



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

**NATIONAL POWER
CORPORATION,**

Petitioner,

G.R. No. 229706

Present:

GESMUNDO, C.J., *Chairperson*
HERNANDO,
ZALAMEDA,
ROSARIO, and
MARQUEZ, JJ.

- versus -

**POWER SECTOR ASSETS AND
LIABILITIES MANAGEMENT
CORPORATION,**

Respondent.

Promulgated:

MAR 15 2023

X ----- X

DECISION

ZALAMEDA, J.:

On 26 June 2001, the effectivity date of the Electric Power Industry Reform Act of 2001 (EPIRA), or Republic Act No. (RA) 9136,¹ the power generation function of the National Power Corporation (NPC) ceased by operation of law. NPC's assets and liabilities were transferred to Power Sector Assets and Liabilities Management Corporation (PSALM), also by operation of law, on the same date. There is no need to present further evidence on these matters. These are not questions of fact that still need to be determined.

¹ ENTITLED: "AN ACT ORDAINING REFORMS IN THE ELECTRIC POWER INDUSTRY, AMENDING FOR THE PURPOSE CERTAIN LAWS AND FOR OTHER PURPOSES." Approved: 08 June 2001.

The Case

This is a Petition for Review on *Certiorari*² under Rule 45 of the Rules of Court filed by petitioner NPC assailing the Decision³ dated 21 July 2016 and the Resolution⁴ dated 27 January 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 138908. The CA set aside the Order⁵ dated 03 March 2014 of Branch 38, Regional Trial Court (RTC) of Lingayen, Pangasinan in Civil Case No. 19076. The RTC denied for lack of merit the motion filed by PSALM to dismiss the third-party complaint filed against it by the Office of the Municipal Treasurer of Sual (Municipal Treasurer).

Antecedents

The CA summarized the facts as follows:

In 2010, the [Municipal Treasurer] assessed the National Power Corporation (NPC) of local business taxes for calendar years 2006, 2007, 2008, and 2009. Aggrieved, the NPC filed a protest arguing that it had ceased to generate and supply electricity after Congress enacted Republic Act No. 9136, also known as the Electric Power Industry Reform Act (EPIRA) that took effect on June 26, 2001. However, the protest was denied prompting the NPC to appeal before the Regional Trial Court docketed as Civil Case No. 19076.

Meantime, the Municipal Treasurer filed a third-party complaint against [PSALM] premised on the local government's tax lien over the properties that it acquired from NPC via the EPIRA. Immediately, PSALM moved to dismiss the complaint based on lack of cause of action. PSALM contended that it is a separate and distinct entity from NPC. Moreover, PSALM assumed only the properties and liabilities of NPC existing at the time of the EPIRA's effectivity on June 26, 2001. Consequently, PSALM has no obligation to pay [the] NPC's local business taxes from 2006 to 2009.⁶

The Municipal Treasurer provided several justifications for filing its Third-Party Complaint⁷ dated 06 June 2011 against PSALM.

² *Rollo*, pp. 20-39.

³ *Rollo*, pp. 10-15. Penned by Associate Justice Mario V. Lopez (now a Member of this Court) and concurred in by Associate Justices Rosmari D. Carandang (now a retired Member of this Court) and Myra V. Garcia-Fernandez.

⁴ *Id.* at 16-17. Penned by Associate Justice Mario V. Lopez (now a Member of this Court) and concurred in by Associate Justices Rosmari D. Carandang (now a retired Member of this Court) and Myra V. Garcia-Fernandez.

⁵ *Id.* at 81-84. Penned by Presiding Judge Teodoro C. Fernandez.

⁶ *Id.* at 10-11.

⁷ *Id.* at 162-168.

The Notices of Assessment⁸ for the Years 2006 to 2009, which the Municipal Treasurer sent to NPC on 09 September 2010, uniformly invoked this Court's ruling dated 09 April 2003 in *National Power Corporation v. Cabanatuan*⁹ (*Cabanatuan*) as basis for NPC's liability for taxes imposed by local government units. The notices referred to a letter certification from the Department of Energy as to NPC's number of kilowatt hours generated and sold during the relevant period.

