

## SECOND DIVISION

[ G.R. No. 187420, August 09, 2017 ]

**POWER GENERATION EMPLOYEES ASSOCIATION-NPC, REPRESENTED BY RAUL M. DEL MUNDO AND JIMMY D. SALMAN, IN THEIR OFFICIAL CAPACITIES AS PRESIDENT AND VICE-PRESIDENT, RESPECTIVELY, AND IN THEIR OWN INDIVIDUAL CAPACITIES AND IN BEHALF OF ALL SIMILARLY SITUATED OFFICIALS AND EMPLOYEES OF NATIONAL POWER CORPORATION, ALVIN O. BORJA, ROBERT S. MAMAUAG, ROMEO B. DE MESA, JR., KENNETH M. SUSARNO, MANUEL R. CABELLO, NESTOR A. PANALIGAN, ARNEL A. CASIMIRO, JAIME C. GARGANERA, PETITIONERS, VS. NATIONAL POWER CORPORATION AND NATIONAL POWER CORPORATION BOARD OF DIRECTORS, POWER SECTOR ASSETS & LIABILITIES MANAGEMENT AND PSALM BOARD DIRECTORS, RESPONDENTS.**

### DECISION

**LEONEN, J.:**

A petition for injunction under Section 78 of the Electric Power Industry Reform Act of 2001<sup>[1]</sup> (EPIRA) is filed only to restrain or enjoin the implementation of any provision of the law. It may not be invoked to enjoin the implementation of contracts alleged to be against the law. Moreover, the petition must be filed by a real party in interest. Otherwise, it may be dismissed for lack of cause of action.

This is a Petition for Injunction with prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction<sup>[2]</sup> under Section 78 of EPIRA. This is filed by the Power Generation Employees Association-National Power Corporation (PGEA-NPC), Alvin O. Borja, Robert S. Mamauag, Romeo B. de Mesa, Jr., Kenneth M. Susarno, Manuel R. Cabello, Nestor A. Panaligan, Arnel A. Casimiro, and Jaime C. Garganera (petitioners) against the National Power Corporation (NAPOCOR), the Power Sector Assets and Liabilities Management (PSALM), and their respective Boards of Directors. Petitioners ask this Court to permanently enjoin the implementation of the Operation and Maintenance Agreement jointly executed by NAPOCOR and PSALM, and to declare this Agreement void for being contrary to EPIRA.<sup>[3]</sup>

On June 8, 2001, Republic Act No. 9136 or EPIRA was signed into law. Among its reforms was the privatization of NAPOCOR assets.<sup>[4]</sup> Pursuant to this objective, PSALM was created "to manage the orderly sale, disposition, and privatization of [NAPOCOR]'s generation assets, real estate and other disposable assets, and [Independent Power Producer] contracts with the objective of liquidating all [NAPOCOR] financial obligations and stranded contract costs in an optimal manner."

<sup>[5]</sup>

Sometime in 2008, PSALM drafted the Operation and Maintenance Agreement<sup>[6]</sup> for NAPOCOR's acceptance.<sup>[7]</sup> The contract provided that NAPOCOR would perform "all functions and services necessary to successfully and efficiently operate, maintain, and manage"<sup>[8]</sup> power plants, generation assets, or facilities until its transfer or turnover to PSALM. It further provided that NAPOCOR must submit its proposed budget to PSALM for review and approval.<sup>[9]</sup> All revenues related to the maintenance and operation of power plants, generation assets, or facilities would be considered as PSALM's properties.<sup>[10]</sup>

Then NAPOCOR President Cyril C. Del Callar (Del Callar) wrote a letter dated August 6, 2008 to Representative Arnulfo P. Fuentebella (Rep. Fuentebella), one (1) of the authors of EPIRA. He inquired whether PSALM had the authority to take control over NAPOCOR's assets and revenues considering that its authority was limited only to the conservation and administration of these assets.<sup>[11]</sup>

In a letter<sup>[12]</sup> dated August 20, 2008, Rep. Fuentebella opined that PSALM "should not be meddling with how [NAPOCOR] operates and sells electricity from the undisposed generating assets and [Independent Power Producer] contracts."<sup>[13]</sup> He further stated that:

In the main, PSALM was designed to act as a Special Purpose Vehicle for the purpose of bridging the financial requirements of [NAPOCOR] by assuming initially a portion of its liabilities to improve the books of accounts of [NAPOCOR] and thereby, provide additional value to its assets before disposal.

This is precisely why the EPIRA affirms the authority of [NAPOCOR] to generate and sell electricity from the undisposed generating assets and [Independent Power Producer] contracts of PSALM with the prohibition that [NAPOCOR] should not incur any new obligation to purchase power through bilateral contracts with generation companies or other suppliers. Congress intended [NAPOCOR] to continue exercising its authority to operate the undisposed assets pursuant to the powers granted by the Revised Charter of [NAPOCOR] or RA 6395. Corollary to such power is the authority of [NAPOCOR] to have full control over all its revenues derived from the operation of the undisposed assets and PSALM shall come into the picture only when such revenues [are] already declared by [NAPOCOR] as its net profits. In fact, [NAPOCOR] through your new [National Power] Board, may even create subsidiaries in order to carry out the business and purposes for which the [NAPOCOR] is established subject of course to the proscription laid down in Section 47 (j) of the EPIRA.

