



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

POWER SECTOR ASSETS and G.R. No. 211571
LIABILITIES MANAGEMENT
CORPORATION (PSALM),

Petitioner,

Present:

- versus -

LEONEN, J., *Chairperson,*
HERNANDO,
INTING,
DELOS SANTOS, and
LOPEZ, J., *JJ.*

ALBERT S. GARCIA, in his
capacity as Governor of the
Province of Bataan,
ENRIQUE T. GARCIA, JR.,
MARIO NIETO. ERNESTO
DAGSON, UNI-WIDE
SCRAP TRADERS
CORPORATION, THE
INDIVIDUAL WORKERS OF
THE BATAAN NUCLEAR
POWER PLANT, represented by
their alleged Attorney-in-Fact,
MARISSA CRUZ, and
the DEPARTMENT OF
ENVIRONMENT AND
NATURAL RESOURCES,

Promulgated:

Respondents.

April 28, 2021

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DECISION

INTING, J.:

Power Sector Assets and Liabilities Corporation (PSALM) assails
in this Petition for Review with prayer for the issuance of a Temporary

Restraining Order and/or Writ of Preliminary Injunction,¹ the Decision (Based on Consent Decree)² dated March 4, 2014 of Branch 4, Regional Trial Court (RTC), Mariveles, Bataan. The RTC ordered the Environmental Management Bureau (EMB) of the Department of Environment and Natural Resources (DENR) and all the defendants in Civil Case No. 882-ML, jointly and solidarily, to clean-up the Bataan Thermal Power Plant (BTTP) of toxic waste materials.³

The Antecedents

In 1967, the 225-megawatt BTTP was constructed in Limay, Bataan through a World Bank loan and operated by the National Power Corporation (NPC). The land on which BTTP was built is owned by the Provincial Government of Bataan. The BTTP started its operations in 1972, but was decommissioned in 1998;⁴ it was then turned over to PSALM pursuant to its mandate under Section 49 of Republic Act No. (RA) 9136, also known as the Electric Power Industry Reform Act of 2001.⁵

Enrique T. Garcia, Jr., (Garcia, Jr.) in his capacity as then Governor of the Province of Bataan, filed an Environmental Complaint⁶ against PSALM, the DENR, the NPC, and Ernesto D. Dagson (Dagson)⁷ seeking, among other things, the disposal and clean-up of toxic waste materials from the BTTP, or in the alternative, for the defendants to put up a trust fund to defray the cost of the disposal and clean-up. The case was docketed as Civil Case No. 882-ML. PSALM was impleaded as the government-owned and -controlled corporation that takes over ownership of all existing generation assets, liabilities, Independent Power Producer contracts, real estate, and all other disposable assets of the NPC.⁸ Dagson was impleaded as the winning bidder in an auction

¹ *Rollo*, Vol. 1, pp. 75-138. Under Rule 45 of the Rules of Court.

² *Id.* at 15-18-A; penned by Presiding Judge Emmanuel A. Silva.

³ *Id.* at 18.

⁴ *Id.* at 15-16.

⁵ *Id.* at 81.

⁶ *Id.* at 375-387.

⁷ In a Manifestation dated March 16, 2012, several workers submitted to the RTC a Revocation of the Special Power of Attorney in favor of Dagson, *id.* at 574-575.

⁸ Section 49, Republic Act No. 9136 provides:

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

sale of the BTPP conducted on December 3, 2010. Other parties who appear to have claims over the BTPP were subsequently impleaded, namely: Mario Nieto (Nieto), Uni-wide⁹ Scrap Trading Corporation (USTC), and individual workers represented by Marissa Cruz (Individual Workers).

