



Republic of the Philippines
Supreme Court
Manila

SUPREME COURT OF THE PHILIPPINES
PUBLIC INFORMATION OFFICE

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POWER SECTOR ASSETS AND
LIABILITIES MANAGEMENT
CORPORATION (PSALM),
represented by LOURDES S.
ALZONA, in her capacity as Officer-
in-Charge, Office of the President
and Chief Executive Officer of
PSALM, and the CONCERNED
OFFICERS OF PSALM,

Petitioners,

- versus -

COMMISSION ON AUDIT,

Respondent.

G.R. No. 218041

Present:

GESMUNDO, C.J.,
LEONEN,
CAGUIOA,
HERNANDO,
LAZARO-JAVIER,
INTING,
ZALAMEDA,
LOPEZ, M.,
GAERLAN,
ROSARIO
LOPEZ, J.,
DIMAAMPAO,
MARQUEZ,
KHO, JR., and
SINGH, JJ.

Promulgated:

August 30, 2022

X-----X

DECISION

LOPEZ, J., J.:

The power of the Commission on Audit (COA) to withhold giving its concurrence to contracts or their renewal, and necessarily disallow disbursements made by reason thereof, by the government, or any of its subdivisions, agencies or instrumentalities, including government owned and controlled corporations, with or without original charters, must at all times be exercised within the Constitutional context and parameters of its audit jurisdiction.

The Case

This is a Petition for *Certiorari*¹ under Rule 64, in relation to Rule 65, of the Rules of Court assailing the Decision No. 2014-136² dated July 18, 2014 issued by respondent COA, as well as its Decision No. 2015-159³ dated April 6, 2015 which sustained Legal Retainer Review No. 2011-004⁴ (*LRR No. 2011-004*) dated January 12, 2011 denying concurrence to the renewal of the contracts of privatization involving legal advisors engaged by petitioner Power Sector Assets and Liabilities Management Corporation (*PSALM*) for the year 2010.

Antecedents

On June 8, 2001, Republic Act (*R.A.*) No. 9136⁵ (*EPIRA Law*) was signed into law.⁶ It provided a framework for the restructuring of the electric power industry, including the privatization of the assets of the National Power Corporation (*NPC*), the transition to the desired competitive structure, and the definition of the responsibilities of the various government agencies and private entities.⁷ To further these objectives, *PSALM* was created under the said law as a government-owned and controlled corporation (*GOCC*) with the principal purpose of managing the orderly sale, disposition, and privatization of *NPC* generation assets, real estate and other disposable assets, and Independent Power Producer (*IPP*) contracts with the end in view of liquidating all *NPC* financial obligations and stranded contract costs in an optimal manner within *PSALM*'s 25-year term of existence.⁸

Pursuant to its mandate, *PSALM*, through its then President and Chief Executive Officer Jose C. Ibazeta (*Ibazeta*), entered into contracts with Atty. Michael B. Tantoco (*Atty. Tantoco*), Atty. Angelito C. Imperio (*Atty. Imperio*), Atty. Jay Angelo N. Anastacio (*Atty. Anastacio*), Atty. Maria Belen M. Nera (*Atty. Nera*) and John T.K. Yeap (*Yeap*) for consultancy services on legal matters involving *PSALM* privatization projects for a period of six months on the dates appearing below:

¹ *Rollo*, pp. 3-24.

² Penned by Commissioner Ma. Gracia M. Pulido Tan, with Commissioners Heidi L. Mendoza and Jose A. Fabia, concurring; *id.* at 33-37.

³ *Id.* at 38-41.

⁴ *Id.* at 42-46.

⁵ Electric Power Industry Reform Act of 2001, June 8, 2001.

⁶ *Power Generation Employees Assoc.-NPC vs. National Power Corporation*, 816 Phil. 30, 33 (2017).

⁷ *R.A. No. 9136, Sec. 3; See IDEALS, Inc. vs. PSALM*, 696 Phil. 486, 502 (2012).

