognition of the corporate accomplishments and the efforts of PSALM officers and employees, hereby approves and confirms the following:

1. The grant of an across-the-board performance-based incentive, equivalent to five and one-half (5.5) months of basic pay net of tax to be released on a staggered basis as follows:

Proposed Release of Incentive	Equivalent Monthly Basic Pay Net of Tax
By 15 December 2009	4 months
After validation of an outstanding performance in the 2009 Corporate Performance Assessment Report by the Internal Audit Department	1.5 months

2. Authority for the PSALM President and CEO to release the performance-based incentive for 2009 equivalent to five and one-half (5.5) months of basic pay net of tax following the above schedule, and

3. Authority for the PSALM President and CEO to sign and execute any and all documents to effect the foregoing resolution.

APPROVED AND CONFIRMED this 15th day of December 2009.^[8]

According to PSALM, it granted the above benefit based on its accomplishments for CY 2009, which have apparently surpassed their targets for the year. Some of these achievements include the privatization of the Limay plant, the turn-over of six (6) additional plants, rates adjustment, attainment of ISO certification, successful execution of an Operation and Maintenance Agreement with NPC, increase in privatization proceeds, and filing of recovery of Stranded Contract Costs and

However, the COA Audit Team Leader assigned to PSALM issued the assailed ND No. 10-003(2009)^[10] disallowing the above disbursement for being illegal and excessive. The expenditure was found to contravene Section 64^[11] of RA 9136^[12] otherwise known as the *Electric Power Industry Reform Act of 2001* or the EPIRA Law, which requires prior presidential approval before granting emoluments and benefits to officials and employees of PSALM. The disbursement also violated Section 3(b) and (c)^[13] of Administrative Order No. 103 dated 31 August 2004,^[14] mandating the suspension of the grant of new or additional benefits to full-time officials and employees, except for Collective Negotiation Agreement (CNA) Incentives.

With respect to its excessiveness, the grant of CPBI equivalent to five and one-half (5.1/2) months of basic salary was considered unreasonably high and beyond just measure or amount under COA Circular 85-55A^[15] dated 08 September 1985.^[16]

The following persons were determined to be liable for the transaction:

Name	Position/Designation	Nature of Participation in the Transaction
Jose C. Ibazeta	President and CEO	For certifying that the charges to budget are necessary, lawful and under her (sic) direct supervision and that supporting documents are valid, proper and legal.
Dorothy M. Calimag	Manager, Human Resources and General Services Department	
Alvin P. Diaz	Manager, Financial Services Department	For certifying that funds are available and earmarked/utilized for the purpose indicated.
Maria M. Bautista	Manager, General Accounting Division	For certifying that supporting documents are complete and proper.
Jose C. Ibazeta	President and CEO	For approving the payments of the CPBI.
Dorothy M. Calimag	Manager, Human Resources and General Services Department	
Lourdes S. Alzona	Vice President, Finance	For directing the Development Bank of the Philippines to credit the amount relative to the CPBI to each individual PSALM employees['] and
Manuel Marcos M. Villalon II	Manager, Treasury Department	
Yolanda D. Alfara	Manager, Controllership Department	

Maria M. Bautista	Manager, General Accounting Division	officers['] bank account.
Amelita G. Zarate	Manager, Corporate Fund Management Division	
Marivi V. Francisco	Sr. Finance Specialist, GAD	
Jose C. Ibazeta	President and CEO	For approving PSALM Memorandum Order No. 09-21 dated 16 December 2009 (Guidelines on the grant of the 2009 CPBI)
Board of Directors	PSALM Board of Directors	For signing/approving Board Resolution No. 2009-1215-006 dated 15 December 2009
All Payees	PSALM Officers and Employees	For receiving the 2009 CPBI. ^[17]

On appeal, the COA Corporate Government Sector (CGS) - Cluster B issued Decision No. 2011-015 dated 20 December 2011^[18] affirming the disallowance of PSALM's CPBI for CY 2009. It ruled the issuance of the ND without a prior Audit Observation Memorandum (AOM) did not deprive PSALM management of due process. The audit of the 2009 CPBI was a continuation of the audit of the 2008 CPBI in which an AOM, followed by a Notice of Suspension and an ND, was issued. In fact, an ND may be issued by the audit team leader outright.

