

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City



**IN THE MATTER OF THE
PETITION FOR DISPUTE
RESOLUTION, WITH
APPLICATION FOR THE
ISSUANCE OF
PROVISIONAL REMEDIES,**

**SEM-CALACA POWER
CORPORATION,**
Petitioner,

-versus-

ERC CASE NO. 2010-058 MC

**NATIONAL POWER
CORPORATION (NPC) AND
POWER SECTOR ASSETS
AND LIABILITIES
MANAGEMENT
CORPORATION (PSALM),**
Respondents.

D O C K E T E D:
Date: SEP 06 2017
By: W

X-----X

ORDER

Before the Commission for resolution is the "Motion for Reconsideration" filed by PSALM against the Order dated 23 June 2014 granting SCPC's Motion for Issuance of Writ of Execution.

The dispositive portion of the assailed Order provides that:

WHEREFORE, premises considered, the "Motion for the Issuance of a Writ of Execution" filed by Sem-Calaca Power Corporation (SCPC) is hereby **GRANTED**.

Let a writ of execution be issued against the National Power Corporation/Power Sector Assets and Liabilities Management Corporation (NPC/PSALM) for the payment of **PhP476,703,077.96** in favor of SCPC, **with interests thereon at the rate of 6% per annum computed from the date of extra-judicial demand on August 4, 2010 until the date of actual payment**, which as of December 2013 already amounts to PhP95,210,011.82 and, the amount of VAT as collected by PSALM from MERALCO.

In its "*Motion for Reconsideration*" dated 29 August 2014, PSALM reiterated its position in its "*Comment (to SCPC's Motion for Issuance of Writ of Execution)*" that before a judgment money claim may be executed against a Government Owned and Controlled Corporation (GOCC) the same must first be filed with the Commission on Audit (COA). Thus, PSALM prayed that the Order dated 23 June 2014 be reconsidered and set aside.

On the other hand, SCPC filed its "*Opposition (to PSALM's Motion for Reconsideration dated 29 August 2014)*".

In said "*Opposition*", SCPC argued two (2) main points. First, the funds subject of the case is the amount which originated from MERALCO payment. According to SCPC, such amount is not the property of PSALM but the payment of MERALCO, which PSALM is bound to turn-over to SCPC for energy supplied by SCPC to MERALCO under Schedule W of the Asset Purchase Agreement. Thus, the said amount was held only by PSALM in its proprietary capacity in connection with the commercial transactions entered into by PSALM, making the said amount private in character.

Second, SCPC argued further that assuming that the amounts claimed by it from PSALM constitute public funds, the general rule that government funds are not subject to execution admits an exception. In support of this contention, SCPC cited the 2003 case of *National Housing Authority vs. Heirs of Isidro Guivelondo*¹. In the said case, the Supreme Court ruled that:

Generally, funds and properties of the government cannot be the object of garnishment proceedings even if the consent to be sued had been previously granted and the state liability adjudged.²

The universal rule that where the State gives its consent to be sued by private parties either by general or special law, it may limit claimant's action "only up to the completion of proceedings anterior to the stage of execution" and that the power of the Courts ends when the judgment is rendered, since government funds and properties may not be seized under writs of execution or garnishment to satisfy such judgments, is based on obvious considerations of public policy. Disbursements of public funds must be covered by the corresponding appropriation as required by law. The functions and public services rendered by the State cannot be allowed to

¹ G.R. No. 154411, June 19, 2003

² Republic v. Villasor, G.R. No. L-30671, 28 November 1973, 54 SCRA 83, 87; Republic v. Palacio, 132 Phil. 369 [1968].

be paralyzed or disrupted by the diversion of public funds from their legitimate and specific objects, as appropriated by law.³

However, if the funds belong to a public corporation or a government-owned or controlled corporation which is clothed with a personality of its own, separate and distinct from that of the government, then its funds are not exempt from garnishment.⁴ This is so because when the government enters into commercial business, it abandons its sovereign capacity and is to be treated like any other corporation.⁵

To further bolster its second point, SCPC also cited COA's Decision in *Decision No. 2011-075* entitled *Claim of Ms. Violeta C. Ilagan against the National Transmission Corporation*. Interpreting the COA decision, SCPC argued that only money claims made pursuant to Republic Act No. 6758 requires COA's decision. Thus, COA's approval is indispensable before judgment may be executed.

Acting on the opposing submissions of the parties, the Commission on 27 April 2015 wrote a letter to the COA Chairman Michael G. Aguinaldo requesting for a legal opinion on "whether or not the funds of PSALM can be the subject of garnishment and in particular, whether money claims against the funds of PSALM by virtue of an ERC judgment award should be filed before the COA."