⁸ *R.A. No. 9136, Sec. 50.*

Advisor	Advisory Services	Contract Period
Micheal B. Tantoco	Privatization of Genco/IPPA	08-03-09 to 01-31-10
Angelito C. Imperio	Securitization of Deferred NGCP Payments to PSALM	12-01-09 to 05-01-10
John T.K. Yeap	Int'l Legal Advisor on Securitization of NGCP Deferred Payments to PSALM	08-18-09 to 02-18-10 10-15-09 to 04-15-10
	Int'l Business Transactions (Transco Principal-only-SWAP under ISDA Agreement)	11-17-09 to 05-18-10
	Appointment of IPPA	
Jay Angelo N. Anastacio	PSALM Compliance with Anti-Trust Provisions	01-01-10 to 06-30-10
Maria Belen M. Nera	Performance-based rate Setting Methodologies and Reforms	01-01-10 to 06-30-10 ⁹

On March 25, 2010, Ibazeta was appointed as Acting Secretary of the Department of Energy (*DOE*). As a consequence of the change in the appointing authority of PSALM, it considered the aforesaid contracts for consultancy services terminated on even date¹⁰ in accordance with Section 53.7¹¹ of The 2016 Revised Implementing Rules and Regulations of Republic Act No. 9184 (*IRR of R.A. No. 9184*).¹²

Inasmuch as PSALM is only 2% short of the 70% EPIRA threshold requirement in the implementation of open access and retail competition in the electricity market in 2010, having attained 68% privatization level of the total energy output of IPP power plants contract under NPC, PSALM regarded the services of the said consultants as vital towards the achievement of its mandate under the EPIRA. Thus, on April 5, 2010, PSALM, under the authority of Maria Luz L. Caminero, its Officer-in-Charge (*OIC*), renewed the contracts¹³ of Attys. Tantoco, Imperio, Anastacio Nera and Yeap for another six months.¹⁴

⁹ *Rollo*, pp. 7-8.

¹⁰ *Id.* at 8.

¹¹ 53.7. Highly Technical Consultants. In the case of individual consultants hired to do work that is (i) highly technical or proprietary; or (ii) primarily confidential or policy determining, where trust and confidence are the primary consideration for the hiring of the consultant: Provided, however, That the term of the individual consultants shall, at the most, be on a six month basis, renewable at the option of the appointing Head of the Procuring Entity, but in no case shall exceed the term of the latter.

¹² Government Procurement Reform Act, July 22, 2002.

¹³ *Rollo*, pp. 79-87; 92-99; 100-105; 106-110; 122-129.

¹⁴ *Id.* at 8.

In the meantime, on March 15, 2010, the Legal Services Sector, Office of the General Counsel of the COA rendered Opinion No. 2010-020¹⁵ which stated that PSALM's engagement of foreign and local private lawyers as consultants for the period July 2007 to April 2010 was covered by Memorandum Circular No. 9 (*M.C. No. 9*) dated August 27, 1998 of the Office of the President and COA Circular No. 95-011 dated December 4, 1995. Thus, before the engagement of the consultants' services, the prior written conformity of the Office of the Solicitor General (*OSG*) or the Office of the Government Corporate Counsel (*OGCC*), and the concurrence of COA must first be obtained. The extension of legal consultancy service was likewise covered by COA Circular No. 95-011.¹⁶

On April 20, 2010, Audit Team Leader Gina Maria P. Molina (*ATL Molina*) furnished PSALM with a copy of the said Opinion and directed it to comply therewith.¹⁷

On April 22, 2010, in compliance with the directive of *ATL Molina*, PSALM forwarded the contract renewals of Attys. Tantoco, Imperio, Anastacio, and Nera, as well as Yeap to the *OGCC* for its review and conformity.¹⁸

On May 6, 2010, the *OGCC* issued Contract Review No. 135, Series of 2010¹⁹ expressing its conformity to the subject contract renewals. This was received by PSALM on May 14, 2010.²⁰

On August 5, 2010, PSALM sought the concurrence of COA to the said contract renewals of its legal advisors for the following period in 2010:²¹

Advisor	Advisory Services	Contract Period
Michael B. Tantoco	Privatization of Genco/IPPA	April 5, 2010 ---- Oct. 5, 2010
Angelito C. Imperio	Securitization of NGCP Deferred Payments PSALM	April 5, 2010 ---- Oct. 5, 2010
John T.K. Yeap	Appointment of IPPA	May 18, 2010 ---- Nov. 18, 2010
	International Business Transactions (Transco, Principal-only-SWAP under ISDA Agreement)	April 5, 2009 ---- Oct. 5, 2010
Jay Angelo N. Anastacio	PSALM Compliance with Anti-Trust	April 5, 2010 ---- Oct. 5, 2010

¹⁵ Id. at 73-76.

¹⁶ Id. at 76.

¹⁷ Id. at 72.

¹⁸ Id. at 77-78.

¹⁹ Id. at 130-132.

²⁰ Id. at 9.

²¹ Id. at 133-135.