The Municipal Treasurer also cited Municipal Ordinance No. 121¹⁰ in its assessment of local business taxes against NPC in the Notices of Assessment and in its Third-Party Complaint¹¹ against PSALM:

Section 2A.01 There is hereby imposed on the following persons who establish, operate, conduct or maintain their respective business within the municipality a graduated business tax in the amount hereafter prescribed:

x x x x

e) On **contractors** and other independent contractors, in accordance with the following schedule:

Gross sales/receipts of the preceding year	Rate of tax per annum
x x x 2,000,000.00 or more	At a rate not exceeding fifty percent (50%) of one percent (1%) ¹²

In addition, the Municipal Treasurer also invoked the Court's declaration in the 2009 case of *NPC Drivers and Mechanics Association (DAMA) v. The National Power Corporation*¹³ (*NPC DAMA*). Therein, the Court held that EPIRA mandated PSALM to take most of NPC's assets during its privatization. Therefore, it is reasonable for PSALM to also assume the liabilities of NPC during privatization.

Finally, according to the Municipal Treasurer, the motion to implead PSALM was justified under the lien established in Section 173 of The Local Government Code of 1991 (LGC), or RA 7160:¹⁴

SECTION 173. *Local Government's Lien.* — Local taxes, fees,

⁸ Id. at 139-146.

⁹ 449 Phil. 233 (2003).

¹⁰ *Rollo*, pp. 139-146. Also served as basis in the Notices of Assessment for the Years 2006 to 2009.

¹¹ Id. at 162-168.

¹² Id. at 163. Emphases in the Third-Party Complaint.

¹³ 621 Phil. 376 (2009).

¹⁴ Entitled: "AN ACT PROVIDING FOR A LOCAL GOVERNMENT CODE OF 1991." Approved: 10 October 1991.

charges and other revenues constitute a lien, superior to all liens, charges or encumbrances in favor of any person, enforceable by appropriate administrative or judicial action, not only upon any property or rights therein which may be subject to the lien but also upon property used in business, occupation, practice of profession or calling, or exercise of privilege with respect to which the lien is imposed. The lien may only be extinguished upon full payment of the delinquent local taxes, fees and charges including related surcharges and interest.

Thus, the Municipal Treasurer asked the RTC to direct PSALM to deliver to the Municipal Treasurer the amount equivalent to the local business tax liability of NPC,¹⁵ plus monthly interest of 2% of the principal local business tax contained in the notices of assessment in conformity with Section 168¹⁶ of the LGC.

In its Answer¹⁷ dated 20 February 2013, PSALM alleged that the Municipal Treasurer did not serve it a Notice of Assessment and Demand to Pay. It only learned of the assessment when it was informed by the Development Bank of the Philippines (DBP) and the Land Bank of the Philippines (LBP) of their receipt of a Warrant of Distrainment. PSALM also raised special and affirmative defenses:

First, NPC DAMA is not yet final. PSALM underscored that, as of 15 August 2011, this Court's Resolution dated 02 December 2009 in *NPC DAMA* was not yet final and executory. Moreover, the issues raised in *NPC DAMA* refer to separation pay, backwages, and benefits, and not to local business taxes.

Second, NPC and PSALM are separate entities. PSALM asserted that NPC, despite the divestment and/or privatization of its assets, Independent Power Producer (IPP) contracts and spun-off corporations, remains a government-owned and controlled corporation (GOCC) mandated to perform missionary electrification function¹⁸ through the Small Power

¹⁵ *Rollo*, p. 166. Specified as ₱327,538,133.22 in the Third-Party Complaint.

¹⁶ SECTION 168. *Surcharges and Penalties on Unpaid Taxes, Fees, or Charges.* — The sanggunian may impose a surcharge not exceeding twenty-five (25%) of the amount of taxes, fees or charges not paid on time and an interest at the rate not exceeding two percent (2%) per month of the unpaid taxes, fees or charges including surcharges, until such amount is fully paid but in no case shall the total interest on the unpaid amount or portion thereof exceed thirty-six (36) months.