In closing, allow me to recapitulate my views on the matter. It is wrong for PSALM to assume that it has authority, as transferee of [NAPOCOR] assets and liabilities, to operate the undisposed generating assets and act as power generator. This is not the mandate the Congress gave them. The function of PSALM is limited and akin to that of a liquidator of [NAPOCOR] assets as stated in Section 50 of the EPIRA that the principal

purpose of PSALM is to manage the orderly sale, disposition, and privatization of [NAPOCOR] generation assets, real estate and other disposable assets, and [Independent Power Producer] contracts with the end in view of liquidating all [NAPOCOR] financial obligations and stranded contract costs in an optimal manner.<sup>[14]</sup> (Citations omitted)

Del Callar resigned as NAPOCOR President on September 30, 2008. Then President Gloria Macapagal-Arroyo appointed Froilan A. Tampinco (Tampinco) to replace Del Callar.<sup>[15]</sup>

On March 9, 2009, the Operation and Management Agreement<sup>[16]</sup> was signed by PSALM, represented by Jose F. Ibazeta, and NAPOCOR, represented by Tampinco. This Agreement was confirmed and ratified by NAPOCOR's Board of Directors on the same day.<sup>[17]</sup>

On April 21, 2009, NAPOCOR Employees Consolidated Union (NECU) and NAPOCOR Employees and Workers Union (NEWU) filed a Petition<sup>[18]</sup> with this Court, docketed as G.R. No. 187359, seeking to restrain the implementation and enforcement of the Operation and Maintenance Agreement, in relation to G.R. No. 187257. G.R. No. 187257 was a Petition for Certiorari filed by the Republic of the Philippines against the Regional Trial Court of Quezon City to restrain the latter's November 28, 2008 Decision awarding P6,496,055,339.98 with legal interest of P704,777,508.60 as Cost of Living Allowance and Amelioration Allowance to NECU and NEWU.<sup>[19]</sup>

In G.R. No. 187359, NECU and NEWU alleged that certain provisions of the Operation and Maintenance Agreement regarding the remittance of NAPOCOR's revenues to PSALM "thwart[ed]" the execution of the trial court's November 28, 2008 Decision.<sup>[20]</sup>

On April 28, 2009, petitioners filed this present Petition for Injunction with Prayer for Temporary Restraining Order or Preliminary Injunction<sup>[21]</sup> seeking to restrain the implementation of the Operation and Management Agreement for contravening the provisions of EPIRA. In particular, they argue that PSALM's ownership extends only to net profits, and not to all revenues, of NAPOCOR under Section 55(e)<sup>[22]</sup> of EPIRA. Hence, NAPOCOR's revenues should not be billed for PSALM's account.<sup>[23]</sup>

On July 13, 2009, this Court issued a Resolution,<sup>[24]</sup> consolidating G.R. No. 187359 with G.R. Nos. 187257 and 187776. Upon motion of the Office of the Solicitor General, this Court, in its Resolution<sup>[25]</sup> dated September 9, 2009, also consolidated G.R. No. 187420 with these cases.

On February 17, 2011, NECU and NEWU filed an Omnibus Motion<sup>[26]</sup> seeking to withdraw the Petition in G.R. No. 187359 and to detach the Petition from G.R. No. 187420 and have it consolidated instead with G.R. No. 156208.<sup>[27]</sup> G.R. No. 156208 was then a pending case regarding the extent by which PSALM would answer for NAPOCOR's liabilities after the passing of EPIRA.

In its June 22, 2011 Resolution,<sup>[28]</sup> this Court granted the Motion to Withdraw the Petition in G.R. No. 187359; however, it denied the prayer to consolidate G.R. No. 187420 with G.R. No. 156208. G.R. No. 187359 was then considered as closed and terminated.<sup>[29]</sup> In its Resolution<sup>[30]</sup> dated March 10, 2014, this Court, upon the motion of NECU and NEWU,<sup>[31]</sup> deconsolidated G.R. No. 187420 from G.R. Nos. 187257 and 187776. Only G.R. No. 187420 will be resolved by this Court in this Decision.

