

**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...**

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

Ponente: LEONEN, J.

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LEONEN, J.:

A petition for injunction under Section 78 of the Electric Power Industry Reform Act of 2001[1] (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[2] 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.[3]

On June 8, 2001, Republic Act No. 9136 or EPIRA was signed into law. Among its reforms was the privatization of NAPOCOR assets.[4] 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."[5]

Sometime in 2008, PSALM drafted the Operation and Maintenance Agreement[6] for NAPOCOR's acceptance.[7] The contract provided that NAPOCOR would perform "all functions and services necessary to successfully and efficiently operate, maintain, and manage"[8] 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.[9] All revenues related to the maintenance and operation of power plants, generation assets, or facilities would be considered as PSALM's properties.[10]

Then NAPOCOR President Cyril C. Del Callar (Del Callar) wrote a letter dated August 6, 2008 to Representative Arnulfo P. Fuentesbello (Rep. Fuentesbello), 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.[11]

In a letter[12] 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." [13] 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.[14] (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.[15]

On March 9, 2009, the Operation and Management Agreement[16] 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.[17]

On April 21, 2009, NAPOCOR Employees Consolidated Union (NECU) and NAPOCOR Employees and Workers Union (NEWU) filed a Petition[18] 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.[19]

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.[20]

On April 28, 2009, petitioners filed this present Petition for Injunction with Prayer for Temporary Restraining Order or Preliminary Injunction[21] 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)[22] of EPIRA. Hence, NAPOCOR's revenues should not be billed for PSALM's account.[23]

On July 13, 2009, this Court issued a Resolution,[24] 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[25] dated September 9, 2009, also consolidated G.R. No. 187420 with these cases.

On February 17, 2011, NECU and NEWU filed an Omnibus Motion[26] 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.[27] 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,[28] 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.[29] In its Resolution[30] dated March 10, 2014, this Court, upon the motion of NECU and NEWU,[31] 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.[32]

Petitioners argue that the Operation and Maintenance Agreement "is a clear display of [the] arrogance of PSALM." [33] 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." [34] 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." [35]

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.[36] They estimate that since the implementation of the Operation and Maintenance Agreement, revenue of "P104 Billion, more or less . . . ha[s] been illegally transferred" [37] 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.[38]

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.[39]

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.[40]

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[41] under Rule 21, Section 5(q) of EPIRA's Implementing Rules and Regulations.[42] 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.[43]

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.[44]

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.[45]

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.[46]

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." [47] 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.[48]

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.[49] 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." [50] 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." [51]

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 over these assets.[52]

From the arguments of the parties in their pleadings, the following are the issues for this Court's resolution:

First, whether petitioners may file a Petition for Injunction under Section 78 of EPIRA to question the validity of the Operation and Maintenance Agreement between respondents PSALM and NAPOCOR;

Second, whether petitioners may question the validity of the Operation and Maintenance Agreement despite not being one (1) of the contracting parties; and

Finally, whether the Operation and Maintenance Agreement violated the provisions of EPIRA when it mandated the remittance of NAPOCOR's revenues to PSALM and when it required NAPOCOR to submit its proposed budget to PSALM for approval.

I

Petitioners allege that Operation and Maintenance Agreement entered into by PSALM and NAPOCOR contravenes the provisions of EPIRA.[53] Petitioners filed this Petition directly with this Court pursuant to Section 78 of EPIRA to enjoin the implementation of the Operation and Maintenance Agreement. Section 78 provides:

SECTION 78. Injunction and Restraining Order. – The implementation of the provisions of this Act shall not be restrained or enjoined except by an order issued by the Supreme Court of the Philippines.

This Court explained in *NPC Drivers and Mechanics Association v. National Power Corporation*:^[54]

The provision vests upon the Supreme Court the jurisdiction to restrain or enjoin the implementation of the provisions of the EPIRA. In other words, the Court exercises jurisdiction on all questions involving the enforcement of the provisions of the EPIRA.^[55]

The Operation and Maintenance Agreement is a contract that preserves the implementation of EPIRA. Thus, it is covered by Section 78. Under this provision, no restraint or injunction whether permanent or temporary, could be issued by any court except by this Court.