Maria Belen M. Nera	Performance-based Rate Setting Methodologies & Reforms	April 5, 2010 ---- Oct. 5, 2010 ²²
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On January 12, 2011, COA General Counsel issued LRR No. 2011-004²³ denying the request of PSALM for concurrence to the renewal of its consultants' contracts notwithstanding the approval granted by the OGCC to same in view of PSALM's non-compliance with M.C. No. 9 and COA Circular No. 98-002 dated June 9, 1998, which required the written concurrence of COA prior to the hiring of private lawyers. Aside from the lack of prior assent of COA to the said contract renewals, COA also found excessive the consultancy fees and reimbursable expenses granted to the consultants, and the contracts to be non-compliant with various requirements.²⁴

In a letter dated March 17, 2011, PSALM asked the COA General Counsel to reconsider the denial of its request for concurrence to the renewal of the contracts of its consultants.²⁵

On July 18, 2014, COA issued Decision No. 2014-136²⁶ affirming LRR No. 2011-004; and thereby denying concurrence to PSALM's renewal of consultancy contracts and disallowing in audit the payments under the Contract for Legal Services on the following grounds: (a) The subject contract renewals were covered by M.C. No. 9, COA Circular No. 86-255 dated April 22, 1986 and COA Circular No. 95-011, which required the prior acquiescence of the Solicitor General or the OGCC, and the written concurrence of COA before the hiring of lawyers to render any form of legal service, and not only when they are hired to represent the government agency in judicial or quasi-judicial proceedings; (b) The contracts were submitted to the OGCC for conformity only on April 22, 2010 – after they have been signed by the parties on April 5, 2010. The belated submission of the contracts to OGCC resulted to the belated submission of the same to COA; (c) The urgency of the directive under the EPIRA to implement the privatization of generation assets and transmission business as well as the necessity of continuing the legal advisory services of its consultants in order to accomplish the objectives of EPIRA cannot excuse PSALM from complying with the said issuances as they have been in force since the 1990s; and (d) The requirement under the issuances are not merely procedural but substantive. PSALM's unjustified violation thereof rightly called for denial of COA's concurrence to the renewal contracts and the payments made thereon must be disallowed in audit.²⁷ The *fallo* of the said Decision reads:

²² Id. at 135.

²³ Id. at 42-46.

²⁴ Id.

²⁵ Id. at 47-49.

²⁶ Id. at 33-37.

²⁷ Id. at 35-37.

WHEREFORE, the instant request of Atty. Cecilio B. Gellada, Jr. is hereby **DENIED** and Legal Retainer Review No. 2011-004 dated January 12, 2011, denying concurrence to the renewal contracts of Power Sector Assets and Liabilities Management Corporation legal advisors, is **SUSTAINED**. Accordingly, the payments under the Contract for Legal Services shall be disallowed in audit.²⁸

On September 5, 2014, PSALM asked COA to take a second look at the facts and circumstances of the case and reconsider its Decision.²⁹

On April 6, 2015, COA issued Decision No. 2015-159³⁰ denying PSALM's motion for reconsideration for lack of merit. COA disposed as follows:

WHEREFORE, premised considered, the motion for reconsideration of Power Sector Assets and Liabilities Management Corporation, through counsels, Makati City, is hereby **DENIED** for lack of merit. Accordingly, Commission on Audit Decision No. 2014-136 dated July 18, 2014, which sustained Legal Retainer Review No. 2011-004 dated January 12, 2011, denying concurrence on the renewal contracts of PSALM's legal advisors for the year 2010, is **AFFIRMED WITH FINALITY**.

Further, the Audit Team Leader is hereby directed to issue a Notice of Disallowance on the payments of services of the legal advisors.³¹

Here, COA reiterated its earlier ruling that PSALM's belated request for concurrence to the contract renewals of its legal advisors violated M.C. No. 9, COA Circular No. 95-011 and the relevant Supreme Court decisions on the matter. Additionally, it relieved the legal advisors of PSALM from refunding the compensations they received for actual legal services rendered, but it held liable the persons responsible for the expenditures pursuant to Section 104 of Presidential Decree No. 1445 (*P.D.*), or the Government Auditing Code of the Philippines.³²

Hence, the present Petition.

Meanwhile, during the pendency of the present petition, COA issued on January 16, 2018 several Notices of Disallowance directing the persons named therein to settle the amounts disallowed in audit. The pertinent portions of the Notices of Disallowance provide:³³

²⁸ Id. at 37.

²⁹ Id. at 50-62.

³⁰ Id. at 38-41.

³¹ Id. at 40.

³² Id. at 39-40.

³³ Id. at 284-285, 287-288, 290-291, 293-294, and 296-298.