¹⁷ *Rollo*, pp. 185-196.

¹⁸ Section 70 of the EPIRA describes Missionary Electrification, which allows NPC to provide power generation despite divestment and/or privatization of its assets. Section 70 reads:

Sec. 70. Missionary Electrification. — Notwithstanding the divestment and/or privatization of NPC assets, IPP contracts and spun-off corporations, NPC shall remain as a National Government-owned and -controlled corporation to perform the missionary electrification function through the Small Power Utilities Group (SPUG) and shall be responsible for providing power generation and its associated power delivery systems in areas that are not connected to the transmission system. The missionary electrification function shall be funded from the revenues from sales in missionary areas and from the universal charge to be collected from all electricity end-users as determined by the ERC.

Utilities Group (SPUG). PSALM contended that the claims against it are limited by the liabilities that NPC transferred based on Secs. 49, 50, 51, and 56 of the 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”, which shall take ownership of all existing NPC generation assets, liabilities, IPP contracts, real estate and all other disposable assets. All outstanding obligations of NPC arising from loans, issuances of bonds, securities and other instruments of indebtedness shall be transferred to and assumed by PSALM 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 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 objective of liquidating all NPC financial obligations and stranded contract costs in an optimal manner.

x x x x

PSALM 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.

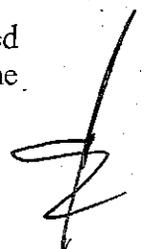
SECTION 51. *Powers.* — PSALM shall, in the performance of its functions and for the attainment of its objective, have the following powers:

(a) To formulate and implement a program for the sale and privatization of NPC assets and IPP contracts and the liquidation of NPC debts and stranded contract costs, such liquidation to be completed within the term of existence of PSALM;

(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;

(c) To take title to and possession of NPC IPP contracts and to appoint, after public bidding in transparent and open manner, qualified independent entities who shall act as the IPP Administration in accordance with this Act;

(d) To calculate the amount of the stranded debts and stranded contract costs of NPC which shall form the basis for ERC in the determination of the universal charge;



(e) To liquidate NPC stranded contract costs, utilizing the proceeds from sales and other property contributed to it, including the proceeds from the universal charge;

(f) To adopt rules and regulations as may be necessary or proper for the orderly conduct of its business or operations;

(g) To sue and be sued in its name;

(h) To appoint or hire, transfer, remove and fix the compensation of its personnel; *Provided, however,* That the Corporation shall hire its own personnel only if absolutely necessary, and as far as practicable, shall avail itself of the services of personnel detailed from other government agencies;

(I) To own, hold, acquire, or lease real and personal properties as may be necessary or required in the discharge of its functions;

(j) To borrow money and incur such liabilities, including the issuance of bonds, securities or other evidences of indebtedness utilizing its assets, as collateral and/or through the guarantees of the National Government: *Provided, however,* That all such debts or borrowings shall have been paid off before the end of its corporate life;

(k) To restructure existing loans of NPC;

(l) To collect, administer, and apply NPC's portion of the universal charge; and

(m) To structure the sale, privatization or disposition of NPC assets and IPP contracts and/or their energy output based on such terms and conditions which shall optimize the value and sale prices of said assets.

SECTION 56. *Claims Against PSALM* — The following shall constitute the claims against PSALM:

(a) NPC liabilities transferred to PSALM;

(b) Transfers from the National Government;

(c) New Loans; and

(d) NPC stranded contract costs.

Third, NPC and PSALM are not liable for business taxes. NPC does not do business in Sual as a contractor. PSALM referred to Sections 131(d) and 131(n) of the LGC, and Article 220(h) of the Implementing Rules and Regulations (IRR) of the LGC to define "business," "gross sales receipts,"

and "contractor."¹⁹

SECTION 131. *Definition of Terms.* — When used in this Title, the term:

x x x

(d) "Business" means trade or commercial activity regularly engaged in as a means of livelihood or with a view to profit;

x x x

n) "Gross Sales or Receipts" include the total amount of money or its equivalent representing the contract price, compensation or service fee, including the amount charged or materials supplied with the services and deposits or advance payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person excluding discounts if determinable at the time of sales, sales return, excise tax, and value-added tax (VAT);

Article 220. *Definition of Terms.* — x x x

(h) "Contractor" includes persons, natural or juridical, not subject to professional tax under Article 228 of this Code, whose activity consists essentially of the sale of all kinds of services for a fee, regardless of whether or not the performance of the service calls for the exercise or use of the physical or mental faculties of such contractor or his employees.