The Commission's inquiry was answered by COA through a letter dated 10 July 2015⁶, to wit:

xxxx, this Office invites your attention to COA Circular No. 2001-002 dated July 31, 2001 quoting in full the Supreme Court Administrative Circular No. 10-2000 issued on October 25, 2000, which exhaustively disposed of the issue on issuance of Writs of Execution to Satisfy Money Judgments against Government Agencies and Local Government Units, partly stated thus:

Judges should bear in mind that in Commissioner of Public Highways v. San Diego (31 SCRA 617, 625 [1970]), this Court explicitly stated:

³ Commissioner of Public Highways v. San Diego, G.R. No. L-30098, 18 February 1970, 31 SCRA 616, at 625

⁴ Philippine National Bank v. Pabalan, G.R. No. L-33112, 15 June 1978, 83 SCRA 595, 598

⁵ Rizal Commercial Banking Corporation v. De Castro, G.R. No. L-34548, 29 November 1988, 168 SCRA 49, 60.

⁶ Attached herewith as Annex "A"

The universal rule that where the State gives its consent to be sued by private parties either by general or special law, it may limit claimant's action 'only up to the completion of proceedings anterior to the stage of execution' and that the power of the Courts ends when the judgment is rendered since government funds and properties may not be seized under writs of execution or garnishment to satisfy such judgments, is based on obvious considerations of public policy. Disbursements of public funds must be covered by the corresponding appropriation as required by law. The functions and public services rendered by the State cannot be allowed to be paralyzed or disrupted by the diversion of public funds from their legitimate and specific objects, as appropriated by law (underscoring supplied)

Moreover, it is settled jurisprudence that upon determination of State liability, the prosecution, enforcement or satisfaction thereof must still be pursued in accordance with the rules and procedures laid down in P.D. No. 1445, otherwise known as the Government Auditing Code of the Philippines (Department of Agriculture vs. NLRC, 227 SCRA 693, 701-02 [1993] citing Republic vs. Villasor, 54 SCRA 84 [1973]). All money claims against the Government must first be filed with the Commission on Audit which must act upon it within sixty days. Rejection of the claim will authorize the claimant to elevate the matter to the Supreme Court on certiorari and in effect sue the State thereby (P.D. 1445, Sections 49-50). (underscoring supplied)

The foregoing was further affirmed in the recent case of Lucena B. Rallos vs. City of Cebu et. Al., G.R. No. 202651, August 28, 2013, viz:

Despite the rendition of a final and executory judgment validating a money claim against an agency

or instrumentality of the government, its filing with the COA is a sine qua non condition before payment can be effected.

xxxxx

This Court, in the case of University of the Philippines v. Dizon, thus held that despite the existence of a final and executory judgment validating the claim against an agency or instrumentality of the Government, the settlement of the said claim is still subject to the primary jurisdiction of the COA. Ineluctably, the claimant has to first seek the COA's approval of the monetary claim. (underscoring supplied)

Moreover, the Supreme Court upheld the primary jurisdiction of this Commission over money claims against government agencies and instrumentalities in the case of Province of Aklan vs. Jody King Construction and Development Corp., G.R. Nos. 197592 & 20262, November 27, 2013, viz:

Under Commonwealth Act No. 327, as amended by Section 26 of Presidential Decree No. 1445, it is the COA which has primary jurisdiction over money claims against government agencies and instrumentalities (underscoring supplied)

RULING

The Commission finds the PSALM's motion meritorious.

The funds of PSALM, subject of the contribution, is a public fund

The argument of SCPC that the monies claimed by it from PSALM are not public funds is misplaced.

SCPC's argument arose from the nature of the source of the amount claimed. It would be recalled that the amount claimed by SCPC originated from MERALCO's payment for electricity supplied

by the former. The payment was made through National Power Corporation (NPC)/PSALM. NPC/PSALM is obligated to remit the said amount to SCPC. However, when NPC/PSALM remitted the amount to SCPC, it deducted therefrom the claimed amount and paid to Wholesale Electricity Spot Market (WESM).

SCPC assumed that, as the claimed amount originally formed part of MERALCO payment, it is private in character and retained such nature even if it were mingled with PSALM's funds.

Public funds has been defined in the case of *Republic of the Philippines, represented by Asset Privatization Trust, now Privatization and Management Office (PMO) v. Virgilio M. Tatlonghari, et al.*⁷, to wit:

The definition of "government funds" is provided under the Revised Administrative Code and Presidential Decree No. 1445:

"Government funds" includes public moneys of every sort and other resources **pertaining to any agency of the Government.**

The phrase "pertaining to any agency of the Government" distinguishes government funds from private funds. The definition of "government funds" indicates that for funds to be considered government funds or public funds, it must be shown that the funds properly belong to a government agency. To determine whether an entity is a government agency, we are also guided by the definition provided under the Revised Administrative Code and Presidential Decree No. 1445:

"Government agency" or "agency of the government," or "agency" refers to any department, bureau or office of the National Government, or any of its branches and instrumentalities, or any political subdivision, **as well as any government-owned or controlled corporation,** including its subsidiaries, or other self-governing board of commission of the Government.