However, in *Carpio-Morales v. Court of Appeals*,^[56] this Court invalidated the second paragraph of Republic Act No. 6770, Section 14^[57] for being unconstitutional. The assailed provision prohibited any court, except this Court, to enjoin investigations of the Ombudsman.^[58] This Court explained in *Carpio-Morales* that provisional remedies found in the Rules of Court are within this Court's constitutional prerogative to promulgate rules on pleading, practice, and procedure.

Under Rule 58 of the Rules of Court, all courts have the inherent power to issue temporary restraining orders or writs of preliminary injunction.^[59] When Congress passes a law that prohibits other courts from exercising this power, it encroaches upon this Court's power to promulgate rules of procedure,^[60] in violation of the separation of powers. Thus:

[W]hen Congress passed the first paragraph of Section 14, RA 6770 and, in so doing, took away from the courts their power to issue a [Temporary Restraining Order] and/or [Writ of Preliminary Injunction] to enjoin an investigation conducted by the Ombudsman, it encroached upon this Court's constitutional rule-making authority. Clearly, these issuances, which are, by nature, provisional reliefs and auxiliary writs created under the provisions of the Rules of Court, are matters of procedure which belong exclusively within the province of this Court. Rule 58 of the Rules of Court did not create, define, and regulate a right but merely prescribed the means of implementing an existing right since it only provided for temporary reliefs to preserve the applicant's right in esse which is threatened to be violated during the course of a pending litigation ...

....

That Congress has been vested with the authority to define, prescribe, and apportion the jurisdiction of the various courts under Section 2, Article VIII supra, as well as to create statutory courts under Section 1, Article VIII supra, does not result in an abnegation of the Court's own power to promulgate rules of pleading, practice, and procedure under Section 5 (5), Article VIII supra. Albeit operatively interrelated, these powers are nonetheless institutionally separate and distinct, each to be preserved under its own sphere of authority. When Congress creates a court and delimits its jurisdiction, the procedure for which its jurisdiction is exercised is fixed by the Court through the rules it promulgates. The first paragraph of Section 14, RA 6770 is not a jurisdiction-vesting provision, as the Ombudsman misconceives, because it does not define, prescribe, and apportion the subject matter jurisdiction of courts to act on certiorari cases; the certiorari jurisdiction of courts, particularly the CA, stands under the relevant sections of BP 129 which were not shown to have been repealed.

Instead, through this provision, Congress interfered with a provisional remedy that was created by this Court under its duly promulgated rules of procedure, which utility is both integral and inherent to every court's exercise of judicial power. Without the Court's consent to the proscription, as may be manifested by an adoption of the same as part of the rules of procedure through an administrative circular issued therefor, there thus, stands to be a violation of the separation of powers principle.[61]

However, Carpio-Morales dealt only with temporary restraining orders, not permanent injunctions. The injunction contemplated in EPIRA is not a mere interlocutory action by a court but a permanent remedy. Thus, Section 78 of EPIRA can still apply to this case.

II

Petitioners, not being privy to the Operation and Maintenance Agreement, have no cause of action against respondents. They are not the real parties in interest to question its validity.

Provisional reliefs, such as a temporary restraining order or a writ of preliminary injunction, are ancillary writs issued by the court to protect the rights of a party during the pendency of the principal action. Rule 58, Section 3 of the Rules of Court provides:

SECTION 3. Grounds for issuance of preliminary injunction. – A preliminary injunction may be granted when it is established:

- (a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring performance of an act or acts, either for a limited period or perpetually;
- (b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or
- (c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

To issue an injunctive writ, the applicant must establish his or her right sought to be protected. Petitioners allege that while they were not privy to the Operation and Maintenance Agreement, they will be affected by its implementation as NAPOCOR employees since they are "the ones engaged in the operations and maintenance of the unsold generation plants." [62]

The Petition, however, fails to show how NAPOCOR employees will be affected by the Operation and Maintenance Agreement's implementation. While a provision of this Agreement mentions the status of NAPOCOR's employees upon its implementation,[63] petitioners' arguments center on Articles XVI and XVII of this Agreement, which read:

XVI. Budget

....

Within fifteen (15) calendar days from the Effectivity of this Agreement, OPERATOR shall submit its 2009 budget to OWNER. Every 1[st] week of March thereafter, OPERATOR shall submit to OWNER for review and approval the O&M Budget for the succeeding year. Such O&M Budget as approved shall be included in OWNER'S proposed Annual Corporate Operating Budget (COB).

....