In the Environmental Complaint, Garcia, Jr. alleged that he had reason to believe that the BTPP had produced toxic waste materials based on a published report of a similar and smaller 130-megawatt Rockwell Thermal Plant (RTP) owned by Manila Electric Company and operated in Makati City for about 40 years; that the RTP had produced a deadly pond of toxic waste contaminated with cancer-causing polychlorinated biphenyls (PCBs), with the cost of proper disposal estimated at ₱400,000,000.00; and that the presence of PCBs in the soil within the BTPP was confirmed in the sampling and investigation conducted by the EMB of the DENR.¹⁰

On October 20, 2006, Garcia, Jr. issued Executive Order No. 13, S-2006¹¹ seeking to prohibit PSALM from selling, disposing, or removing the machineries and equipment of the BTPP until after the proper disposal of toxic materials for the safety of the people and the environment. On April 16, 2009, PSALM reported that it concluded a negotiated sale transaction of the BTPP with Rubenori, Inc.¹² Garcia, Jr. then issued Executive Order No. 2, Series of 2009¹³ prohibiting the dismantling, movement, removal, and disposal of the machineries and equipment of the BTPP until after the proper and complete disposal and clean-up of toxic waste materials in the area, or unless the entire proceeds of the sale were placed in an escrow account to answer for the disposal.

Garcia, Jr. also alleged in his Environmental Complaint that Dagson gave assurance that he will abide by Executive Order Nos. 13

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.

⁹ The corporation name "Uni-wide" varies in many parts of the *rollo*.

¹⁰ *Rollo*, Vol. 1, p. 379.

¹¹ *Id.* at 239-240.

¹² The agreement with Rubenori, Inc. was subsequently terminated for a material breach of the agreement, *id.* at 284.

¹³ *Id.* at 282-283.

and 2 concerning the issue of toxic waste materials. However, Garcia, Jr. maintained that the disposal of the toxic waste materials should be the responsibility not only of Dagson, but also of NPC and PSALM.¹⁴

On January 4, 2011, the RTC issued a Temporary Protection Order (TEPO). The TEPO was extended until further order from the RTC and/or the final determination of the case. On April 23, 2013, the TEPO was lifted upon posting of a surety bond amounting to ₱30,000,000.00. The RTC appointed the Bataan Provincial Environment and Natural Resources Officer (PENRO) as Commissioner and Legal Officer to advise the court on technical matters concerning toxic wastes. On November 20, 2013, the RTC replaced the PENRO with the EMB of the DENR Region 3, represented by Regional Director Lormelyn E. Claudio (Commissioner Claudio) as the new Commissioner. The Court later appointed Mr. Geri Geronimo R. Sanz (Commissioner Sanz) of the DENR-EMB Central Office as co-Commissioner. On December 19, 2013, upon the recommendation of Commissioner Claudio and Atty. Aurelio C. Angeles, Jr. (Atty. Angeles), the Assistant Commissioner, the RTC reinstated the TEPO initially for 30 days and later extended for another 30 days, or until February 20, 2014.

On March 3, 2014, the RTC approved the Comments and Recommendations¹⁵ jointly filed by Commissioners Claudio and Sanz. Upon the agreement of all the parties, the RTC rendered the assailed Decision.

The Decision of the RTC

In its Decision (Based on Consent Decree) dated March 4, 2014, the RTC approved the Comments and Recommendations of Commissioners Claudio and Sanz for the acceptance of the submitted Environmental Site Assessments (ESA) 1 and 2 as well as for their consolidation. The RTC noted that with the approval of all the parties of the contents of the Comments and Recommendations, the parties no longer questioned the issues raised during the pre-trial. The RTC ruled that the following were admitted: (a) PCBs and other hazardous wastes or substance were present in the premises of the BTPP; (b) the hazardous wastes or substance had already contaminated the soil and the

¹⁴ *Id.* at 381.

¹⁵ *Id.* at 19-28.

environment within the BTPP; and (c) proper treatment and disposal of the hazardous wastes should immediately be made by the defendants for the welfare of the people in the area and the environment.

The dispositive portion of the RTC Decision (Based on Consent Decree) reads:

WHEREFORE, judgment is hereby rendered based on a consent decree approving the Comments and Recommendations submitted by Commissioners Regional Director Lormelyn E. Claudio of the DENR-EMB, Region 3 and Mr. Geri Geronimo R. Sanz of DENR-EMB, Central Office.

