



Republic of the Philippines
Supreme Court
 Baguio City

THIRD DIVISION

NATIONAL POWER CORPORATION G.R. No. 180654

Petitioner,

Present:

- versus -

VELASCO, JR., J., *Chairperson*,
 BRION,*
 PERALTA,
 ABAD, and
 LEONEN, JJ.

**PROVINCIAL GOVERNMENT
 OF BATAAN, SANGGUNIANG
 PANLALAWIGAN OF BATAAN,
 PASTOR B. VICHUACO (IN HIS
 OFFICIAL CAPACITY AS
 PROVINCIAL TREASURER OF
 BATAAN) and THE REGISTER
 OF DEEDS OF THE PROVINCE
 OF BATAAN,**

Promulgated:

Respondents.

April 21, 2014

[Signature]

X ----- X

DECISION

ABAD, J.:

This case is about the distinction between an action contesting a local tax assessment and an action seeking to enjoin the local government from enforcing a tax assessment against a person who claims that the taxable business does not belong to him.

* Designated Additional Member, in lieu of Associate Justice Jose C. Mendoza, per Raffle dated October 9, 2013.

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The Facts and the Case

On March 28, 2003 petitioner National Power Corporation (NPC) received a notice of franchise tax delinquency from the respondent Provincial Government of Bataan (the Province) for ₱45.9 million covering the years 2001, 2002, and 2003. The Province based its assessment on the NPC's sale of electricity that it generated from two power plants in Bataan. Rather than pay the tax or reject it, the NPC chose to reserve its right to contest the computation pending the decision of the Supreme Court in *National Power Corporation v. City of Cabanatuan*,¹ a case where the issue of the NPC's exemption from the payment of local franchise tax was then pending.

On May 12 and 14, 2003 the Province again sent notices of tax due to the NPC, calling its attention to the Court's Decision in *National Power Corporation v. City of Cabanatuan* that held the NPC liable for the payment of local franchise tax. The NPC replied, however, that it had ceased to be liable for the payment of that tax after Congress enacted Republic Act (R.A.) 9136, also known as the Electric Power Industry Reform Act (EPIRA) that took effect on June 26, 2001. The new law relieved the NPC of the function of generating and supplying electricity beginning that year. Consequently, the Province has no right to further assess it for the 2001, 2002, and 2003 local franchise tax.

Ignoring the NPC's view, the Province issued a "Warrant of Levy" on 14 real properties that it used to own in Limay, Bataan. In March 2004 the Province caused their sale at public auction with itself as the winning bidder. Shortly after, the NPC received a copy of the Certificate of Sale of Real Property covering the auctioned properties for ₱60,477,285.22, the amount of its franchise tax delinquency.

On July 7, 2004 the NPC filed with the Regional Trial Court (RTC) of Mariveles, Bataan, a petition for declaration of nullity of the foreclosure sale with prayer for preliminary mandatory injunction against the Province, the provincial treasurer, and the *Sangguniang Panlalawigan*.

The NPC alleged that the foreclosure had no legal basis since R.A. 7160 which authorized the collection of local franchise tax had been modified by the EPIRA. The latter law provided that power generation is not a public utility operation requiring a franchise, hence, not taxable. What remains subject to such tax is the business of transmission and distribution of electricity since these required a national franchise. As it happened, NPC had ceased by operation of the EPIRA in 2001 to engage in power transmission, given that all its facilities for this function, including its

¹ 449 Phil. 233 (2003).

nationwide franchise, had been transferred to the National Transmission Corporation (TRANSCO).

Thus, the NPC asked the RTC to issue a preliminary injunction, enjoining the transfer of title and the sale of the foreclosed lands to Bataan and, after trial, to make the injunction permanent, declare NPC exempt from the local franchise tax and annul the foreclosure sale.

On November 3, 2005 the RTC dismissed the NPC's petition, stating that the franchise tax was not based on ownership of property but on the NPC's exercise of the privilege of doing business within Bataan. Further, the NPC presented no evidence that it had ceased to operate its power plants in that jurisdiction.

The NPC appealed the RTC Decision to the Court of Appeals (CA) but the Province moved to dismiss the same for lack of jurisdiction of that court over the subject matter of the case. The Province pointed out that, although the NPC denominated its suit before the RTC as one for declaration of nullity of foreclosure sale, it was essentially a local tax case questioning the validity of the Province's imposition of the local franchise tax. Any appeal from the action should, therefore, be lodged with the Court of Tax Appeals (CTA). On November 27, 2007 the CA granted the Province's motion and dismissed the petition on the ground cited.

Issue

The issue in this case is whether or not the CA erred in failing to rule that the NPC no longer owned or operated the business subject to local franchise tax and that the Province cannot execute on former NPC properties that had been taken from it and transferred to other government corporations.