XVII. Receipts; Funding and Disbursements

All payments for and proceeds from power invoices and charges, all of which whether in the form of cash, checks or bank deposits/transfers related to the maintenance and operation of the Plants, Other Assets and Other Facilities, including those from the IPPs (the "Revenues"), are properties of OWNER. The Revenues shall be billed by OPERATOR for the account of OWNER using forms prescribed by OWNER.

....

The Revenues shall be collected and monitored by OWNER. The customers will directly pay through or remit to OWNER'S designated bank account/s ...

The Revenues from the IPPs traded energy shall be billed, monitored and collected by OWNER.[64]

Petitioners have not shown how, as NAPOCOR employees, they will be affected by respondent NAPOCOR's submission of its budget for respondent PSALM's approval. If there was indeed an encroachment of the NAPOCOR Board of Directors' prerogative under its Charter to approve its own budget,[65] the Board of Directors would be the proper party to question the validity of Article XVI of the Operation and Maintenance Agreement.

Petitioners have likewise failed to show how they, as NAPOCOR employees, will be affected by the remittance of respondent NAPOCOR's revenues to respondent PSALM. None of them has alleged how the remittance would affect their wages, salaries, and benefits or their working conditions. Otherwise stated, petitioners have not claimed any right sought to be protected or any direct injury they will suffer if the revenues are remitted.

Actions must be instituted by the real parties in interest. Otherwise, the action may be dismissed for lack of cause of action.[66] A real party in interest is defined under Rule 3, Section 2 of the Rules of Court as:

Section 2. Parties in interest. A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest.

Petitioners have not established how they will benefit by enjoining the implementation of the Operation and Maintenance Agreement. They have not established the injury they will suffer if this Agreement is not enjoined. Thus, this Petition is dismissed for lack of cause of action.

III

Even if this Petition was resolved on its substantial merits, it would still be dismissed. The assailed provisions of the Operation and Maintenance Agreement do not contravene the provisions of EPIRA.

The rationale of EPIRA has already been discussed in *Freedom from Debt Coalition v. Energy Regulatory Commission*: [67]

One of the landmark pieces of legislation enacted by Congress in recent years is the EPIRA. It established a new policy, legal structure and regulatory framework for the electric power industry.

The new thrust is to tap private capital for the expansion and improvement of the industry as the large government debt and the highly capital-intensive character of the industry itself have long been acknowledged as the critical constraints to the program. To attract private investment, largely foreign, the jaded structure of the industry had to be addressed. While the generation and transmission sectors were centralized and monopolistic, the distribution side was fragmented with over 130 utilities, mostly small and uneconomic. The pervasive flaws have caused a low utilization of existing generation capacity; extremely high and uncompetitive power rates; poor quality of service to consumers; dismal to forgettable performance of the

government power sector; high system losses; and an inability to develop a clear strategy for overcoming these shortcomings.

Thus, the EPIRA provides a framework for the restructuring of the industry, including the privatization of the assets of the National Power Corporation (NPC), the transition to a competitive structure, and the delineation of the roles of various government agencies and the private entities. The law ordains the division of the industry into four (4) distinct sectors, namely: generation, transmission, distribution and supply. Corollarily, the NPC generating plants have to be privatized and its transmission business spun off and privatized thereafter.[68] (Citations omitted)

PSALM was created as a government-owned and -controlled corporation to take ownership over all of NAPOCOR's assets and liabilities for the sole purpose of managing its sale, disposition, and privatization. PSALM would have a corporate life of 25 years, after which all assets and remaining liabilities would revert back to the national government. Thus, in Sections 49 and 50 of EPIRA:

SECTION 49. Creation of Power Sector Assets and Liabilities Management Corporation. – There is hereby created a government-owned and -controlled corporation to be known as the "Power Sector Assets and Liabilities Management Corporation", hereinafter referred to as the "PSALM Corp.", which shall take ownership of all existing NPC generation assets, liabilities, IPP contracts, real estate and all other disposable assets. All outstanding obligations of the NPC arising from loans, issuances of bonds, securities and other instruments of indebtedness shall be transferred to and assumed by the PSALM Corp. within one hundred eighty (180) days from the approval of this Act.

SECTION 50. Purpose and Objective, Domicile and Term of Existence. – The principal purpose of the PSALM Corp. is to manage the orderly sale, disposition, and privatization of NPC generation assets, real estate and other disposable assets, and IPP contracts with the objective of liquidating all NPC financial obligations and stranded contract costs in an optimal manner.

