

## EN BANC

[ G.R. No. 156208, November 21, 2017 ]

**NPC DRIVERS AND MECHANICS ASSOCIATION (NPC DAMA), REPRESENTED BY ITS PRESIDENT ROGER S. SAN JUAN, SR., NPC EMPLOYEES & WORKERS UNION (NEWU)- NORTHERN LUZON, REGIONAL CENTER, REPRESENTED BY ITS REGIONAL PRESIDENT JIMMY D. SALMAN, IN THEIR OWN INDIVIDUAL CAPACITIES AND IN BEHALF OF THE MEMBERS OF THE ASSOCIATIONS AND ALL AFFECTED OFFICERS AND EMPLOYEES OF NATIONAL POWER CORPORATION (NPC), ZOL D. MEDINA, NARCISO M. MAGANTE, VICENTE B. CIRIO, JR., NECITAS B. CAMAMA, IN THEIR INDIVIDUAL CAPACITIES AS EMPLOYEES OF NATIONAL POWER CORPORATION, PETITIONERS, VS. THE NATIONAL POWER CORPORATION (NPC), NATIONAL POWER BOARD OF DIRECTORS (NPB), JOSE ISIDRO N. CAMACHO AS CHAIRMAN OF THE NATIONAL POWER BOARD OF DIRECTORS (NPB), ROLANDO S. QUILALA, AS PRESIDENT-OFFICER-IN-CHARGE/CEO OF NATIONAL POWER CORPORATION AND MEMBER OF NATIONAL POWER BOARD, AND VINCENT S. PEREZ, JR., EMILIA T. BONCODIN, MARIUS P. CORPUS, RUBEN S. REINOSO, JR., GREGORY L. DOMINGO AND NIEVES L. OSORIO, RESPONDENTS.**

### R E S O L U T I O N

**LEONARDO-DE CASTRO, J.:**

For resolution are the following motions filed subsequent to the entry in the Book of Entries of the Judgment of the Court's decision in the above-entitled case: (a) the National Power Corporation (NPC)'s Manifestation and Motion dated August 22, 2014; (b) Power Sector Assets and Liabilities Management Corporation (PSALM)'s Omnibus Motion dated August 22, 2015; (c) the petitioners' Motion to Expunge dated September 1, 2014; and (d) Meralco's Special Appearance with Urgent Motion for Clarification dated September 4, 2014.

#### Antecedent Facts

The Electric Power Industry Reform Act (EPIRA)<sup>[1]</sup> was enacted to ordain reforms in the electric power industry, including the privatization of the assets and liabilities of the NPC. Pursuant to this objective, the said law created the **National Power Board (NPB)** consisting of **nine (9) heads of agencies** as members, to wit: (a) Secretary of Finance, (b) Secretary of Energy, (c) Secretary of Budget and Management, (d) Secretary of Agriculture, (e) Director-General of the National Economic and Development Authority, (f) Secretary of Environment and Natural Resources, (g) Secretary of the Interior and Local Government, (h) Secretary of the Department of Trade and Industry, and (i) President of the NPC.<sup>[2]</sup>

In line with NPC's privatization, the EPIRA also called for the NPC's restructuring. In this regard, **the NPB passed NPB Resolution Nos. 2002-124 and 2002-125** directing the termination from service of all NPC employees effective January 31, 2003. The restructuring plan covered even "Early-leavers" or those who: (a) did not intend to be rehired by NPC based on the new organizational structure, or (b) were no longer employed by NPC after June 26, 2001, the date of the EPIRA's effectivity, for any reason other than voluntary resignation.<sup>[3]</sup>

#### **The Main Decision**

In Our **Decision**<sup>[4]</sup> **dated September 26, 2006**, we ruled that the above-mentioned resolutions were void and without effect. These were not passed by a majority of NPB's members, as only three out of nine members voted. The other four signatories to the resolutions were not members of the Board. They were merely representatives of those actually named under the EPIRA to sit as members of the NPB. Thus, their votes did not count.