As used in this Article, the term "contractor" shall include general engineering, general building and specialty contractors as defined under applicable laws; filling, demolition and salvage works contractors; proprietors or operators of mine drilling apparatus; proprietors or operators of dockyards; persons engaged in the installation of water system, and gas or electric light, heat or power; proprietors or operators of smelting plants, engraving, plating, and plastic lamination establishments; proprietors or operators of establishments for repairing, repainting, upholstering, washing or greasing of vehicles, heavy equipment, vulcanizing, recapping and battery charging; proprietors or operators of furniture shops and establishments for planing or surfacing and recutting of lumber, and sawmills under contract to saw or cut logs belonging to others; proprietors or operators of dry cleaning or dyeing establishments, steam laundries, and laundries using washing machines; proprietors or owners of shops for the repair of any kind of mechanical and electrical devices, instruments, apparatus, or furniture and shoe repairing by machine or any mechanical contrivance; proprietors or operators of establishments or lots for parking purposes; proprietors or operators of tailor shops, dress shops, milliners and hatters, beauty parlors, barbershops, massage clinics, sauna, Turkish and Swedish baths, slenderizing and building salons and similar establishments; photographic studios; funeral parlors; proprietors or operators of hotels, motels, and

¹⁹ Section 131(h) of the LGC provides the definition of "Contractor" almost *verbatim*. Underlining in the Answer to the Third-Party Complaint.

lodging houses; proprietors or operators of arrastre and stevedoring, warehousing, or forwarding establishments; master plumbers, smiths, and house or sign painters; printers, bookbinders, lithographers; publishers except those engaged in the publication or printing of any newspaper, magazine, review or bulletin which appears at regular intervals with fixed prices for subscription and sale and which is not devoted principally to the publication and advertisements; business agents, private detective or watchman agencies, commercial and immigration brokers, and cinematographic film owners, lessors and distributors.

PSALM argued that, under the LGC's definitions, NPC's activity cannot be considered as those of a contractor. It is further submitted that under the Energy Conversion Agreement (ECA), NPC is the purchaser of the energy generated from Team Energy's operation of the Sual Power Plant. Without asking to implead Team Energy, PSALM pointed to it as the contractor that should be assessed for business taxes under the ECA.

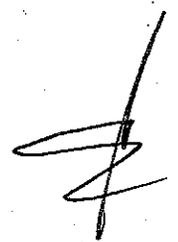
In its Comment, the Municipal Treasurer asserted that the lien in Section 173 of the LGC applies because of PSALM's admission that the assets of NPC were transferred to it by operation of law "since 26 June 2011 [sic]." The records belie PSALM's claim of "non-service of the notices of assessments" and the service of such notices are justified because PSALM holds the properties of NPC upon which the local tax liens attach. The assertion that "NPC and PSALM do not conduct business in Sual" is a question of fact that cannot be resolved in a motion to dismiss. The Municipal Treasurer countered that the claim that "NPC's business tax is not assumed by PSALM" is contrary to the attachment of tax liens to NPC's properties that were transferred to PSALM.²⁰

PSALM filed a Reply²¹ to the Municipal Treasurer's Comment. It reiterated that it is not liable for business taxes, that there is a misplaced invocation of the tax lien, and that neither NPC nor PSALM own the Sual Power Plant.

The Municipal Treasurer submitted a Rejoinder, which stressed that under Sec. 49 of the EPIRA, PSALM not only took over NPC's assets, but also assumed its liabilities. Since a tax is a liability, PSALM also undertook to pay NPC's taxes. The ownership of the Sual Power Plant is a matter that calls for the presentation of evidence and is not a proper subject of a motion to dismiss. The Municipal Treasurer's exercise of its tax lien was not only on Sual Power Plant, but also on NPC's other properties and business assets.

