

Title: Power Sector Assets and Liabilities Management Corporation vs. Commission on Audit

Facts:

- The Electric Power Industry Reform Act (EPIRA Law, R.A. 9136) was enacted on June 8, 2001, creating the Power Sector Assets and Liabilities Management Corporation (PSALM) as a government-owned and controlled corporation (GOCC) to manage the privatization of the National Power Corporation (NPC) assets.
- Pursuant to its mandate, PSALM entered into contracts with various legal advisors for consultancy on privatization projects. These contracts were later considered terminated upon the appointment of PSALM's CEO as Acting Secretary of the Department of Energy (DOE).
- PSALM renewed these contracts for six months under the authority of its Officer-in-Charge (OIC) due to the vital services of the consultants towards achieving PSALM's mandate under the EPIRA.
- The Commission on Audit (COA)'s Legal Services Sector issued an opinion stating that PSALM's engagement of private lawyers was governed by specific circulars requiring the prior written conformity of the Office of the Solicitor General (OSG) or the Office of the Government Corporate Counsel (OGCC), and the concurrence of COA before such engagements.
- PSALM complied by securing the OGCC's conformity to the contract renewals but subsequently sought the COA's concurrence, which was denied for reasons including the non-compliance with procedural requirements and perceived excessiveness of consultancy fees.
- PSALM's request for reconsideration was denied, leading to the issuance of Notices of Disallowance by COA for the payments made to the consultants, citing the responsible officials and consultants for the transaction.

Issues:

1. Whether the COA properly denied its concurrence to the contract renewals of PSALM's legal advisors and subsequently disallowed payments made for their services.
2. Whether the legal advisors hired by PSALM deserve compensation under the contract renewals for the legal consultancy services rendered.
3. Whether the officers of PSALM who approved the said contracts should be held personally liable for the payments made to the legal advisors.

Court's Decision:

The Supreme Court granted the petition, setting aside the COA's decision. It held that:

- The COA's concurrence denial based solely on procedural non-compliance without addressing the necessity and reasonableness of the consultancy services themselves constituted grave abuse of discretion.
- The statutory authority granted to PSALM to engage consultants under the EPIRA Law, coupled with the urgency of PSALM's statutory duties, justified the engagement of legal advisors.
- The Court reiterated the vitality of securing COA and OGCC's concurrence as a procedural safeguard but clarified that non-compliance in this instance did not render the consultancy services unnecessary or extravagant.
- Consequently, the engagement of legal advisors by PSALM for the year 2010 was deemed concurred in by COA, allowing payments for services actually rendered to be allowed in audit, rendering moot the issues of compensating the legal advisors and the personal liability of the PSALM officers involved.

Doctrine:

- The engagement of legal consultants by government-owned and controlled corporations, including PSALM, must comply with regulatory requirements unless duly justified by statutory authority and urgency of mandate. However, the denial of COA's concurrence based on procedural lapses alone, without substantive findings of the engagements being unnecessary or extravagant, constitutes grave abuse of discretion.

Class Notes:

- PSALM's statutory authority under EPIRA Law allows it to hire legal consultants when necessary for its mandate, subject to existing procedural requirements.
- COA's audit jurisdiction covers ensuring government transactions are not irregular, unnecessary, excessive, extravagant, or unconscionable but does not extend to overriding legitimate statutory mandates and pressing government objectives based solely on procedural technicalities.
- Compliance with procedural requirements, such as securing prior written concurrences from OGCC and COA, is crucial but not an end in itself; substantive compliance and necessity for the engagement of consultants can outweigh procedural lapses in certain contexts.

Historical Background:

- The enactment of R.A. 9136 (EPIRA Law) and the creation of PSALM were pivotal in the restructuring and privatization of the electric power industry in the Philippines. The case

underscores the nuanced interplay between achieving statutory objectives within prescribed legal frameworks and complying with audit and oversight procedures to ensure transparency and accountability in public expenditures.