#### **Clarifying the Main Decision**

Subsequently, We clarified the effect of Our Decision in our **Resolution** dated **September 17, 2008** to wit:

1. The Court's Decision does not preclude the NPB from passing another resolution, in accord with law and jurisprudence, approving a new separation program from its employees.
2. The **termination** of the petitioners' employment on January 31, 2003 was **illegal**.
3. Due to the illegal dismissal, as a general rule, the petitioners are entitled to reinstatement. However, **reinstatement has become impossible** because NPC was still able to proceed with its reorganization prior to the promulgation of the Decision dated September 26, 2006.
4. Thus, the petitioners are **entitled** to the following:
  - a. **Separation pay in lieu of reinstatement**, based on a validly approved separation program of the NPC; and
  - b. **Back wages** together with **wage adjustments and all other benefits** which they would have received had it not been for the illegal dismissal, **computed from January 31, 2003 until actual reinstatement or payment of separation pay**.
5. However, any amount of separation benefits **already received** by the petitioners under NPB Resolution Nos. 2002-124 and 2002-125 shall be **deducted** from their total entitlement.

We also approved a **10% charging lien** in favor of the petitioners' counsels, Attys. Aldon and Orocio, in accordance with the Labor Code which limits attorney's fees in illegal dismissal cases (in the private sector) to 10% of the recovered amount.

Finally, We **deferred the computation** of the actual amounts due the petitioners and the enforcement of payment thereof by execution to the proper forum, as this Court is not a trier of facts. We held that this Court is not equipped to receive evidence and determine the truth of the factual allegations of the parties on this matter.

#### **NPB Ratifies NPB Resolution Nos. 2002-124 and 2002-125**

In the meantime, on September 14, 2007, the NPB issued Resolution No. 2007-55, which adopted, confirmed, and approved the principles and guidelines enunciated in NPB Resolution Nos. 2002-124 and 2002-125.

#### **Entry of Judgment**

Our Decision dated September 26, 2006 became **final and executory** on October 10, 2008. The **entry of judgment** thereof was made on October 27, 2008. Thus, in Our **Resolution dated December 10, 2008**, we granted the petitioners' motion for execution. We directed the Chairman and Members of the NPB and the President of NPC (NPB/NPC) to prepare a **verified list** of the names of all NPC employees terminated/separated as a result of NPB Resolution Nos. 2002-124 and 2002-125, and the amounts due to each of them, including 12% legal interest. We also directed the Office of the Clerk of Court and *ex-officio* Sheriff of the Regional Trial Court (RTC) of Quezon City to: a) issue a **writ of execution** based on the list submitted by the NPC, and b) undertake all necessary actions to execute the herein decision and resolution.

The petitioners sought to cite the NPB/NPC for contempt for its alleged failure to comply with the Court's directive. They also insisted for the garnishment and/or levy of NPC's assets, **including those of PSALM**, for the satisfaction of the judgment.

The NPC countered that there were actually only **16 NPC personnel terminated on January 31, 2003**. Also, the issuance of NPB Resolution No. 2007-55 cured the infirm NPB Resolution Nos. 2002-124 and 2002-125. Thus, the termination on January 31, 2003 was valid and legal.

#### **Extent of Illegal Dismissal and PSALM's Liability**

In our **Resolution dated December 2, 2009**, We held that Our previous rulings contemplated the illegal dismissal of **all NPC employees** pursuant to NPB Resolution Nos. 2002-124 and 2002-125, not just 16. Based on NPC Circular No. 2003-09, the terminations were implemented in four (4) tranches, *viz.*: (a) **Top executives** - effective January 31, 2003; (b) **Early-leavers** - effective January 15, 2003; (c) **Those no longer employed in the NPC after June 26, 2001** - effective on the date of actual separation; and (d) **All other personnel** - effective February 28, 2003.