ND No: 2018-01-04-(2010)³⁴

x x x x

The following persons have been determined to be liable for the transactions:

	Name	Position/ Designation	Nature of Participation in the Transaction	Amount Authorized
1.	Michael B. Tantoco	Legal Consultant	Received Payment	6,818,823.48
2.	Jose C. Ibazeta	President and CEO	For entering into a contract with Atty. Tantoco	1,948,235.28
			Approved Payment and	974,117.64
			For approving remittance through bank transfer	974,117.64
3.	Maria Luz L. Caminero	Acting President & CEO/VP & General Counsel	Approved payments	5,844,705.84
			For approving remittance through bank transfer	1,948,235.28
			Supporting Documents valid, proper and legal	1,948,235.28
			For enetering into contract with Atty. Tantoco	4,870,588.20
4.	Cecilio B. Gellada Jr.	OIC-Office of the General Counsel	Supporting Documents valid, proper and legal	4,870,588.20
5.	Lourdes S. Alzona	VP-Finance	For approving remittance through bank transfer	2,922,352.92
6.	Amelita Zarate	Manager- CFMD	For approving remittance through bank transfer	3,896,470.56
7.	Yolanda D. Alfafara	Manager- Controllership Department	For approving remittance through bank transfer (examined and verified the amount)	2,922,352.92
			Supporting Documents Complete	4,870,588.20
8.	Maria M. Bautista	Manager-GAD	For approving remittance through bank transfer	3,896,470.56
			Supporting Documents Complete	1,948,235.28

9.	Marivi V. Francisco	Sr. Finance Specialist	For approving remittance through bank transfer (examined and verified the amount)	3,896,470.56
10.	Alvin P. Diaz	Department manager-Budget and Property Management Department	For certifying that budget are available and obligated for the purpose as indicated	6,818,823.48 ³⁵

ND No: 2018-01-02-(2010)³⁶

x x x x

The following persons have been determined to be liable for the transactions:

	Name	Position/ Designation	Nature of Participation in the Transaction	Amount Authorized
1.	Angelito C. Imperio	Legal Consultant	Received Payment	224,893.50
2.	Jose C. Ibazeta	President and CEO	For entering into a contract with Atty. Imperio	224,893.50
3.	Cecilio B. Gellada Jr.	OIC-Office of the General Counsel	Approved Payments & certifying that the supporting Documents are proper, valid and legal	224,893.50
4.	Maria M. Bautista	Manager-GAD	Supporting Documents Complete	224,893.50
5.	Alvin P. Diaz	Department Manager-Budget and Property management Department	For certifying that budget are available and obligated for the purpose as indicated	224,893.50 ³⁷

ND No: 2018-01-03-(2010)³⁸

x x x x

The following persons have been determined to be liable for the transactions:

³⁵ Id.
³⁶ Id. at 287-288.
³⁷ Id.
³⁸ Id. at 290-291.

	Name	Position/ Designation	Nature of Participation in the Transaction	Amount Authorized
1.	Jay Angelo N. Anastacio	Legal Consultant	Received Payment	745,894.00
2.	Jose C. Ibazeta	President and CEO	For entering into a contract with Atty. Anastacio	240,000.00
3.	Maria Luz L. Caminero	Acting President & CEO/VP & General Counsel	Approved Payments	247,922.00
			Supporting Documents valid, proper and legal	240,000.00
			For entering into a contract with Atty. Anastacio	505,894.00
4.	Cecilio B. Gellada Jr.	OIC-Office of the General Counsel	Approved Payments	497,972.00
			Supporting Documents valid, proper and legal	505,894.00
5.	Maria M. Bautista	Manager-GAD	Supporting Documents Complete	665,894.00
6.	Yolanda D. Alfafara	Manager-Controllership Department	Supporting Documents Complete	80,000.00
7.	Alvin P. Diaz	Department Manager-Budget and Property Management Department	For certifying that budget are available and obligated for the purpose as indicated	745,894.00 ³⁹

ND No: 2018-01-05-(2010)⁴⁰

x x x x

The following persons have been determined to be liable for the transactions:

	Name	Position/ Designation	Nature of Participation in the Transaction	Amount Authorized
1.	Maria Belen M. Nera	Legal Consultant	Received Payment	701,811.75
2.	Jose C. Ibazeta	President and CEO	For entering into a contract with Atty. Nera	262,186.00

³⁹ Id. at 291.

⁴⁰ Id. at 293-294.