Pursuant thereto, the Department of Environment and Natural Resources-Environmental Management Bureau and the abovenamed defendants, jointly and solidarily [*sic*] are being ordered to clean-up the Bataan Thermal Power Plant (BTPP) of the toxic waste materials.

To attain this, a Writ of Continuing Mandamus is hereby issued for the performance and execution of the following:

The Department of Environment and Natural Resources-Environmental Management Bureau-Central Office as the lead agency and DENR-EMB, Region 3 at the coordinating division shall act and perform their respective duties, as follows:

a) To devise and submit to this Environmental Court within six (6) months from receipt hereof their approved remediation plan for the removal of toxic wastes inside the BTPP;

b) To supervise and monitor the compliance of the defendant/s or its/their accredited service provider/s in the implementation and execution of the aforesaid remediation plan;

(c) To submit to this Environmental Court on a quarterly basis a progress report on the implementation of the remediation plan on the BTPP until its completion; and

(d) To submit to this Environmental Court within thirty (30) days from the completion of the implementation of the remediation plan, a Certification that BTPP is already cleared of toxic wastes.

This Decision is immediately executory.

SO ORDERED.¹⁶

PSALM filed the present petition for review before the Court assailing the RTC Decision (Based on Consent Decree) on the following grounds:

1. The RTC Decision (Based on Consent Decree) varied with the recommendation of the DENR-EMB Commissioners;
2. The RTC Decision (Based on Consent Decree) is fatally flawed and defective as it imposed obligations that were not voluntarily assumed by the parties; and
3. The RTC-imposed obligations lack the consent of all the parties on all its terms and conditions.

PSALM alleges as follows: A consent decree is entered into by the parties themselves and the role of the court is to approve the compromise presented by the parties. Thus, the RTC cannot impose obligations not voluntarily assumed by the parties. The Comments and Recommendations suggested further sampling and studies preparatory to the remediation plan, but the RTC Decision (Based on Consent Decree) made all the defendants liable for the clean-up of the BTPP. The recognition of the technical nature of the recommendation of the officials of the DENR-EMB is not tantamount to an admission, or express assumption of liability, or consent to clean-up the BTPP. The RTC prematurely lifted the TEPO in its Order dated April 23, 2013 which resulted in the hauling by the Individual Workers of valuable assets of the BTPP that was allowed by the Provincial Government of Bataan. NPC estimated the value of the hauled material and spare parts at ₱391,008,093.33.¹⁷

Albert S. Garcia (Albert Garcia), in his capacity as Governor of the Province of Bataan, alleges in his Comment¹⁸ that PSALM availed itself of a wrong mode of appeal by filing a petition for review before the Court instead of an ordinary appeal before the Court of Appeals; and

¹⁶ *Id.* at 18-19.

¹⁷ *Id.* at 123.

¹⁸ *Rollo*, Vol. 3, pp. 1323-1335.

that PSALM cannot escape its liability over the toxic wastes generated by its predecessor, the NPC, which constructed and operated the BTPP.

USTC, in its Comment,¹⁹ alleges that on December 29, 1988, the NLRC-RAB III rendered a Decision in 26 consolidated cases filed by more than 6,000 employees against Power Contractors, Inc., NPC, and Westinghouse International Projects Company for unpaid wages and compensation; that the NLRC-RAB III issued an Order granting the issuance of a Writ of Execution in favor of the employees directing the Sheriff to collect from the NPC the amount of ₱73,463,695.00 as full satisfaction of the amount due; that the Sheriff of the NLRC-RAB III caused a Notice of Levy and Notice of Sale of Execution of Personal Property; and that on December 3, 2010, an auction sale was conducted with the employees, represented by Dagson, as the winning bidder. USTC further alleges that the employees executed in their favor deeds of sale; thus making them the recognized awardees/owners of all the machineries, turbines, and all other movables inside the BTPP. USTC furthermore alleges that in an Order dated August 30, 2013, the NLRC-RAB III adjudged USTC as the logical and legitimate purchaser of the rights and properties of the judgment awardees.