COA CGS-Cluster B also concurred with the finding that the subject transaction was excessive. An analysis of PSALM's financial statements shows that income from financial operations, after financial expenses, reflects a negative of Php3.235 billion. PSALM also had deficient funds to meet its obligations. Finally, the disbursement did not carry the approval of the President as required by law. The confidential document dated 30 December 2009 submitted by PSALM purporting to bear the Office of the President's approval of the grant of CPBI, is insufficient to override the ND. The said document did not bear the signature of President Gloria Macapagal Arroyo and was not among the records available on file or in the possession of the OP. Thus, the authenticity of the document cannot be given weight.^[19]

Decision of the COA Proper

Petitioners filed a petition for review before the COA Proper, which initially denied the same in its Decision No. 2015-085 dated 26 March 2015^[20] for failure of petitioners to appeal within the reglementary period of six (6) months or 180 days counted from their receipt of the assailed ND, hence:

WHEREFORE, premises considered, the petition for review of Power Sector Assets and Liabilities Management Corporation is hereby **DISMISSED** for having been filed out of time. Accordingly, Commission

on Audit Corporate Government Sector-Cluster B Decision No. 2011-015 dated December 20, 2011, affirming Notice of Disallowance (ND) No. 10-003-(2009) dated June 15, 2010, on the payment of the 2009 corporate performance-based incentive to the officials and employees of PSALM in the total amount of P56,604,286.37, is final and executory.^[21]

Upon petitioners' motion for reconsideration, the COA Proper, through its Decision No. 2018-301 dated 15 March 2018,^[22] affirmed the disallowance, with the modification of excusing certain officers from liability, thus:

WHEREFORE, premises considered, the Motion for Reconsideration of Power Sector Assets and Liabilities Management Corporation (PSALM), its officers and employees, through counsels, of Commission on Audit (COA) Decision No. 2015-085 dated March 26, 2015, is hereby **PARTIALLY GRANTED**. Accordingly, COA CGS-Cluster B Decision No. 2011-015 dated December 20, 2011, and Notice of Disallowance (ND) No. 10-003-(2009) dated June 15, 2010, on the grant of Corporate Performance-Based Incentive to PSALM officials and employees for calendar year 2009, in the total amount of P56,604,286.37 is **AFFIRMED with MODIFICATION**. All PSALM officials and employees named liable under the ND shall remain liable, except for Mr. Alvin P. Diaz, Ms. Lourdes S. Alzona, Mr. Manuel Marcos M. Villalon II, Ms. Yolanda D. Alfafara, Ms. Amelita G. Zarate, Ms. Marivi V. Francisco, and Ms. Maria M. Bautista who are excluded from liability as approving/certifying officers but shall continue to be liable as payees up to the amount they actually received.

The Prosecution and Litigation Office, Legal Services Sector, this Commission, is hereby directed to forward the case to the Office of the Ombudsman for investigation and filing of appropriate charges, if warranted, against the persons liable for the transaction.^[23]

The COA Proper explained that the issuance of an AOM is not a prerequisite for the issuance of an ND. Petitioners were afforded the opportunity to defend themselves in their appeals disproving the denial of due process. Moreover, the disallowance was justified for lack of Presidential approval and for being excessive considering PSALM had a negative actual income for CY 2009.

The officers and employees of PSALM likewise could not claim good faith since at the time the CPBI for CY 2009 was granted, the audit team had already issued an AOM and an ND disallowing the same kind of benefit, more specifically the CPBI for CY 2008. The COA Proper, nevertheless, excused from liability some of the approving and certifying officers, who merely performed ministerial functions when they signed the pertinent documents for the subject disbursement. Nonetheless, these officers were still held liable as payees up to the amount they received.^[24]

Issues

Petitioners now come before this Court and raise the following as grounds to question the COA's decision:

- A. The constitutional right of petitioners to due process of law was violated when the ND No. 10003-(2009) was hastily issued by the