The PSALM Corp. shall have its principal office and place of business within Metro Manila.

The PSALM Corp. shall exist for a period of twenty five (25) years from the effectivity of this Act, unless otherwise provided by law, and all assets held by it, all moneys and properties belonging to it, and all its liabilities outstanding upon the expiration of its term of existence shall revert to and be assumed by the National Government.

Under EPIRA, PSALM acts as the conservator of NAPOCOR's assets. Until NAPOCOR's assets could be sold or disposed of, PSALM operates and maintains NAPOCOR's assets and manages its liabilities in trust for the national government, thus:

SECTION 51. Powers. – The PSALM Corp. shall, in the performance of its functions and for the attainment of its objective, have the following powers:

....

(b) To take title to and possession of, administer and conserve the assets transferred to it; to sell or dispose of the same at such price and under such terms and conditions as it may deem necessary or proper, subject to applicable laws, rules and regulations[.]

To this end, EPIRA provides that NAPOCOR may generate and sell electricity only from PSALM's undisposed generating assets and is not allowed to incur any new obligations, signifying that PSALM exercises complete ownership over all of NAPOCOR's generating assets:

SECTION 51. Powers. – The PSALM Corp. shall, in the performance of its functions and for the attainment of its objective, have the following powers:

....

(j) NPC may generate and sell electricity only from the undisposed generating assets and IPP contracts of PSALM Corp. and shall not incur any new obligations to purchase power through bilateral contracts with generation companies or other suppliers.

As a corporation operating a necessary public utility, NAPOCOR continues to function in the course of its privatization. Under EPIRA, PSALM was given ownership over the generating assets but was not granted functions to operate these assets. Thus, it entered into the Operation and Maintenance Agreement with NAPOCOR to ensure NAPOCOR's continued operations.

EPIRA likewise states which assets PSALM owns. Section 55 provides:

Section 55. Property of the PSALM Corp. – The following funds, assets, contributions and other property shall constitute the property of the PSALM Corp.:

- (a) The generation assets, real estate, IPP contracts, other disposable assets of NPC, proceeds from the sale or disposition of such assets and the residual assets from B-O-T, R-O-T, and other variations thereof;
- (b) Transfers from the National Government;
- (c) Proceeds from loans incurred to restructure or refinance NPC's transferred liabilities: Provided, however, That all borrowings shall be fully paid for by the end of the life of the PSALM Corp.;
- (d) Proceeds from the universal charge allocated for stranded contract costs and the stranded debts of NPC;
- (e) Net profit of NPC;
- (f) Net profit of TRANSCO;
- (g) Official assistance, grants, and donations from external sources; and
- (h) Other sources of funds as may be determined by PSALM Corp. necessary for the above-mentioned purposes.

Citing Section 55(e) of EPIRA, petitioners argue that PSALM was only given ownership of NAPOCOR's net profits,[69] and not of its revenues. Petitioners further cite Rule 21, Section 11(a)(i) of EPIRA's Implementing Rules and Regulations to reinforce their argument that only net profits were transferred to PSALM.[70] For reference, Rule 21, Section 11(a)(i) states:

Section 11. Property of PSALM. –

The following funds, assets, contributions and other properties shall constitute the property of the PSALM:

(a) The generation assets, real estate, IPP Contracts, other disposable assets of NPC, proceeds from the operation or disposition of such assets and the residual assets from BOT, ROT, and other variations thereof. The proceeds from the operation and disposition of NPC assets shall include:

- (i) Net profit of NPC [.]

Petitioners assail Article XVII of the Operation and Maintenance Agreement for contravening these provisions. Pertinent portions of Article XVII state:

XVII. Receipts; Funding and Disbursements

All payments for and proceeds from power invoices and charges, all of which whether in the form of cash, checks or bank deposits/transfers, related to the maintenance and operation of the Plants, Other Assets and

Other Facilities, including those from the IPPs (the "Revenues"), are properties of OWNER. The Revenues shall be billed by OPERATOR for the account of OWNER using forms prescribed by OWNER.

....

The Revenues shall be collected and monitored by OWNER. The customers will directly pay through or remit to OWNER'S designated bank account/s ...