We ruled further that the issuance of NPB Resolution No. 2007-55 on September 14, 2007 only means that the services of all NPC employees have been **legally** terminated on this date. Thus, the petitioners' entitlement (*i.e.*, separation pay in lieu of reinstatement plus back wages less benefits already received) **shall be reckoned from the above-mentioned dates (instead of just January 31, 2003) up to September 14, 2007**.

Lastly, We held that PSALM's assets may be subject of the execution of this case. We explained that under the EPIRA, PSALM shall assume all of NPC's existing generation assets, liabilities, IPP contracts, real estate, and other disposable assets. **It would be unfair and unjust if PSALM gets nearly all of NPC's assets but will not pay for liabilities incurred by NPC during the privatization stage**. Further, there was a transfer of interest over these assets by operation of law. **These properties may be used to satisfy the judgment.**<sup>[5]</sup>

#### **Our Jurisdiction, Legal Interest, and NPB Resolution No. 2007-55's Non-Retroactivity**

In our **Resolution dated June 30, 2014**, we emphasized that by virtue of **Section 78 of the EPIRA, We have jurisdiction** to rule on the issue of the illegal termination of NPC employees. Also, since Our Decision dated September 26, 2006 and Resolution dated September 17, 2008 have already become final and executory, NPC is barred by the principles of **estoppel** and **finality of judgments** from raising arguments aimed at modifying Our final rulings.

Further, we held that Our Resolution dated September 17, 2008 did not grant additional reliefs. It merely **clarified** the Decision dated September 26, 2006.

On the other hand, we also ruled that Our Resolution dated December 10, 2008 did not exceed the terms of the Resolution dated September 17, 2008 (inasmuch as it also awarded **interest**). Legal interest on the judgment debt shall be computed as follows:

1. **12%** from October 10, 2008 (finality of the Decision dated September 26, 2006) until June 30, 2013; and
2. **6%** from July 1, 2013 (effectivity of Central Bank Circular No. 799) onwards.

As for NPB Resolution No. 2007-55, We pointed out that it did not affect our final rulings as the said resolution shall be applied **prospectively** (September 14, 2007 onwards).

We continued to explain PSALM's liability in this case. Pursuant to Sections 47, 49, 50, and 55 of the EPIRA, **PSALM assumed NPC's liabilities** existing at the time of the EPIRA's effectivity, **including the separation benefits due to the petitioners**.

Finally, We found the NPC and Office of the Solicitor General (OSG) guilty of **indirect contempt** due to their noncompliance with our final orders. The parties were ordered to pay a fine of P30,000.00 each.

#### **Implementation and Execution of the Court's Main Decision and Resolutions**

Pursuant to Our Resolution dated June 30, 2014, the RTC Clerk of Court and *Ex-Officio* Sheriff issued a Demand for Immediate

Payment dated July 28, 2014 and served the same upon the NPC and PSALM. The demand amounted to P62,051,646,567.13 broken down as follows:

Judgment amount, <sup>[6]</sup> inclusive of 10% charging lien	P60,244,316,841.88
Lawful fees and costs of execution	1,807,329,725.25
Total amount demanded	P62,051,646,567.13

A few days later, in a letter dated July 31, 2014, the RTC Clerk of Court and *Ex Officio* Sheriff asked the Court to clarify the effects of our Resolution dated June 30, 2014, specifically whether the judgment may already be executed. In response, some of the petitioners, as represented by Attys. Aldon and Orocio, also wrote a letter dated August 5, 2014 to request the Court to immediately act on this matter.

Before the Court could act on the above-mentioned correspondences, the RTC Clerk of Court and *ex-officio* Sheriff issued Notices of Garnishment addressed to the Manila Electric Company (Meralco), and National Transmission Commission (Transco)<sup>[7]</sup> with respect to all credits in or under their possession or control owing or payable to NPC and/or PSALM, including but not limited to bank deposits and financial interests, goods, effects, stocks, interest in stock and shares, and any other personal properties. Another Notice of Garnishment was also served upon Land Bank of the Philippines (Landbank) in relation to NPC and PSALM's bank accounts.<sup>[8]</sup>

In separate letters, PSALM, through its president and chief executive officer Emmanuel R. Ledesma, Jr., advised Meralco and Transco to "exercise restraint and refrain from improvidently releasing funds" owing to PSALM to satisfy the Notices of Garnishment served upon them.