The DENR, represented by the Office of the Solicitor General (OSG), alleges in its Comment²⁰ the following: The RTC Decision (Based on Consent Decree) should be qualified. The DENR-EMB is liable for the clean-up of the BTPP only insofar as it is mandated by RA 6969.²¹ The DENR-EMB has to monitor and regulate the proper handling of the disposal of toxic wastes, but it is not liable for the actual removal and disposal of the toxic wastes including the costs and expenses thereof. The DENR was impleaded in the Environmental Complaint only as the government agency tasked to monitor, supervise, and control the presence, transportation, disposal, and clean-up of toxic and hazardous substances under RA 6969. The OSG further alleges that the RTC was correct in upholding the recommendations of the DENR-EMB; and that the DENR-EMB is a specialized agency which has in its favor the presumption that it possesses the necessary qualifications and competence exacted by law over matters under its jurisdiction.

¹⁹ *Id.* at 1344-1353.

²⁰ *Id.* at 1449-1461.

²¹ Toxic Substances and Hazardous and Nuclear Waste Control Act of 1990.

Viray Rongcal Beltran Yumul & Viray Law Office, counsel for the Individual Workers, in its Compliance²² maintains that the relief sought before the Court is the nullity of the RTC Decision (Based on Consent Decree) only insofar as the liabilities of PSALM and NPC are concerned; that the Individual Workers prayed that they be excused from filing their Comment, as they would abide by the decision of the Court in the case; and that the Court noted and granted the request of the Individual Workers in its Resolution²³ dated October 14, 2015.

Dagson, in his Compliance and Comment,²⁴ alleges that the RTC cannot use the Comments and Recommendations of the Commissioners as the basis of its Decision because the clean-up must be based on a remediation plan that to date, has not yet been issued; that he agrees with PSALM that a consent decree cannot be based on assumption, but presupposes the existence of an agreement voluntarily entered into by the parties; that the demolition of the BTTP already commenced without the proper ESA and remediation plan; and that the RTC is holding the other respondents accountable for the cost of the clean-up without declaring the extent of their participation.

Nieto failed to file his Comment. In a Resolution²⁵ dated September 14, 2016, the Court required PSALM to submit Nieto's correct and present address. In a Manifestation and Compliance,²⁶ PSALM informed the Court that the last pleading filed by Nieto in Civil Case No. 882-ML was a Comment/Opposition [re: Uniwide Scrap Trader's Corporation's (USTC) Urgent Motion to Conduct the Approved Environmental Site Assessment and Dismantling Activities in BTTP] with Manifestation regarding Motion for Issuance of a Break Open Order dated 30 June 2014. PSALM informed the Court that on February 22, 2016, it received a Motion for Substitution of Party dated February 5, 2016 filed by one Rosalinda P. Abracero (Abracero) alleging that Nieto died on December 1, 2015, but assigned his rights to Abracero prior to his death. PSALM alleged that it did not receive any confirmation from Atty. Virgilio Batalla (Atty. Batalla), Nieto's counsel.

²² *Rollo*, Vol. 3, pp. 1475-1477.

²³ *Id.* at 1479-1481.

²⁴ *Id.* at 1656-1666.

²⁵ *Id.* at 1691-1692.

²⁶ *Id.* at 1693-1699.

In a Resolution²⁷ dated March 29, 2017, the Court required Atty. Batalla to comment on the manifestation regarding the death of Nieto and the substitution by Abracero before the RTC. In an internal Resolution²⁸ dated July 5, 2017, the Court directed the Division Clerk of Court to resend the Resolution dated March 29, 2017 to Atty. Batalla. In a Resolution dated January 8, 2018,²⁹ the Court issued a show cause order against Atty. Batalla for his failure to comply with the Resolution dated March 29, 2017. In a Resolution dated December 3, 2018,³⁰ the Court imposed a fine of ₱5,000.00 upon Atty. Batalla and required him to comply with the Resolution dated January 8, 2018. To date, Atty. Batalla has not complied with the Court's directives. As such, Abracero was neither impleaded nor became a party to this case before the Court.

Garcia, Jr. likewise did not file his comment to the petition. However, the Provincial Governor of Bataan was adequately represented by Albert Garcia.