²⁰ *Rollo*, pp. 207-214.

²¹ *Id.* at 217-225.



Ruling of the RTC

In its Order²² dated 03 March 2014, the RTC denied PSALM's motion to dismiss the third-party complaint filed against it by the Municipal Treasurer. A motion to dismiss based on lack of cause of action is resolved based on the facts alleged in the complaint. The RTC reasoned that if it hypothetically admitted the Municipal Treasurer's allegations, then it may render a valid judgment against PSALM.

The RTC also held that the absence of the condition precedent, or lack of assessment made against PSALM, for the collection of taxes is a question of fact and law, which it cannot resolve at that stage in the proceedings. It considered that justice is better served when cases are determined on the merits rather than on technicalities.

PSALM filed a Manifestation²³ on 21 May 2014 to call the RTC's attention to the Decision dated 21 April 2014 in *National Power Corporation v. Provincial Government of Bataan*²⁴ (*Bataan*) where this Court declared that only liabilities that were existing as of 25 June 2001 were assumed by PSALM from NPC.

The RTC denied PSALM's Motion for Reconsideration for lack of merit in its Order²⁵ dated 10 September 2014.

Ruling of the CA

In its Decision²⁶ dated 21 July 2016, the CA found no basis to implead PSALM as a party to NPC's appeal to the RTC in Civil Case No. 19076.

The CA held that, based on the rulings in *NPC DAMA* and *Bataan*, PSALM only assumed NPC's existing liabilities as of 26 June 2001, or the effectivity of the EPIRA. The local business taxes that the Municipal Treasurer sought to impose upon NPC accrued in 2006 to 2009, which are beyond the effectivity of the EPIRA. It is therefore iniquitous for the Municipal Treasurer to hold PSALM liable for obligations incurred by NPC

²² Id. at 81-84.

²³ Id. at 104-107.

²⁴ 733 Phil. 34 (2014).

²⁵ *Rollo*, pp. 86-88.

²⁶ Id. at 10-15.

even after the effectivity of EPIRA. Moreover, the Municipal Treasurer cannot take refuge in the local government's tax lien. PSALM acquired NPC's assets by operation of law on 26 June 2001, or before the accrual of business taxes for the years 2006 to 2009. No lien can exist over properties that no longer belong to the taxpayer at the time when the tax becomes due.

The CA's Decision thus concluded:

In sum, the Municipal Treasurer has no cause of action to implead PSALM [Corp.] in a case involving liabilities which are not existing at the time the EPIRA took effect and to enforce a tax lien over properties which unquestionably do not belong to the taxpayer at the time the tax became due and payable. The RTC, therefore, gravely abused its discretion in refusing to dismiss the third-party complaint.

FOR THESE REASONS, the petition is hereby GRANTED. The March 3, 2014 Order of the Regional Trial Court is SET ASIDE. The third-party complaint against PSALM in Civil Case No. 19076 is DISMISSED.

SO ORDERED.²⁷

NPC filed a motion for reconsideration, which the CA denied as the issues raised have already been resolved and discussed in the assailed decision.

Issue

The lone issue raised by NPC is that the CA gravely erred in holding that the RTC gravely abused its discretion in refusing to dismiss the third-party complaint against PSALM.²⁸ In support of this assigned error, NPC raises the following arguments:

- I. The principal issue in this case involves the interpretation and determination of the applicability of an existing law. Hence, the same may be the proper subject of a petition for review on certiorari under Rule 45 of the Rules of Court.
- II. With all due respect, petitioner NPC cannot be made liable for the payment of local business tax for years 2006 to 2009 considering that upon the effectivity of the EPIRA Law on June 26, 2001, it had ceased to operate, conduct, and/or maintain any business activity in the main grid specifically within the territorial jurisdiction of the

²⁷ Id. at 14.