The Revenues from the IPPs traded energy shall be billed, monitored and collected by OWNER.[71]

This Court has previously stated that:

EPIRA must not be read in separate parts [but] must be read in its entirety, because a statute is passed as a whole, and is animated by one general purpose and intent. Its meaning cannot to be extracted from any single part thereof but from a general consideration of the statute as a whole.[72]

The enumeration of assets must be read together with the extent of PSALM's ownership over them. Section 49 of EPIRA provides that PSALM "shall take ownership of all existing NPC generation assets, liabilities, IPP contracts, real estate and all other disposable assets." This implies that PSALM exercises all the rights of an owner, albeit for a limited purpose: the conservation and liquidation of these assets.

Thus, in *NPC Drivers and Mechanics Association v. National Power Corporation*,[73] this Court confirmed that the intent and purpose of PSALM's creation was for it to privatize NAPOCOR. In order to achieve this purpose, EPIRA granted PSALM ownership over NAPOCOR's assets and liabilities for a limited period. Hence, respondent PSALM exercises all attributes of ownership over its assets during this limited period.

Among the attributes of ownership are that of the right to possess or enjoy (*jus utendi*), the right to the fruits (*jus fruendi*), the right to abuse or consume (*jus abutendi*), the right to dispose or alienate (*jus disponendi*), and the right to recover (*jus vindicandi*).[74]

Under the law, respondent PSALM exercises all attributes of ownership over respondent NAPOCOR's generation assets, including the right to operate these assets if the operation prevents its dissipation. PSALM was given a lifespan of 25 years, during which it would have ownership over all of NAPOCOR's generation assets. PSALM, thus, has right over all the fruits produced by the assets including its revenues.

Since PSALM is mandated to administer these generation assets, it has the correlative obligation to answer for the expenses of its operations. Whatever remains from the revenues would be NAPOCOR's net profits, over which PSALM has explicit ownership under the law.

Petitioners quote a letter written by one (1) of EPIRA's authors arguing that the law did not intend for respondent PSALM to exercise full ownership rights over respondent NAPOCOR's generation assets. The letter, in part, states:

It is wrong for PSALM to assume that it has authority, as transferee of NPC 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 NPC 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 NPC generation assets, real estate and other disposable assets, and IPP contracts with the end in view of liquidating all NPC financial obligations and stranded contract costs in an optimal manner.[75]

Petitioners are reminded that this statement is a mere expression of an opinion by a representative of Congress. It does not reflect the intent of both the House of Representatives and the Senate, the chambers that actually passed the bill into law. Thus, in *Legaspi v. Executive Secretary*: [76]

And as to the opinions expressed by Senator Salvador Laurel and Congressman Emilio Espinosa on the alleged intention of Congress in enacting Republic Act 6389, all that can be said is that individual statements made by Senators on the floor of the Senate do not necessarily reflect the view of the Senate; much less do they indicate the intent of the House of Representatives.[77]

In the interpretation of laws, courts must ascertain the legislative intent and give it effect.[78] Legislative intent is determined from the law itself, where each and every provision is considered in light of the purpose to which it was enacted.[79] The interpretation of laws is inherently a judicial function, such that this Court's application and interpretation of laws becomes part of the law of the land.[80] Thus, a legislator's opinion, be it stated in a letter or expressed during the deliberations of a bill, is not binding on courts.[81]

The submission for approval of respondent NAPOCOR's Operation and Maintenance Budget likewise does not violate respondent NAPOCOR's Charter.

Petitioners assail Article XVI of the Operation and Maintenance Agreement, which reads:

XVI. Budget

....

Within fifteen (15) calendar days from the Effectivity of this Agreement, OPERATOR shall submit its 2009 budget to OWNER. Every 1st week of March thereafter, OPERATOR shall submit to OWNER for review and approval the O&M Budget for the succeeding year. Such O&M Budget as approved shall be included in OWNER'S proposed Annual Corporate Operating Budget (COB).[82]

Under its Charter, respondent NAPOCOR's Board of Directors has the power to formulate and adopt a Corporate Operating Budget.[83] The assailed provision does not transfer the power to adopt a Corporate Operating Budget to PSALM. It merely mandates that its Operation and Maintenance Budget be included in the Corporate Operating Budget. Respondent PSALM's approval of the Operation and Maintenance Budget is within its authority to operate and administer respondent NAPOCOR's generation assets.