Meanwhile, in a Manifestation³¹ dated January 13, 2016, USTC manifested to the Court that in view of the urgency of commencing the clean-up of asbestos-containing materials and toxic waste materials in the BTPP, it undertakes to perform the clean-up activities at its own expense through entities accredited and authorized by the DENR-EMB. USTC submitted to the Court the Environmental Compliance Certificate issued by the DENR-EMB to KRC Environmental Services, one of the companies hired by USTC to perform the clean-up operations in the BTPP.

The Issue

Whether the RTC Decision (Based on Consent Decree) went beyond the Comments and Recommendations of the Commissioners.

²⁷ *Id.* at 1737-1738.

²⁸ *Id.* at 1741.

²⁹ *Id.* at 1745-1747.

³⁰ *Id.* at 1754-1756.

³¹ *Id.* at 1489-1492.

The Ruling of the Court

The petition is partly meritorious.

To clarify, the determination of the opposing claims of ownership of the BTPP, its parts, and equipment and machineries is not an issue before the Court. Here, PSALM assails the RTC Decision (Based on Consent Decree) in the sense that it deviated from the Comments and Recommendations of Commissioners Claudio and Sanez. PSALM alleges that the RTC Decision does not have the approval of the defendants in imposing upon them obligations that were not agreed upon by the parties.

In environmental cases, the parties are not prohibited from exploring avenues for settlement.³² Section 5, Rule 3 of the Rules of Procedure for Environmental Cases provides:

SECTION 5. *Pre-Trial Conference; Consent Decree.* — The judge shall put the parties and their counsels under oath, and they shall remain under oath in all pre-trial conferences.

The judge shall exert best efforts to persuade the parties to arrive at a settlement of the dispute. The judge may issue a consent decree approving the agreement between the parties in accordance with law, morals, public order and public policy to protect the right of the people to a balanced and healthful ecology.

Evidence not presented during the pre-trial, except newly-discovered evidence, shall be deemed waived.

The settlement takes the form of a consent decree. A consent decree is a “*judicially-approved settlement between concerned parties based on public interest and public policy to protect and preserve the environment.*”³³ A consent decree necessarily requires the agreement of all the parties pursuant to Section 5, Rule 3 of the Rules of Procedure for Environmental Cases.

³² See *Most Rev. Arigo, et al. v. Swift, et al.*, 743 Phil. 8, 56 (2014).

³³ Section 4(b), Rule 1 of the Rules of Procedure for Environmental Cases.

In this case however, the consent of all the parties is lacking. Still, PSALM admitted that the parties agreed with the Comments and Recommendations of Commissioners Claudio and Sanz which state:

Based on the submitted ESAs, presentation of the service providers and the discussions during the review of the ESAs, the Review Committee ascertained that there are gaps in the individual ESAs. Thus, it is prudent to accept the submitted ESAs and consolidate the same and the recommendations of which shall be undertaken during the conduct of further sampling and studies for the preparation of Remediation Plan subject to approval of the Commission and the DENR-EMB Central and Region 3 Offices prior to any dismantling operation by the awardee/court-declared owner.³⁴

However, there is nothing in the Comments and Recommendations of the Commissioners that touched upon the liabilities of the parties. Hence, the RTC erred in interpreting the acceptance of the parties of the Comments and Recommendations of the Commissioners as their acceptance of their liabilities in the clean-up of the BTPP and in ruling that all the defendants, including the DENR-EMB, are jointly and solidarily liable for the clean-up. While the RTC is not precluded from ruling on the liabilities of the defendants for the clean-up of the BTPP, it must make its ruling after giving all the parties an opportunity to be heard. In this case, the RTC Decision (Based on Consent Decree) was supposed to be upon the agreement of all the defendants which PSALM denies.