Related to such definition is the Supreme Court ruling in *Commission of Public Highways vs. San Diego (31 SCRA 616)*, viz:

⁷ G.R. No. 170458, November 23, 2015

All government funds deposited with PNB by any agency or instrumentality of the government, whether by way of general or special deposit, remain government funds, since such government agencies or instrumentalities do not have any non-public or private funds of their own. They are not subject to garnishment or levy; **even assuming that the funds become commingled with other funds of the bank, this does not remove the character of the fund as a credit representing government funds thus deposited.** (Emphasis supplied.)

Considering the foregoing jurisprudence, commingling of the funds does not divest its nature from being a public fund.

Hence, any writ of execution against such fund is essentially an imposition on the public funds.

SCPC's money claim is subject to the primary jurisdiction of COA.

PSALM asserted that before SCPC's judgment money claim may be executed, the same must first be filed with COA. To buttress its contention, PSALM relied on the following Supreme Court decisions. (1) University of the Philippines, *et al.* vs. Hon. Agustin S. Dizon⁸; (2) National Home Mortgage Finance Corporation vs. Mario Abayari et al.⁹; and (3) National Electrification Administration vs. Danilo Morales¹⁰.

In all the above-cited jurisprudence, the Supreme Court has consistently cited Section 26 of Presidential Decree No. 1445 and ruled that judgment money claims against a government instrumentality¹¹, which includes by definition government owned and controlled corporations (GOCC) like PSALM, must first be filed with COA before its execution.

Section 26 of Presidential Decree No. 1445, otherwise known as the General Auditing Code of the Philippines, provides that:

⁸ G.R. No. 171182, August 23, 2012

⁹ G.R. No. 166508, October 2, 2009

¹⁰ G.R. No. 154200, July 24, 2007

¹¹ E.O. 292, Administrative Code of 1987, Section 2 (10) Instrumentality refers to any agency of the National Government, not integrated within the department framework vested within special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter. **This term includes regulatory agencies, chartered institutions and government-owned or controlled corporations.**

Section 26. General jurisdiction. - The **authority and powers of the Commission shall extend to** and comprehend all matters relating to auditing procedures, systems and controls, the keeping of the general accounts of the Government, the preservation of vouchers pertaining thereto for a period of ten years, the examination and inspection of the books, records, and papers relating to those accounts; and the audit and settlement of the accounts of all persons respecting funds or property received or held by them in an accountable capacity, as well as the examination, audit, and **settlement of all debts and claims of any sort due from or owing to the Government or any of its subdivisions, agencies and instrumentalities. The said jurisdiction extends to all government-owned or controlled corporations**, including their subsidiaries, and other self-governing boards, commissions, or agencies of the Government, and as herein prescribed, including non-governmental entities subsidized by the government, those funded by donations through the government, those required to pay levies or government share, and those for which the government has put up a counterpart fund or those partly funded by the government. (*emphasis supplied*)

Reliance of the SCPC on the 2003 case of *National Housing Authority vs. Heirs of Isidro Guivelondo*¹² and the 2011 COA decision for Decision No. 2011-075 fails to persuade.

A circumspect review of the case of Guivelondo shows that the same is inapplicable to the instant case because it is premised on the supposition that when the government enters into commercial business, it abandons its sovereign capacity and thus, it should be treated like any other corporation.

Guivelondo case further provides that same “doctrine was applied to suits filed against the Philippine Virginia Tobacco Administration (*PNB vs. Pabalan*¹³, *et al.*, 83 SCRA 695); the National Shipyard & Steel Corporation (*NASSCO vs. CIR*¹⁴, 118 Phil. 782); the Manila Hotel Company (*Manila Hotel Employees Asso. vs. Manila Hotel Co.*, 73 Phil. 374); and the People's Homesite and Housing Corporation (*PNB vs. CIR*, 81 SCRA 314).”

In all of the jurisprudence cited in Guivelondo case, the Supreme Court referred to the charter of the subject GOCCs which

¹² *supra* note 1

¹³ G.R. No. L-33112, June 15, 1978

¹⁴ G.R. No. L-17874, August 31, 1963

provides that it has all the powers and functions of a corporation under the corporation law. Thus, it should be treated as an ordinary corporation subject to writs of execution.