3.	Maria Luz L. Caminero	Acting President & CEO/General Counsel	Approved Payments	210,519.33
			For entering into a contract with Atty. Nera	491,292.42
			Supporting Documents valid, proper and legal	262,186.00
4.	Cecilio Gellada Jr. B.	OIC-Office of the General Counsel	Approved Payments	491,292.42
			Supporting Documents valid, proper and legal	439,625.75
5.	Maria Bautista M.	Manager-GAD	Supporting Documents Complete	701,811.75
7.	Alvin P. Diaz	Department Manager-Budget and Property Management Department	For certifying that budget are available and obligated for the purpose as indicated	701,811.75 ⁴¹

ND No: 2018-01-01-(2010)⁴²

x x x x

The following persons have been determined to be liable for the transactions:

	Name	Position/ Designation	Nature of Participation in the Transaction	Amount Authorized
1.	John Yeap	Legal Consultant	Received Payment	21,476,893.95
2.	Maria Luz L. Caminero	Acting President & CEO	For entering into a contract with Mr. Yeap	21,476,893.95
			Approved Payments	18,969,862.49
			For approving remittance through bank Transfer	9,288,297.47
3.	Emmanuel R. Ledesma, Jr.	President and CEO	For approving remittance through bank Transfer	2,507,031.46
			Approved Payments	2,507,031.46

⁴¹ Id. at 294.

⁴² Id. at 296-298.

4.	Cecilio B. Gellada Jr.	OIC-Office of the General Counsel	Supporting Documents valid, proper and legal	21,476,893.95
5.	Lourdes S. Alzona	Officer in Charge PSALM/VP Finance	For approving remittance through bank Transfer	11,864,913.45
6.	Manuel L. Villalon II	Manager-Treasury Department	For approving remittance through bank Transfer	9,681,565.02
7.	Yolanda D. Alfara	Manager-Controllership Department	For approving remittance through bank Transfer	9,611,980.50
			For approving remittance through bank Transfer (examined and verified the amount)	11,837,571.22
			Supporting Documents Complete	21,379,967.20
8.	Maria M. Bautista	Manager-GAD	For approving remittance through bank Transfer (examined and verified the amount)	9,611,980.50
			Supporting Documents Complete	96,926.75
9.	Rosemarie V. Cornejo	OIC-Controllership Department	For approving remittance through bank Transfer (examined and verified the amount)	27,342.23
10.	Alvin P. Diaz	Department Manager-Budget and Property Management Department	For certifying that budget are available and obligated for the purpose as indicated	21,476,893.95 ⁴³

The issuance of the said Notices of Disallowance prompted PSALM to ask the Court to issue a status quo ante order and/or temporary restraining order to protect PSALM, its officers and officials until the Court shall have finally ruled on the propriety of the questioned COA Decisions.⁴⁴

On June 28, 2018, PSALM appealed the five Notices of Disallowance to Cluster Director, Cluster 3, Corporate Government Sector (CGS) of COA.⁴⁵ The appeal was denied through CGS-Cluster 3 Decision No. 2018-26 dated August 16, 2018. The said Decision is now pending appeal before COA Proper.⁴⁶

Arguments

PSALM as well as its concerned officers (collectively, PSALM) contend that the contracts submitted to COA for concurrence are the contract renewals of its legal advisors. PSALM explains that upon the appointment of Ibazeta as acting DOE Secretary on March 25, 2010, the unexpired six-months contracts of Attys. Tantoco, Imperio, Anastacio and Nera, as well as Yeap were abruptly cut short on even date pursuant to Section 53.7 of the Revised IRR of R.A. No. 9184, which provides that the term of the consultants shall, at the most, be on a six months basis, but in no case shall such term exceed the term of the Head of the Procuring Entity, which is Ibazeta in this case. Due to Ibazeta's appointment, the unexpired portion of its legal advisors' contracts had to be renewed on April 5, 2010 by its OIC to allow them to continue their services, which are vital and necessary for PSALM to achieve its mandate under the EPIRA. When it received COA Opinion No. 2010-020, it complied in good faith with its directive by seeking the conformity of the OGCC on April 22, 2010 and then the concurrence of COA on August 5, 2010, after it received the approval of the OGCC to the contract renewals of PSALM's privatization legal advisors.⁴⁷

It labels as grave abuse of discretion on the part of the COA when it concluded that the "real cause of the belated submission of the contracts to the COA was the belated submission by the PSALM of the contracts to the OGCC."⁴⁸ PSALM explains that COA's concurrence was obtained only after the OGCC gave its approval to the renewal contracts because it honestly believed that it cannot seek COA's concurrence without the OGCC's prior approval to the same.⁴⁹

⁴⁴ Id. at 272-278.