The RTC adopted the Comments and Recommendations of Commissioners Claudio and Sanz when it enumerated the functions to be performed by the DENR-EMB—it shall be the lead agency to accomplish the clean-up of the BTPP. The functions are meant to implement the Comments and Recommendations of the Commissioners prior to the clean-up; thus:

- a) To devise and submit to this Environmental Court within six (6) months from receipt hereof their approved remediation plan for the removal of toxic wastes inside the BTPP;
- b) To supervise and monitor the compliance of the defendant/s or its/their accredited service provider/s in the implementation and execution of the aforesaid remediation plan;

³⁴ *Rollo*, Vol 1. p. 28.

c) To submit to this Environmental Court on a quarterly basis a progress report on the implementation of the remediation plan on BTPP until its completion; and

d) To submit to this Environmental Court within thirty (30) days from the completion of the implementation of the remediation plan, a Certification that BTPP is already cleared of toxic wastes.³⁵

The Court finds no reason to reverse the RTC assigned functions to the DENR-EMB. Further samplings and studies, as recommended by Commissioners Claudio and Sanez, can be done under the supervision of the DENR-EMB prior to the remediation plan. Nevertheless, the responsibility of the DENR-EMB is to act as the lead agency in the clean-up. The obligation for the clean-up lies with the other defendants, but the DENR has the responsibility to supervise the entire operation to ensure its proper implementation. However, the RTC erred in making the DENR-EMB solidarily liable for the clean-up of the BTPP. As the lead agency, the DENR-EMB should not be solidarily liable with the other defendants who have claims over the BTPP and its assets. First, as provided in the Implementing Rules and Regulations of RA 6969, “[t]he waste generator shall be responsible for the proper management and disposal of the hazardous wastes” and “shall bear the costs for the proper storage, treatment and disposal of their hazardous waste.”³⁶ Under the IRR, the waste generator is the person who generates or produces, through any commercial, industrial or trade activities, hazardous wastes.³⁷ In the case, the DENR-EMB does not fall within the definition of a waste generator. The DENR-EMB has no stake on the remaining assets of the BTPP. Thus, DENR-EMB should not be held liable for the clean-up.

WHEREFORE, the petition is **PARTLY GRANTED**. The case is hereby **REMANDED** to Branch 4 of the Regional Trial Court of Mariveles, Bataan for the determination of the liabilities of the defendants (except the Department of Environment and Natural Resources-Environmental Management Bureau) who have claims over the Bataan Thermal Power Plant and its remaining assets, and equipment and machineries for the clean-up of toxic waste materials prior to their disposition.

³⁵ *Id.* at 18-19.

³⁶ Title 3, Chapter VII, Section 24 (4) and (5) of the IRR of RA 6969.

³⁷ Title I, Chapter I, Section 6(21) of the IRR of RA 6969.

SO ORDERED.

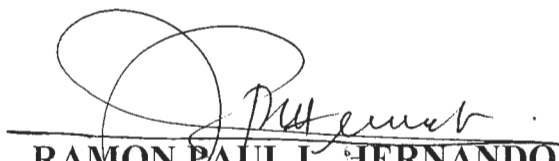


HENRI JEAN PAUL B. INTING
Associate Justice

WE CONCUR:



MARVIC M.V.F. LEONEN
Associate Justice
Chairperson



RAMON PAUL L. HERNANDO
Associate Justice



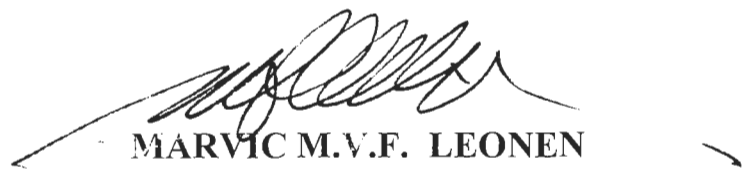
EDGARDO L. DELOS SANTOS
Associate Justice



JHOSEP Y. LOPEZ
Associate Justice

ATTESTATION

I attest 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.

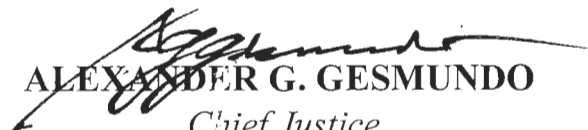


MARVIC M.V.F. LEONEN
Associate Justice
Chairperson



CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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

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