Petitioners argue that while EPIRA authorizes PSALM to take ownership of NAPOCOR's generation assets, liabilities, Independent Power Producer (IPP) contracts, real estate, and disposable assets, its ownership should be based on its mandate to privatize NAPOCOR's assets and to liquidate its liabilities. They submit that EPIRA did not authorize PSALM to enter into the Operation and Maintenance Agreement with NAPOCOR.<sup>[32]</sup>

Petitioners argue that the Operation and Maintenance Agreement "is a clear display of [the] arrogance of PSALM."<sup>[33]</sup> They maintain that PSALM merely holds NAPOCOR's assets as its "naked owner for the purposes of disposing [these assets] and use the proceeds thereof to liquidate [NAPOCOR's] liabilities."<sup>[34]</sup> They assert that since EPIRA did not give PSALM the authority to generate and sell electricity, it should not have entered into the Operation and Maintenance Agreement over the sale of the "undisposed generation assets."<sup>[35]</sup>

Petitioners further hold that the remittance of NAPOCOR's revenues to PSALM violates EPIRA since Section 55 of EPIRA and Section II(a)(i) of its Implementing Rules and Regulations mandate that only the net profits shall be owned by PSALM.<sup>[36]</sup> They estimate that since the implementation of the Operation and Maintenance Agreement, revenue of "P104 Billion, more or less . . . ha[s] been illegally transferred"<sup>[37]</sup> to PSALM.

Petitioners likewise assert that EPIRA did not grant PSALM the power to control and supervise the internal operations of NAPOCOR. Thus, they argue that the provision in the Operation and Maintenance Agreement requiring NAPOCOR to submit its proposed budget to PSALM violates EPIRA since NAPOCOR's Charter grants the NAPOCOR Board of Directors the authority to adopt a budget without prior approval from PSALM.<sup>[38]</sup>

The Office of the Solicitor General, on the other hand, argues that the Operation and Maintenance Agreement merely recognized PSALM's ownership of NAPOCOR's generation assets and facilities, consistent with the mandate of EPIRA. It argues that under Sections 49 and 55 of EPIRA, PSALM became the owner of NAPOCOR's generation assets, real estate, IPP contracts, other disposable assets, residual assets, and its net profits. It avers that generation assets include all proceeds from the *operation* or disposition of the assets.<sup>[39]</sup>

The Office of the Solicitor General explains that EPIRA limited NAPOCOR's functions by stripping it of its generation and transmission assets and transferring them to PSALM. It argues that since PSALM now owns these generation assets, PSALM has the right over the proceeds derived from its operations.<sup>[40]</sup>

The Office of the Solicitor General further contends that there is nothing in EPIRA that qualifies or limits PSALM's ownership of these assets. Thus, PSALM may operate generation assets directly or indirectly through NAPOCOR<sup>[41]</sup> under Rule 21, Section 5(q) of EPIRA's Implementing Rules and Regulations.<sup>[42]</sup> It argues that the opinion of Rep. Fuentebella should not be controlling since it is the judiciary, and not the legislative branch, that interprets the law.<sup>[43]</sup>

The Office of the Solicitor General likewise maintains that petitioners are not entitled to injunctive relief since they are neither the real parties in interest nor have they shown that they will suffer a grave and irreparable injury with the implementation of the Operation and Management Agreement.<sup>[44]</sup>

Respondent PSALM submits that Section 78 of EPIRA refers to this Court's jurisdiction to enjoin or restrain the implementation of the provisions of EPIRA and not those of any operation and management agreements entered into by NAPOCOR and PSALM. It further argues that this Court's jurisdiction over questions of law is appellate, not original; therefore, petitioners should have first filed the petition before a Regional Trial Court.<sup>[45]</sup>

Respondent PSALM attests that since petitioners were not privy to the Operation and Management Agreement, they are not the real parties in interest who could assail its validity. It also points out that petitioners Raul M. Del Mundo and Jimmy D. Salman, PGEA-NPC's President and Vice President, respectively, have not been authorized to file this Petition.<sup>[46]</sup>

Respondent PSALM explains that EPIRA "stripped-off [NAPOCOR's] generation and transmission assets" and "defined [NAPOCOR's] limited functions and role in the restructured electricity industry."<sup>[47]</sup> It argues that any income derived from the sale of electricity is income derived from operation of the generating assets owned by PSALM; hence, NAPOCOR's revenue from these generating assets should be remitted to PSALM.<sup>[48]</sup>

Respondent PSALM reiterates the Office of the Solicitor General's argument that Rep. Fuentebella's opinion does not express legislative intent. It argues that legislative intent is ascertained by the statute itself and its Implementing Rules and Regulations, which was crafted by the Department of Energy and approved by the Joint Congressional Power Commission.<sup>[49]</sup> Respondent PSALM clarifies that under Section 47(j) of EPIRA, it is "vested by law with the sole discretion to decide on how the generation assets are to be operated and who will operate them prior to privatization."<sup>[50]</sup> Additionally, the Implementing Rules and Regulations of EPIRA provide that "PSALM exercised its sole discretion by choosing [NAPOCOR] as operator of its remaining undisposed generating assets."<sup>[51]</sup>

Finally, respondent PSALM holds that contrary to petitioners' allegation, the Operation and Maintenance Agreement does not require NAPOCOR to submit its entire corporate budget for approval. It argues that NAPOCOR is required to submit only its budget proposal concerning the undisposed generation assets, IPP contracts, real estate, and all other disposable assets consistent with its exercise of ownership