⁴⁵ Id. at 368.

⁴⁶ Id. at 364-367.

⁴⁷ Id. at 12-13.

⁴⁸ Id. at 36.

⁴⁹ Id. at 13.

PSALM insists that M.O. No. 9 and COA Circular No. 95-011 should not be strictly applied in this case since the contracts executed by PSALM and its legal advisors are neither contracts involving representation in cases before the courts and quasi-judicial bodies nor retainer contracts, but contracts merely for advisory opinions on legal issues that are recommendatory in nature and for a specified period only. Moreover, the fast-tracking of the privatization projects would be meaningless if PSALM would be required to obtain first the time-consuming approvals of OGCC and COA prior to its engagement of private lawyers. It is the urgency of the projects involved, which PSALM is time-bound to accomplish under the EPIRA, that resulted in its failure to comply with the procedures laid down in M.C. No. 9 and COA Circular No. 95-011. Moreover, it contends that the subject contracts are not the first to be entered into by PSALM with legal advisors. Since the consultancy engagements it entered into in 2008 were not subject to any negative audit findings by COA, it relied in good faith that such contracts were valid. It was only on April 20, 2010, through COA Opinion No. 2010-020, that it was made aware that it had to comply with COA Circular No. 95-011 which it did by submitting the subject contract renewals to the OGCC for conformity. It is PSALM's position that once the conformity of the OGCC has been obtained for the contracts, it behooves upon COA to give its concurrence thereto.⁵⁰ Its procedural lapses in obtaining the required COA concurrence are excusable since the objectives sought to be achieved by PSALM under the EPIRA were realized and redounded to the benefit of the national government and the public.⁵¹

Assuming that the requirements of M.C. No. 9 and COA Circular No. 95-011 apply strictly in this case, PSALM contends that it must be considered to have substantially complied with the same when it submitted to COA on August 5, 2010 the subject contract renewals for its concurrence in light of the fact that it became necessary only to renew said contracts by reason of their automatic termination when the term of its appointing head ended. The continuity of service of the legal advisors should not be held hostage to the requirements imposed by the circulars given that the urgency to implement the privatization mandate under the EPIRA must take precedence over the proper sequence of procedural compliance under the said issuances.⁵²

Even if it were to be eventually decided that PSALM violated the prior concurrence of COA requirement, it insists that the principle of *quantum meruit* should be applied in this case. Thus, the subject legal advisors who had already rendered their services under their renewed contracts should be compensated therefor. Otherwise, the government will be unjustly enriching itself at the expense of another.⁵³ Concomitantly, the PSALM officers who authorized the disbursement of funds should not be

⁵⁰ Id. at 114-116.

⁵¹ Id. at 18.

⁵² Id. at 16-18.

⁵³ Id. at 18-20.

made personally liable for the amounts paid since they acted in good faith and within the bounds of their official functions.⁵⁴

COA, for its part, argues that it correctly denied giving its concurrence to the renewal of the consultancy contracts of PSALM's legal advisors since it did not comply with M.C. No. 9 and COA Circular No. 95-011. The post facto approval of the OGCC to the subject contract renewals could not lend validity to the same since COA Circular No. 86-055, COA Circular No. 95-011 and M.C. No. 9 not only require COA to give its concurrence to such engagements, but directs that the conformity of the OSG or OGCC and concurrence of COA to be secured first before government-owned and controlled corporations could enter into contracts with private lawyers. PSALM could not use the urgency of its mandate under the EPIRA as a shield to excuse its non-compliance with the foregoing issuances given that the requirements provided therein were already in force as early as 1986, and reiterated in 1995 and 1998.⁵⁵

According to the COA, PSALM's plea for a liberal interpretation of the said issuances cannot be taken into consideration considering that what the circulars seek to prevent – unauthorized, unnecessary, excessive, extravagant or unconscionable disbursement of public funds and properties – are present in this case. It explains that it already found the consultancy fees and reimbursable expenses of PSALM's advisors excessive when compared to the benchmark fees of other legal consultants for the calendar year 2010.⁵⁶

Contrary to the view of PSALM that its legal advisors are not covered by the circulars since they were engaged to render purely advisory opinions,⁵⁷ COA also avers that the case of *Polloso vs. Hon. Gangan*⁵⁸ had long settled that the requirements found in the issuances cover the hiring of private lawyers to render any form of legal service and makes no distinction as to whether the legal services to be performed involve an actual legal controversy or court litigation.⁵⁹

Finally, COA stated that since the legal advisors were hired without the prior written conformity and concurrence of the OGCC and COA, they cannot be paid on the basis of *quantum meruit* for to do so would allow the circumvention of the mandates of the circulars. However, the legal advisors hired by PSALM in violation of M.C. No. 9 and COA Circular No. 95-011 are relieved from refunding the compensation they already received as these were for actual legal services rendered. Nonetheless, the same shall become

⁵⁴ Id. at 261-264.