#### ***NPC Employees List Requirement and Suspension of Execution***

In Our **Resolution dated September 9, 2014**, the Court directed the parties to submit their **separate lists of NPC employees** as of January 31, 2002, showing the following data:

- i. The full name;
- ii. Date of hire;
- iii. Last date of uninterrupted service after date of hire;
- iv. Position. and salary as of last date of service; and
- v. If termination or separation pay has been received at any time from NPC, the amount of termination or separation pay received and date of receipt.

Further, We directed the RTC Clerk of Court and *Ex-Officio* Sheriff: (a) to **defer** the implementation of the Main Decision and the Resolutions dated September 17, 2008, December 2, 2009, and June 30, 2014 while We consider the submissions now before Us and until further notice; and (b) **lift** the Notice of Garnishment dated August 14, 2014.

Subsequently, in Our **Resolution dated October 20, 2014**, we **modified** the terms of Our Resolution dated September 9, 2014 and required a more detailed list as follows:

- a. Employee's full name;
- b. Date of hire;
- c. Position as of date of hire;
- d. Date of actual termination under NPB Resolution Nos. 2002-124 and 2002-125;
- e. Position as of date of actual termination under NPB Resolution Nos. 2002-124 and 2002-125;
- f. Salary as of last date of actual termination;
- g. Separation pay that the employee is entitled to under the approved separation pay program;
- h. Date of receipt of separation pay;
- i. Amount of separation pay received;
- j. Wage adjustments and other benefits that the employee is entitled to from the date of actual termination until September 14, 2007;
- k. Wage adjustments and other benefits that the employee has received from the date of actual termination until September 14, 2007;
- l. Date of re-hire by the NPC, the PSALM, or the TRANSCO, if any;
- m. Position as of date of re-hire by the NPC, the PSALM, or the TRANSCO, if any;
- n. Salary as of date of re-hire by the NPC, the PSALM, or the TRANSCO, if any;
- o. Subsequent position/s in the NPC, the PSALM, or the TRANSCO as a result of personnel actions after the date of re-hire;

- p. Date of release of appointment papers in the subsequent position/s;
- q. Salary in the subsequent position/s;
- r. Date of actual termination in the NPC, the PSALM, or the TRANSCO, if any;
- s. Separation pay that the employee is entitled to under the approved separation pay program;
- t. Amount of separation pay received;
- u. Date of receipt of separation pay.<sup>[9]</sup>

The NPC and PSALM submitted their compliance to our Resolution dated October 20, 2014.

The **NPC submitted a list of 9,272 employees**, including details required by our Resolution dated October 20, 2014, through their Compliance *Ad Cautelam* dated March 16, 2015. However, it made the following reservations:

1. Its submission should not prejudice the reliefs prayed for in NPC's Manifestation and Motion dated August 22, 2014.
2. The figures in the submission are necessarily indeterminate because they are subject to the final outcome of disallowance proceedings under the Commission on Audit and a pending case before the RTC (Case No. R-QZN-15-01290 CV) based on their lack of appropriation cover.

On the other hand, PSALM's submission was partially based on the information it received from NPC, the custodian of personnel records, which considered **47 former NPC employees**. PSALM points out that it is unable to provide complete information.

It argues that assuming that it is liable, the affected NPC employees have already been paid separation benefits pursuant to Rule 33 of the EPIRA Implementing Rules.

### **Motions Pending Resolution**

The motions that remain pending before Us (after the Resolution dated June 30, 2014) are as follows: (a) the NPC's Manifestation and Motion dated August 22, 2014; (b) PSALM's Omnibus Motion dated August 22, 2015; (c) the petitioners' Motion to Expunge dated September 1, 2014; and (d) Meralco's Special Appearance with Urgent Motion for Clarification dated September 4, 2014.