Ruling of the Court

The RTC found that the NPC failed to present evidence that it no longer owned or operated the business subject to local franchise tax and that the properties the Province levied on did not belong to it. But proving these things did not require the presentation of evidence in this case since these events took place by operation of law, particularly the EPIRA. Thus, Section 8 of the EPIRA provides:

SEC. 8. *Creation of the National Transmission Company.* There is hereby created a National Transmission Corporation, hereinafter referred to as TRANSCO, which shall assume the electrical transmission

function of the National Power Corporation (NPC), and have the power and functions hereinafter granted. The TRANSCO shall assume the authority and responsibility of NPC for the planning, construction and centralized operation and maintenance of its high voltage transmission facilities, including grid interconnections and ancillary services.

Within six (6) months from the effectivity of this Act, the transmission and subtransmission facilities of NPC and all other assets related to transmission operations, including the nationwide franchise of NPC for the operation of the transmission system and the grid, shall be transferred to the TRANSCO. The TRANSCO shall be wholly owned by the Power Sector Assets and Liabilities Management Corporation (PSALM Corp.).

The subtransmission functions and assets shall be segregated from the transmission functions, assets and liabilities for transparency and disposal: *Provided*, That the subtransmission assets shall be operated and maintained by TRANSCO until their disposal to qualified distribution utilities which are in a position to take over the responsibility for operating, maintaining, upgrading, and expanding said assets. All transmission and subtransmission related liabilities of NPC shall be transferred to and assumed by the PSALM Corp.

TRANSCO shall negotiate with and thereafter transfer such functions, assets, and associated liabilities to the qualified distribution utility or utilities connected to such subtransmission facilities not later than two (2) years from the effectivity of this act or the start of open access, whichever comes earlier: x x x.

x x x x

The above created the TRANSCO and transferred to it the NPC's electrical transmission function with effect on June 26, 2001. The NPC, therefore, ceased to operate that business in Bataan by operation of law. Since the local franchise tax is imposed on the privilege of operating a franchise, not a tax on the ownership of the transmission facilities, it is clear that such tax is not a liability of the NPC.

Nor could the Province levy on the transmission facilities to satisfy the tax assessment against the NPC since, as Section 8 above further provides, the latter ceased to own those facilities six months from the effectivity of the EPIRA. Those facilities have since belonged to TRANSCO.

The legislative emasculating of the NPC also covered its former power generation function, which was the target of the Province's effort to collect the local franchise tax for 2001, 2002, and 2003. Section 49 of the EPIRA provides:


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

Section 49 above created the Power Sector Assets and Liabilities Management Corporation (PSALM Corp.) and transferred to it all of the NPC’s “generation assets” which would include the Bataan Thermal Plant. Clearly, the NPC had ceased running its former power transmission and distribution business in Bataan by operation of law from June 26, 2001. It is, therefore, not the proper party subject to the local franchise tax for operating that business. Parenthetically, Section 49 also transferred “all existing x x x liabilities” of the NPC to PSALM Corp., presumably including its unpaid liability for local franchise tax from January 1 to June 25, 2001. Consequently, such tax is collectible solely from PSALM Corp.

An indispensable party is one who has an interest in the controversy or subject matter and in whose absence there cannot be a determination between the parties already before the court which is effective, complete or equitable.² Here, since the subject properties belong to PSALM Corp. and TRANSCO, they are certainly indispensable parties to the case that must be necessarily included before it may properly go forward. For this reason, the proceedings below that held the NPC liable for the local franchise tax is a nullity. It did not matter where the RTC Decision was appealed, whether before the CA or the CTA.

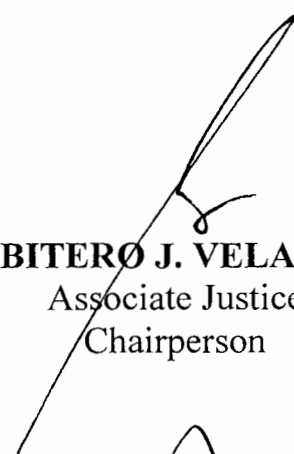
WHEREFORE, the Court **GRANTS** the petition of the National Power Corporation and **SETS ASIDE** the Resolution of the Court of Appeals in CA-G.R. CV 87218 dated November 27, 2007. It further **REMANDS** the case to the Regional Trial Court so that the Power Sector Assets and Liabilities Management Corporation and the National Transmission Corporation may be impleaded as proper parties.

SO ORDERED.


ROBERTO A. ABAD
Associate Justice

² *Lagunilla v. Velasco*, G.R. No. 169276, June 16, 2009, 589 SCRA 224.


WE CONCUR:




PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson



ARTURO D. BRION
Associate Justice




DIOSDADO M. PERALTA
Associate Justice



MARVIC MARIO VICTOR F. LEONEN
Associate Justice

ATTESTATION

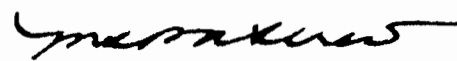
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

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.



MARIA LOURDES P. A. SERENO
Chief Justice