The case of *NASSCO vs. CIR* is illustrative of this doctrine, to wit:

The allegation to the effect that the funds of the NASSCO are public funds of the government, and that, as such, the same may not be garnished, attached or levied upon, is untenable for, as a government owned and controlled corporation, the NASSCO has a personality of its own, distinct and separate from that of the Government. It has — pursuant to Section 2 of Executive Order No. 356, dated October 23, 1950 (46 Off. Gaz., 4677), pursuant to which the NASSCO has been established — "all the powers of a corporation under the Corporation Law . . ." Accordingly, it may sue and be sued and may be subjected to court processes just like any other corporation (Section 13, Act No. 1459, as amended).

Likewise, the case of *PNB vs. Pabalan*¹⁵ and *Rizal Commercial Banking Corporation v. De Castro*¹⁶ (also cited in *Guivelondo* case), both of which involved the fund of Philippine Virginia Tobacco Administration (PVTA), the Supreme Court alluded to its charter, Republic Act No. 2265¹⁷:

Among the specific powers vested in the PVTA are: 1) to buy Virginia tobacco grown in the Philippines for resale to local bona fide tobacco manufacturers and leaf tobacco dealers [Section 4(b), R.A. No. 2265]; 2) to contracts of any kind as may be necessary or incidental to the attainment of its purpose with any person, firm or corporation, with the Government of the Philippines or with any foreign government, subject to existing laws [Section 4(h), R.A. No. 2265]; and 3) **generally, to exercise all the powers of a corporation under the Corporation Law**, insofar as they are not inconsistent with the provisions of this Act [Section 4(k), R.A. No. 2265.]

¹⁵ *supra* note 13

¹⁶ G.R. No. L-34548, 29 November 1988, 168 SCRA 49, 60

¹⁷ An Act Establishing The Virginia Tobacco Administration, Defining Its Objectives, Powers And Functions, And For Other Purposes

Analogous to PTVA and NASSCO, Guivelondo case involved National Housing Authority (NHA), a GOCC whose charter, Presidential Decree No. 757, provides the following:

Section 20. Applicability of the Corporation Law. The provisions of the Corporation Law, in so far as they are not inconsistent with the provisions and policies provided in this Decree, shall be applicable to the Authority.

Thus, in contrast with the foregoing GOCCs, PSALM's charter limited its purpose "*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.*"¹⁸ PSALM's charter has no similar provision referring to the Corporation Law or Corporation Code of the Philippines¹⁹. Neither is there a jurisprudence stating that PSALM's mandate is commercial in character.

From the foregoing discussions, it is clear that the doctrine enunciated in the Guivelondo case, from which SCPC relied upon its argument, is not applicable to the instant case. The claim against PSALM falls within the general rule that funds of a GOCC may not be subjected to writs of execution unless it is filed before the COA

Moreover, the 2011 COA decision cited by SCPC is not considered to have formed part of jurisprudence. Thus, it cannot be considered to have overturned the consistent rulings of the Supreme Court that any judgment money claims against a GOCC must be filed before the COA.

Lastly, the said doctrine was further upheld by Supreme Court in the recent jurisprudence of Republic of the Philippines et al. v. Hon. Luisito G. Cortez et al.,²⁰ where it ruled that "*Money claims and judgments against the government must first be filed with the Commission on Audit. Trial courts have already been strongly cautioned against the issuance of writs of execution in cases involving the disbursement of public funds in Supreme Court Administrative Circular No. 10-2000.*"

WHEREFORE, premises considered, the Commission hereby **GRANTS** PSALM's motion for reconsideration and **SETS ASIDE** its **Order dated 23 June 2014**.

¹⁸ Section 50, R.A. No. 9136, otherwise known as, Electric Power Industry Reform Act (EPIRA)

¹⁹ Batas Pambansa Bilang 68

²⁰ G.R. No. 187257

Furthermore, the decision of the Supreme Court upholding the Commission's decision dated 6 July 2011 and Order dated 13 February 2012, as well as the corresponding entry of judgment making the decision final and executory on 13 February 2017, is hereby noted.

The grant of PSALM's motion is without prejudice to the filing of SCPC of the appropriate money claims before the Commission on Audit consistent with the Supreme Court's Administrative Circular No. 10-2000.

SO ORDERED.

Pasig City, 18 July 2017.

JOSE VICENTE B. SALAZAR*
Chairman and CEO



ALFREDO J. NON
Commissioner



GLORIA VICTORIA C. YAP-TARUC
Commissioner



JOSEFINA PATRICIA A. MAGPALE-ASIRIT
Commissioner



GERONIMO D. STA. ANA
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* The Chairman was placed on preventive suspension as per Order of the Office of the President (OP-DC Case No. 17-D-094) dated 2 May 2017 and received on 04 May 2017.

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