#### ***The NPC's Manifestation and Motion dated August 22, 2014***

The NPC argues as follows:

1. The subject matter of the case has a **huge financial impact**, which must be decided *en banc*.

PSALM echoes this view.<sup>[10]</sup> It further claims that two divisions of the Court have given conflicting decisions-while one has ruled that PSALM is an indispensable party, the other considered them as a necessary party. Thus, in PSALM's view, to remedy the **seeming conflict** between the two rulings, the present case must be referred to the Court *en banc*.

In Our Resolution dated September 9, 2014, we deferred the resolution of this matter pending full consideration of other remaining motions submitted by the parties.

2. The Supreme Court has no jurisdiction over illegal dismissal cases of NPC employees. Jurisdiction is vested with the Civil Service Commission (CSC).
3. Department secretaries may vote through representatives.
4. In the absence of an actual computation of the amounts due to the petitioners, the RTC Clerk of Court and *Ex-Officio* sheriff of Quezon City cannot garnish NPC's properties. The Court's delegation of authority must first be raffled to an RTC judge for proper determination pursuant to the Court's Resolution dated June 30, 2014.

#### ***PSALM's Omnibus Motion dated August 22, 2015***<sup>[11]</sup>

PSALM maintains that it should be absolved from any liability in this case due to the following reasons:

1. PSALM shall only be liable for obligations/liabilities that were exclusively listed under the EPIRA, to wit: (1) NPC liabilities transferred to PSALM, (2) transfers from the national government, (3) new loans, and (4) NPC stranded contract costs.<sup>[12]</sup> Thus, despite the privatization of NPC's assets, NPC remained as separate and distinct from PSALM. It is capable of fulfilling its own obligations that were not assumed by PSALM.
2. The obligation to pay separation benefits was not among the liabilities assumed by PSALM because it arose only after the EPIRA took effect.<sup>[13]</sup>
  - a. Under Section 49 of the EPIRA, PSALM shall be liable only for NPC's selected **outstanding obligations**. The obligation to pay separation benefits in the present case was not an outstanding obligation assumed by PSALM because, at the time of the EPIRA's passage, the obligation did not yet exist nor did it arise from any loan, bond issuance, security and other instrument or indebtedness.<sup>[14]</sup>
  - b. The obligation to pay the separation benefits in the present case only arose after the EPIRA took effect. Only NPC liabilities existing during the effectivity of the EPIRA were transferred to PSALM. Such transfer could not have included even NPC liabilities incurred after the EPIRA took effect.
3. NPC remains to be solely liable for the payment of separation benefits in this case.

- a. Separation benefits as a result of the privatization of NPC are governed by Section 63 of the EPIRA and Rule 33 of its Implementing Rules.
  - b. Under Section 4, Rule 33 of the Implementing Rules, **funds necessary to cover the payment of separation pay shall be provided by either the GSIS or from the corporate funds of the NEA or the NPC, as the case may be. The Buyer or Concessionaire or the successor company shall not be liable for the payment thereof.**
  - c. There is no basis to hold PSALM liable. The IRR clearly mandates that the payment of separation pay in favor of displaced NPC employees shall be out of NPC's own corporate funds.
4. If PSALM is at all liable, its liability is limited to the separation pay of NPC employees terminated pursuant to a valid separation plan. PSALM cannot be held liable for separation pay arising from a separation/restructuring plan that was tainted with irregularities and bad faith. If the law had intended PSALM to assume even the obligation to pay separation pay, the same would have been clear and categorical.<sup>[15]</sup>

However, in PSALM's Supplement to the Compliance dated October 27, 2014,<sup>[16]</sup> it argues that the separation program was effected through valid board actions. The laws applicable to government corporations like NPC recognize the validity of designating alternates to sit as members of the governing boards.