The Petition is not only procedurally infirm; it also failed to substantiate how the implementation of the assailed Operation and Maintenance Agreement between respondents contravenes respondent PSALM's mandate under EPIRA.

WHEREFORE, the Petition is DISMISSED for lack of merit.

SO ORDERED.

Carpio, (Chairperson), Peralta, Mendoza, and Martires, JJ., concur.

[1] Rep. Act No. 9136, sec. 78. provides:

Section 78. Injunction and Restraining Order. – The implementation of the provisions of this Act shall not be restrained or enjoined except by an order issued by the Supreme Court of the Philippines.

[2] Rollo (G.R. No. 187420), pp. 3-34.

[3] Id. at 28-29.

[4] Rep. Act No. 9136, sec. 47.

[5] Rep. Act No. 9136, sec. 50.

[6] Rollo (G.R. No. 187420), pp. 35-48.

[7] Id. at 13.

[8] Id. at 39.

[9] Id. at 43-44.

[10] Id. at 44.

[11] Id. at 50.

[12] Id. at 51-55.

[13] Id. at 53.

[14] Id. at 54.

[15] Id. at 15.

[16] Id. at 35-48.

[17] Id. at 56.

[18] Rollo (G.R. No 187359), pp. 3-60.

[19] See Republic v. Hon. Cortez, G.R. Nos. 187257 and 187776, February 7, 2017 < <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/february2017/187257.pdf> > [Per J. Leonen, En Banc].

[20] Rollo (G.R. No 187359), pp. 48-55.

[21] Rollo (G.R. No. 187420), pp. 3-34.

[22] Rep. Act No. 9136, sec. 55 provides:

Section 55. Property of the PSALM Corp. – The following funds, assets, contributions and other property shall constitute the property of the PSALM Corp.:

....

(e) Net profit of NPC[.]

[23] Rollo (G.R. No. 187420), pp. 23-24.

[24] Rollo (G.R. No. 187776), pp. 149-150.

[25] Id.

[26] Rollo (G.R. No. 187359), pp. 645-651.

[27] Rollo (G.R. No. 187359), p. 649. G.R. No. 156208 is entitled NPC Drivers and Mechanics Association, et al. v. National Power Corporation, et al.

[28] Rollo (G.R. No. 187257), pp. 1581-1582.

[29] Id. at 1582.

[30] Rollo (G.R. No. 187420), pp. 449-450.

[31] Rollo (G.R. No. 187776), pp. 422-425.

[32] Rollo (G.R. No. 187420), pp. 385-386, PGEA-NPC Memorandum.

[33] Id. at 386.

[34] Id. at 387, PGEA-NPC Memorandum.

[35] Id. at 388, PGEA-NPC Memorandum.

[36] Id. at 392-393, PGEA-NPC Memorandum. Rep. Act No. 9136, section 55 provides:

Section 55. Property of the PSALM Corp. — The following funds, assets, contributions and other property shall constitute the property of the PSALM Corp.:

- (a) The generation assets, real estate, IPP contracts, other disposable assets of NPC, proceeds from the sale or disposition of such assets and the residual assets from B-O-T, R-O-T, and other variations thereof;
- (b) Transfers from the National Government;
- (c) Proceeds from loans incurred to restructure or refinance NPC's transferred liabilities: Provided, however, That all borrowings shall be fully paid for by the end of the life of the PSALM Corp.;
- (d) Proceeds from the universal charge allocated for stranded contract costs and the stranded debts of NPC;
- (e) Net profit of NPC;
- (f) Net profit of TRANSCO;
- (g) Official assistance, grants, and donations from external sources; and
- (h) Other sources of funds as may be determined by PSALM Corp. necessary for the above-mentioned purposes.

IMPLEMENTING RULES AND REGULATIONS of Rep. Act No. 9136, part IV, Rule 21, sec. 11 provides: Section 11. Property of PSALM. The following funds, assets, contributions and other properties shall constitute the property of the PSALM:

(a) The generation assets, real estate, IPP Contracts, other disposable assets of NPC, proceeds from the operation or disposition of such assets and the residual assets from BOT, ROT, and other variations thereof. The proceeds from the operation and disposition of NPC assets shall include:

- (i) Net profit of NPC[.]

[37] Rollo (G.R. No. 187420), p. 395, PGEA-NPC Memorandum. This estimate is based on the allegation that NAPOCOR has 352 customers, with MERALCO remitting P2.5 billion monthly and other customers remitting P5.5 billion monthly.