²⁸ Id. at 26.



municipality of Sual, Pangasinan. Such activities were already transferred to [the] PSALM pursuant to Section 49 of the said law.²⁹

NPC disagrees with the CA's reasoning that it is contrary to the declared policy of the EPIRA to hold PSALM liable for obligations incurred by NPC after 26 June 2001, or after the effectivity of the EPIRA. It submits that any liability that pertains to the Sual Power Plant, including the alleged business taxes for the years 2006 to 2009, should be assumed by PSALM.

Ruling of the Court

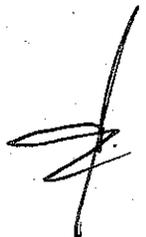
The Petition has no merit. We affirm the ruling of the CA. Accordingly, Our discussion of the propriety of the Municipal Treasurer's assessment of local business taxes against NPC is limited to the CA's dismissal of the third-party complaint against PSALM.

The Municipal Treasurer assessed local business taxes against NPC for the alleged performance of its power generation function. A third-party complaint was then filed against PSALM because it had assumed NPC's assets and liabilities. We emphasize that there is nothing in the records that state that PSALM was made liable because it continued to perform NPC's power generation function. The tax assessment was made upon the conduct of an activity, and the lien was made on the assets.

It has been argued that the resolution of NPC's protest of the Municipal Treasurer's assessment involves the determination of facts which should be properly raised before the lower courts, such as the determination of whether NPC is a contractor liable for business tax during the period covered by the assessments, and of which among NPC, PSALM, and Team Energy own, or is the contractor of, the Sual Power Plant. We do not settle those facts here as those pertain to NPC's supposed liability.

Instead, We first ascertain whether, during the assessment period, NPC may perform the function for which the local business taxes were assessed. We then proceed to determine whether the assets owned by PSALM should be made liable for the local business taxes assessed on NPC. Resolution of these issues may be done through a careful reading of law and of jurisprudence and without resorting to a determination of facts.

²⁹ Id. at 26-27.



*The EPIRA, NPC,
and PSALM*

RA 9136, or EPIRA, was enacted on 08 June 2001 and took effect on 26 June 2001. The EPIRA organized the electric power industry into four sectors: generation, transmission, distribution, and supply.³⁰

The law mandated that generation assets, real estate, and other disposable assets as well as Independent Power Producer (IPP) contracts of NPC, except for the assets of the Small Power Utilities Group (SPUG), shall be privatized in accordance with its provisions.³¹ Sec. 49 of the EPIRA designated PSALM to take ownership of NPC's existing assets and to be the transferee of its outstanding obligations. The EPIRA described the purpose and powers of PSALM in Secs. 50 and 51 previously quoted. The EPIRA also enumerated the property of PSALM:

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

- (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 PSALM;
- (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 necessary for the above-mentioned purposes.

The claims against PSALM are enumerated in Sec. 56 previously quoted. It includes, among others, NPC's liabilities transferred to PSALM.

³⁰ Section 5, EPIRA.

³¹ Section 47, EPIRA.

*NPC's Non-Conduct of its
Power Generation Function is
Not a Question of Fact*

Save for missionary electrification, NPC's power generation function ceased by operation of law on 26 June 2001. In the present case, the Municipal Treasurer issued NPC with Notices of Assessment on 09 September 2010 for the "number of KWH generated and sold"³² for the years 2006 to 2009. The subject matter of the assessment clearly refers to NPC's power generation function. The Municipal Treasurer effectively ignored the EPIRA when it assessed NPC for taxes for acts that it cannot legally perform beyond 26 June 2001.

On 21 April 2014, this Court promulgated Our Decision in *Bataan*. In determining the propriety of the imposition of a local franchise tax, We declared that **there is no need to present evidence on the legislative emasculation of NPC's power generation function. This took place by operation of law through the EPIRA.**³³ On 06 March 2017, We promulgated Our Resolution on the same case. Apart from the expiry of NPC's power generation function, We also declared that the "EPIRA effectively removed power generation from the ambit of local franchise taxes. Hence, **as regards [NPC's] business of generating electricity**, the franchise taxes sought to be collected by the Provincial Government of Bataan for the latter part of 2001 up to 2003 are **devoid of any statutory basis.**"³⁴

As of 26 June 2001, therefore, NPC's power generation function no longer exists. In line with *Bataan*, there is statutory basis for declaring that NPC's business of generating power was already legislatively emasculated when the Municipal Treasurer issued on 09 September 2010 its assessments for the years 2006 to 2009. The period for which the assessments were issued is clearly beyond 26 June 2001.