⁵⁵ Id. at 158-162.

⁵⁶ Id. at 162-163.

⁵⁷ Id. at 163-165.

⁵⁸ 390 Phil. 1101 (2000).

⁵⁹ Id. at 1109.

the personal liability of the government officials who hired the consultants without following the required procedure under the circulars.⁶⁰

Issues

I.

Whether COA properly denied giving its concurrence to the contract renewals of PSALM's legal advisors and thereby disallowing in audit payments made for their services;

II.

Whether the legal advisors hired by PSALM deserve compensation for the legal consultancy services rendered pursuant to the subject service contracts/contract renewals; and

III.

Whether the officers of PSALM who approved the said contracts should be held personally liable for the payment of the subject legal advisors' compensations.

Our Ruling

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government.⁶¹ This expanded concept emphasizes the judicial department's duty and power to strike down grave abuse of discretion on the part of any branch or instrumentality of government,⁶² except, of course, to those pertaining to questions that are to be decided by the people in their sovereign capacity.⁶³ Such power encompasses the decisions, orders or rulings of the COA which may be brought before the Court on *certiorari*.⁶⁴

It is the general policy of the Court to sustain the decisions of administrative authorities, especially one which is constitutionally-created not only on the basis of the doctrine of separation of powers but also for their presumed expertise in the laws that they are entrusted to enforce.⁶⁵ For the COA's part, the 1987 Constitution has made it the guardian of public

⁶⁰ *Rollo*, pp. 165-167.

⁶¹ *Francisco, Jr. vs. The House of Representatives*, 460 Phil. 830, 878 (2003). (Citation omitted)

⁶² See *Rep. Baguilat vs. Speaker Alvarez*, 814 Phil. 183, 199 (2017). (Citation omitted)

⁶³ *Sen. Defensor Santiago vs. Sen. Guingona, Jr.*, 359 Phil. 276, 291 (1998).

⁶⁴ CONSTITUTION, Art. IX (A), Section 7.

⁶⁵ *Maritime Industry Authority vs. Commission on Audit*, 750 Phil. 288, 308 (2015). (Citation omitted)

funds, vesting it with broad powers over all accounts pertaining to government revenue and expenditures and the uses of public funds and property including the exclusive authority to define the scope of its audit and examination, establish the techniques and methods for such review, and promulgate accounting and auditing rules and regulations.⁶⁶ The exercise by COA of its general audit power is among the constitutional mechanisms that give life to the check-and-balance system inherent in a republican form of government such as ours.⁶⁷ More importantly, the COA's audit jurisdiction — giving this constitutional mechanism more bite — includes GOCCs with or without original charters.⁶⁸ Thus, the limitation of the Court's power of review over COA rulings merely complements its nature as an independent constitutional body that is tasked to safeguard the proper use of the government and, ultimately, the people's property by vesting it with power to (1) determine whether the government entities *comply with the law and the rules in disbursing* public funds; and (2) disallow legal disbursements of these funds.⁶⁹

At this juncture, the Court points out that: (1) some legal advisors in this case are the same persons involved in the recently decided case of *PSALM vs. COA*⁷⁰ — essentially the same parties but involving different service contracts; and (2) unlike the facts in the foregoing case, PSALM's responsible officers here totally bypassed the required prior concurrence of the OGCC and the COA in approving the renewal of the subject service contracts. In this regard, the matter to be resolved here is whether COA was correct in not giving its consent to the subject contract renewals solely on the ground that PSALM did not secure the OGCC and COA's concurrence before it renewed the contracts of the subject legal advisors, and the resulting disallowance of the expenditures made by reason of the said contracts.

***Statutory grant to PSALM of authority
to engage the services of consultants
under the EPIRA Law***

Under Presidential Decree No. 1415,⁷¹ “The [OGCC] shall be the principal law office of all government-owned or controlled corporations, *without exception*, including their subsidiaries.”⁷² However, Section 10, Chapter 3, Title III, Book IV of the current Administrative Code *deleted* the phrase “without exception” from the OGCC's charter. As such, the first

⁶⁶ *Yap vs. Commission on Audit*, 633 Phil. 174, 189 (2010). (Citation omitted)

⁶⁷ *Commissioner of Internal Revenue vs. Commission on Audit*, 291-A Phil. 220, 229 (1993).