[38] Id. at 395-396, PGEA-NPC Memorandum.

[39] Id. at 332, OSG Consolidated Memorandum. The Office of the Solicitor General submitted a Consolidated Memorandum for G.R. Nos. 187257, 187776, 187359, and 187420. The portions were separated by sub-headings.

[40] Id. at 333-334, OSG Consolidated Memorandum.

[41] Id. at 334-335, OSG Consolidated Memorandum.

[42] Id. at 337, OSG Consolidated Memorandum.

[43] Id. at 335-336, OSG Consolidated Memorandum.

[44] Id. at 340-341, OSG Consolidated Memorandum.

[45] Id. at 361, PSALM Memorandum.

[46] Id. at 362, PSALM Memorandum.

[47] Id. at 366, PSALM Memorandum.

[48] Id.

[49] Id. at 369-370, PSALM Memorandum.

[50] Id. at 369.

[51] Id. at 371, PSALM Memorandum.

[52] Id. at 373, PSALM Memorandum.

[53] Rollo, p. 4, Petition.

[54] 737 Phil. 210 (2014) [Per J. Brion, Special Third Division].

[55] Id. at 250-251.

[56] G.R. Nos. 217126-27, November 10, 2015 < <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/november2015/217126-27.pdf> > [Per J. Perlas-Bernabe, En Banc].

[57] Rep. Act No. 6770, sec. 14 provides:

Section 14. Restrictions. — No writ of injunction shall be issued by any court to delay an investigation being conducted by the Ombudsman under this Act, unless there is a prima facie evidence that the subject matter of the investigation is outside the jurisdiction of the Office of the Ombudsman.

No court shall hear any appeal or application for remedy against the decision or findings of the Ombudsman, except the Supreme Court, on pure question of law.

[58] G.R. Nos. 217126-27, November 10, 2015 < <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/november2015/217126-27.pdf> > 69 [Per J. Perlas-Bernabe, En Banc].

[59] RULES OF COURT, Rule 58, sec. 2 provides:

Section 2. Who may grant preliminary injunction. — A preliminary injunction may be granted by the court where the action or proceeding is pending. If the action or proceeding is pending in the Court of Appeals or in the Supreme Court, it may be issued by said court or any member thereof.

[60] CONST., art. VIII, sec. 5. The Supreme Court shall have the following powers:

(5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.

[61] *Carpio-Morales v. Court of Appeals*, G.R. No. 217126-27, November 10, 2015 < <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/november2015/217126-27.pdf> > 42-44

(2015) [Per J. Perlas-Bernabe, En Banc] citing *Primicias v. Ocampo*, 93 Phil. 446, 452 (1953) [Per J. Bautista Angelo, En Banc]; *Bustos v. Lucero*, 81 Phil. 640 (1948) [Per J. Tuason, En Banc]; and 36 C. J. 27; 52 C. J. S. 1026.

[62] Rollo (G.R. No. 187420), p. 212, PGEA-NPC Consolidated Reply.

[63] *Id.* at 41. IX. Employees.

OWNER shall not be deemed to be the employer of OPERATOR'S employees rendering service to OPERATOR for purposes of this Agreement. Any and all claims arising from and as a consequence of the employment of such employees, including separation pay, monetary benefits and other claims for damages arising out of or as a consequence of employment with OPERATOR, shall be the responsibility of and for the sole account of OPERATOR.

[64] Rollo, pp. 43-44.

[65] See Rep. Act No. 6395 (1971), sec. 6, par. 8(b) provides:

Section 6. The "National Power Board; Its Composition; Compensation of Members; Qualifications; Powers and Duties....

The Board shall, moreover, have the following specific powers and duties:

....

(b) To adopt an annual and supplemental budget of receipts and expenditures of the Corporation according to its requirements, which may include financial assistance of not more than ten thousand pesos each to municipalities which are the site of or contiguous to watersheds, lakes or natural sources of hydroelectric power being utilized by the Corporation, subject to the approval of the Office of Economic Coordination: Provided, That copies of the budgets of receipts and expenditures herein referred to shall be submitted to the Committee on National Enterprises and Government Corporations of the Senate and the Committee on Government Enterprises of the House of Representatives within fifteen (15) days from the transmission thereof to the Office of Economic Coordination[.]