*The Cut-Off Date for the
PSALM's Assumption
of NPC's Local Business Tax*

When the Municipal Treasurer filed its Third-Party Complaint against PSALM in clear disregard to the EPIRA, it disregarded the limits of

³² *Rollo*, pp. 139-146.

³³ *Bataan*, 21 April 2014, J. Abad. Boldface added.

³⁴ *Bataan*, 06 March 2017, J. Leonen. Boldface added.



PSALM's assumption of NPC's local business taxes.

The EPIRA intended to limit the liabilities and obligations transferred from NPC to PSALM to those existing at the time the EPIRA took effect.³⁵ Our 30 June 2014 Resolution in *NPC DAMA* explained the rationale for this limitation as follows:

In the same manner that "existing" modifies the assets transferred from NPC to PSALM, **the liabilities transferred from NPC to PSALM under Section 49 of the EPIRA are also limited to those existing at the time of the effectivity of the law.** In this regard, we consider significant the purpose and objective of creating PSALM, the powers conferred to it, and the duration of its existence.

Section 50 of the EPIRA states 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 objective of liquidating all NPC financial obligations and stranded contract costs in an optimal manner." [Footnote citing Section 50, EPIRA] Pursuant to this purpose, PSALM was conferred the power "to formulate and implement a program for the sale and privatization of NPC assets and IPP contracts and the liquidation of NPC debts and stranded contract costs, **such liquidation to be completed within the term of existence of PSALM**" [Footnote citing Section 51, EPIRA] Under Section 50 of the EPIRA, **PSALM is to exist for a period of 25 years from the law's effectivity.**

Considering the limited period of existence for PSALM's discharge of its mandate, it would be absurd and iniquitous to hold it liable for liabilities and obligations incurred by NPC even after the EPIRA's effectivity. Note that despite privatization, NPC continues to exist and perform missionary electrification functions. [Footnote citing Section 70, EPIRA] In discharging these missionary electrification functions, NPC would certainly acquire assets and incur liabilities. To hold PSALM liable for NPC's post-EPIRA liabilities and obligations, particularly those not arising from existing liabilities and obligations, is clearly contrary to the declared policy of the EPIRA. [Footnote citing Section 2, EPIRA]

The second sentence of Section 49 of the EPIRA further confirms the interpretation that only existing NPC liabilities were transferred to PSALM. The EPIRA requires that "[a]ll **outstanding obligations** of NPC arising from loans, issuances of bonds, securities, and other instruments of indebtedness shall be transferred to and assumed by PSALM within one hundred eighty (180) days from the approval of this Act." [Footnote citing Section 49, EPIRA]

These "outstanding obligations . . . arising from . . . instruments of indebtedness" fall within the broader classification of "existing liabilities" of NPC that PSALM acquired. The only difference is that the outstanding

³⁵ *NPC DAMA*, 30 June 2014, J. Brion. Emphases in the original.

obligations from instruments of indebtedness must be transferred to PSALM within 180 days from the approval of the EPIRA. But the 180-day period merely refers to the period within which the transfer should be effected; it does not authorize the transfer of obligations incurred during the same 180-day period from the EPIRA's approval.

The EPIRA provided a 180-day period for the transfer of these obligations in order for the ERC to be able to determine, fix and approve the universal charge that shall be imposed on all electricity end-users within one (1) year from its approval. [Footnote citing Section 34, EPIRA] Under Section 34 of the EPIRA, the universal charge shall answer for the stranded debts of NPC or those "unpaid obligations of NPC which have not been liquidated by the proceeds from the sales and privatization of NPC assets." The outstanding obligations arising from instruments of indebtedness that Section 49 of the EPIRA refers to may be considered as "stranded debts of NPC" that shall be satisfied by the universal charge collected from electricity consumers.³⁶