Further, based on the Congressional deliberations leading to the EPIRA's enactment, the legislature intended to limit NPC liabilities to be transferred and assumed by PSALM only to NPC debts arising from **direct contractual obligations with banking and multilateral financial institutions.**<sup>[17]</sup>

5. Its right to due process was violated when it was declared as a mere necessary party to the case.
6. In keeping with PSALM's right to due process, the Notices of Garnishment issued to it by the Regional Trial Court, Quezon City, Clerk of Court should be quashed for being fatally defective.
7. Prior approval by the Commission on Audit (COA) must first be obtained before any money judgment can be enforced against PSALM.

On the other hand, the petitioners counter that while government funds are generally not subject to execution, this rule admits of exceptions.<sup>[18]</sup> Relying on *National Housing Authority v. Heirs of Isidro Guivelondo*,<sup>[19]</sup> they argue that funds belonging to a public corporation or a government-owned or controlled corporation like PSALM, which is clothed with its own personality, separate, and distinct from that of the government are not exempt from garnishment.<sup>[20]</sup>

#### ***Petitioners' Motion to Expunge dated September 1, 2014***

The petitioners argue that the NPC's Manifestation and Motion dated August 22, 2014 and PSALM's Omnibus Motion dated August 22, 2015 violate the prohibition against the filing of a second motion for reconsideration. In their view, the arguments raised in these motions are mere rehashes of issues already resolved and disposed of by the Court. Thus, the petitioners request that these motions be denied and excluded from the records of the case altogether.

#### ***Meralco's Special Appearance with Urgent Motion for Clarification dated September 4, 2014***

Meralco filed its Special Appearance before the Court in view of: (a) the Notice of Garnishment dated August 14, 2014 served by the RTC Clerk of Court and *Ex-Officio* Sheriff garnishing *all* credits owing to PSALM but in and under Meralco's possession and control; and (b) PSALM's letter of even date cautioning Meralco to exercise restraint and refrain from releasing funds due to PSALM but still in its (Meralco) possession.

Meralco manifests to the Court the following:

1. In response to the Notice of Garnishment, it filed a Compliance and Manifestation dated August 19, 2014. Meralco informed the RTC Clerk of Court and *Ex-Officio* Sheriff that it is ready and willing to comply with the RTC's directives and processes. However, there are serious repercussions that may arise due to the garnishment of PSALM's credits (*i.e.*, suspension and/or nonpayment/fulfillment of reciprocal obligations between PSALM and Meralco, possible breach of contract on Meralco's part, *etc.*). Thus, the parties must first clarify these matters with and seek guidance from the Court.
2. Meralco also asserts that its regular remittances to PSALM may be any one of three types, to wit: (a) *universal charges* for: 1) NPC's stranded contract costs, 2) missionary electrification, and 3) environmental charges; (b) *line rental costs* for energy purchases of Sunpower Philippines Manufacturing Limited (Sunpower); and (c) *deferred accounting adjustments - generation rate adjustment mechanism* (DAA-GRAM).

It discusses each type of remittance as follows:

- a. *Universal charges* are collected by Meralco and remitted to PSALM by virtue of several Energy Regulatory Commission (ERC) rulings.<sup>[21]</sup> In accordance with the EPIRA, upon remittance, PSALM will then place the amounts received in a Special Trust Fund (STF), which shall be disbursed for purposes specified in Section 34 of the EPIRA<sup>[22]</sup> and in favor of identified beneficiaries. Meralco claims that the judgment obligation in the present case has not been included in the previous filings of the NPC/PSALM for the recovery of any component of universal charge.
- b. *Line rental cost* is an amount billed by the Philippine Electricity Market Corporation (PMC) to buyers of electricity covered by bilateral contracts to account for the cost of energy lost in the process of delivering contracted energy volumes from a generator's plant to the buyers. Sunpower is one of the said buyers of electricity. There is a special arrangement with regard to the line rental cost attributable to Sunpower where, instead of billing Sunpower directly, PMC bills PSALM, which in turn bills Meralco. Meralco then has the duty to collect the amount from Sunpower. Upon collection, Meralco shall remit the amount to PSALM, which will ultimately be remitted to PMC. Thus, while the amounts of line rental cost will be initially remitted to PSALM,