[66] See *Sustiguer v. Tamayo*, 257 Phil. 588, 598 (1989) [Per CJ. Fernan, Third Division] citing *I F. REGALADO, REMEDIAL LAW COMPENDIUM*, 51, 154 (5th Revised Edition) and *Casimiro v. Roque*, 98 Phil. 880 (1956) [Per J. Montemayor, First Division]. Fn 24

[67] 476 Phil. 134 (2004) [Per J. Tinga, En Banc].

[68] *Id.* at 183-184 citing Rep. Act No. 9136.

[69] IMPLEMENTING RULES AND REGULATIONS of Rep. Act No. 9136, Rule 6, sec. 8(c) defines "net profits" as Net Profit = Total Utility Revenue – (Total Operating Expenses – Other Income + Interest & Other Charges).

[70] Rollo, pp. 392-393, PGEA-NPC Memorandum.

[71] *Id.* at 44.

[72] *Freedom from Debt Coalition v. Energy Regulatory Commission*, 476 Phil. 134, 196 (2004) [Per J. Tinga, En Banc].

[73] 621 Phil. 376 (2009) [Per J. Chico-Nazario, Third Division].

[74] See *Hacienda Luisita v. Presidential Agrarian Reform Council*, 686 Phil. 377 (2012) [Per J. Velasco, Jr., En

Banc] and *Samartino v. Raon*, 433 Phil. 173 (2002) [Per J. Ynares-Santiago, First Division].

[75] *Rollo*, p. 54.

[76] 160-A Phil. 905 (1975) [Per J. Martin, First Division].

[77] *Id.* at 913 citing *Resins, Inc., vs. Auditor General*, 134 Phil. 697 (1968) [Per J. Fernando, En Banc]; *Casco Philippine Chemical Co., Inc. vs. Gimenez*, 117 Phil. 363 (1963) [Per J. Concepcion, En Banc]; *Song Kiat Chocolate Factory vs. Central Bank*, 102 Phil. 477 (1957) [Per J. Bengzon, En Banc]; *Mayon Motors Inc. vs. Acting Commissioner of Internal Revenue*, 111 Phil. 524 (1961) [Per J. Bautista Angelo, En Banc]; and *Philippine Association of Government Retirees, Inc. vs. GSIS*, 121 Phil. 1402 (1965) [Per J. Concepcion, En Banc].

[78] See *Macondray & Co. v. Eustaquio*, 64 Phil. 446 (1937) [Per J. Imperial, First Division]; *U. S. vs. Toribio*, 15 Phil. 85 (1910) [Per J. Carson, First Division]; *U. S. vs. Navarro*, 19 Phil. 134 (1911) [Per J. Carson, En Banc]; *De. Jesus vs. City of Manila*, 29 Phil. 73 (1914) [Per J. Moreland, First Division]; *Borromeo vs. Mariano*, 41 Phil., 322 (1921) [Per J. Malcolm, En Banc]; and *People vs. Concepcion*, 44 Phil. 126 (1922) [Per J. Malcolm, En Banc].

[79] *Mangila v. Lantin*, 140 Phil. 471, 475 (1969) [Per J. Sanchez, En Banc] citing *Republic vs. Reyes* 123 Phil. 1035 (1966) [Per J. Sanchez, En Banc] and Crawford, *Interpretation of Laws*, pp. 260-261.

[80] CIVIL CODE, art. 8.

[81] *Song Kiat Chocolate Factory vs. Central Bank*, 102 Phil. 477, 480-481(1957) [Per J. Bengzon, En Banc].

[82] *Rollo*, pp. 43-44.

[83] See Rep. Act No. 6395 (1971), sec. 6, par. 8 (b). Provides:

Section 6.

....

The Board shall, moreover, have the following specific powers and duties:

....

(b) To adopt an annual and supplemental budget of receipts and expenditures of the Corporation according to its requirements, which may include financial assistance of not more than ten thousand pesos each to municipalities which are the site of or contiguous to watersheds, lakes or natural sources of hydroelectric power being utilized by the Corporation, subject to the approval of the Office of Economic Coordination: Provided, That copies of the budgets of receipts and expenditures herein referred to shall be submitted to the Committee on National Enterprises and Government Corporations of the Senate and the Committee on Government Enterprises of the House of Representatives within fifteen (15) days from the transmission thereof to the Office of Economic Coordination[.]

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