We subscribe to the Court's explanation of "existing liabilities." In *NPC DAMA*, We held NPC liable for separated employees' entitlement to separation pay and backwages up to 14 September 2007, because "(1) The liability was already **existing** at the time of the EPIRA's effectivity and was transferred from NPC to PSALM by virtue of Section 49 of the law; (2) It is a 'Transferred Obligation' as defined under the Deed of Transfer; and (3) Under the EPIRA, [the] PSALM [Corp.] is **duty-bound** to settle the subject liability."³⁷

In the present case, We maintain EPIRA's 26 June 2001 effectivity date as the cut-off date for NPC's local business tax assessments. Unlike the factual circumstances in *NPC DAMA*, NPC's liability for local business taxes that accrued in 2006 to 2009 was not in existence at the time of EPIRA's effectivity and thus Section 49 of the law had nothing to transfer to PSALM. There is also no contractual obligation, as in a Deed of Transfer, for PSALM's liability for the said assessments. Additionally, since NPC's power generation function ended on 26 June 2001, PSALM's liabilities related to NPC's power generation function also ended on the same date.

*The Municipal Treasurer's
Lien on NPC's Assets*

In determining whether the Municipal Treasurer has a lien on NPC's assets, We refer to this Court's ruling in *Bataan* where We declared void the

³⁶ *NPC DAMA*, 30 June 2014, J. Brion. Emphases in the original.

³⁷ *NPC DAMA*, 21 November 2017, J. Leonardo-De Castro.

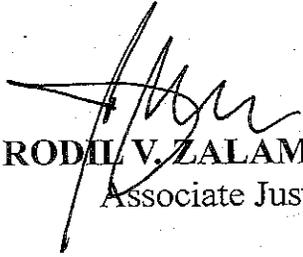
foreclosure sale of properties, which by then were already owned by the National Transmission Corporation (TRANSCO). The EPIRA transferred the properties from NPC to the TRANSCO not later than 26 December 2001. Thus, when the Provincial Government of Bataan levied and auctioned these properties sometime in January 2004 and March 2004, NPC no longer owned these properties.

Similarly, the Municipal Treasurer's claim of a lien over NPC's generation assets from 2006 to 2009 cannot hold. Given the 26 June 2001 cut-off of NPC's power generation function and its ownership over generation assets, NPC no longer owns such assets beyond 26 June 2001. Thus, any generation asset from NPC held by PSALM cannot be subject of a lien for an obligation related to NPC's generation function. We underscore that the lien sought to be imposed upon PSALM's assets was based on its ownership of such assets. There was never any claim that PSALM exercised NPC's power generation function to justify PSALM's assumption of NPC's supposed liability for local business tax.

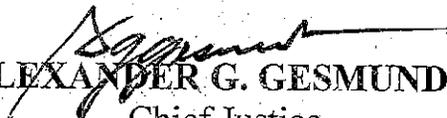
In sum, under the established facts, the assets in PSALM's ownership cannot be made liable for the local business taxes assessed upon NPC's power generation function for the years 2006 to 2009, or after the 26 June 2001 effectivity of EPIRA.

WHEREFORE, premises considered, the instant Petition is hereby **DENIED**. Accordingly, the Decision dated 21 July 2016 and Resolution dated 27 January 2017 of the Court of Appeals in CA-G.R. SP No. 138908 is **AFFIRMED**

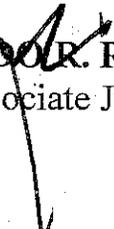
SO ORDERED.


RODIL V. ZALAMEDA
Associate Justice

WE CONCUR:


ALEXANDER G. GESMUNDO
Chief Justice

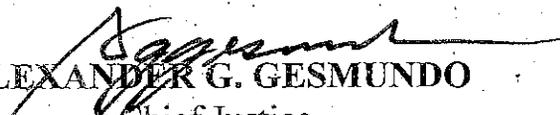

RAMON PAUL L. HERNANDO
Associate Justice


RICARDO R. ROSARIO
Associate Justice


JOSE MIDAS P. MARQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ALEXANDER G. GESMUNDO
Chief Justice