⁶⁸ *Engr. Feliciano vs. Commission on Audit*, 464 Phil. 439, 453 (2004).

⁶⁹ *Philippine Health Insurance Corporation vs. COA, et al.*, 837 Phil. 90, 106 (2018). (Citation omitted)

⁷⁰ G.R. No. 247924, November 16, 2021.

⁷¹ Defining the Powers and Functions of the Office of the Government Corporate Counsel, Adjusting the Compensation of Personnel and for Other Purposes, June 9, 1978.

⁷² *Id.* at Section 1. (Emphasis supplied)

paragraph of Section 10, Chapter 3, Title III, Book IV of The Administrative Code of 1987⁷³ now reads:

Section 10. *Office of the Government Corporate Counsel.* – The Office of the Government Corporate Counsel (OGCC) shall act as the principal law office of all government-owned or controlled corporations, their subsidiaries, other corporate off-springs and government acquired asset corporations and shall exercise control and supervision over all legal departments or divisions maintained separately and such powers and functions as are now or may hereafter be provided by law. In the exercise of such control and supervision, the Government Corporate Counsel shall promulgate rules and regulations to effectively implement the objectives of the Office.⁷⁴

A plain reading of the aforementioned provision, especially as regards the procurement of private legal services by GOCCs, allows the Court to deduce the following functions and powers of the OGCC:

1. The **function to act as the principal law office** of all GOCCs, their subsidiaries, other corporate off-springs and government acquired asset corporations;
2. The **power to exercise control and supervision** over all **legal departments or divisions maintained separately** by these GOCCs, their subsidiaries, other corporate off-springs and government acquired asset corporations;
3. The **power to perform functions** already provided and which may be provided thereafter by law; and
4. The **power to promulgate rules and regulations** to effectively implement its own objectives.⁷⁵

Nonetheless, since part of the Chief Executive's residual powers is the power to implement reorganization measures within the Executive branch,⁷⁶ the President may provide for exceptions as regards legal representation of the GOCCs — consistent with the restrictive interpretative rule of *expressio unius est exclusio alterius* and its variations.⁷⁷ This was recognized in *Phividec International Authority vs. Capitol Steel Corporation*⁷⁸ where it was acknowledged that GOCCs may engage the services of private lawyers as long as the following chronological requisites concur: (1) private counsels can be hired only in exceptional cases; (2) the GOCC must first secure the written conformity and acquiescence of the OSG or the OGCC, as the case

⁷³ Executive Order No. 292.

⁷⁴ Id. (Emphasis and underscoring supplied)

⁷⁵ Id.

⁷⁶ *Malaria Employees and Workers Association of the Philippines, Inc. vs. Exec. Sec. Romulo*, 555 Phil. 629, 637 (2007).

⁷⁷ See *Malinias vs. COMELEC*, 439 Phil. 319, 335 (2002).

⁷⁸ 460 Phil. 493, 503 (2003).

may be, before any hiring can be done; and (3) the written concurrence of the COA must also be secured *prior* to the hiring.⁷⁹

In PSALM's case, there is no express statutory prohibition as to the hiring of private legal services as Section 51 (h)⁸⁰ of the EPIRA Law allows such act if availing the services of personnel detailed from other government agencies is not practicable. Such provision should be given great consideration as the OGCC acts as the general counsel of all GOCCs. It would far be impracticable for the OGCC, given their finite number of legal employees, to spread itself thinly by assigning some of its lawyers to exclusively devote all of their time to all the peculiar concerns of certain government agencies that require the use of technical expertise or specialized knowledge. This observation is consistent with the OGCC's role as the "principal law office" of the government as well as the law's implied recognition that GOCCs are authorized to separately maintain their own legal departments or divisions. Otherwise, the mention of these separately maintained legal departments or divisions in the first paragraph of Section 10, Chapter 3, Title III, Book IV of the Administrative Code would become a mere superfluity. Indeed, one of the basic rules in statutory interpretation is that all parts of a statute are to be harmonized and reconciled so that effect may be given to each and every part thereof, and that conflicting intentions in the same statute are never to be supposed or so regarded.⁸¹ The words to be given meaning whether they be found in the Constitution or in a statute, define and therefore limit the authority and discretion of the judges who must apply those words.⁸²

As such, there is no doubt that PSALM may separately maintain its own legal department by providing for its structure. This "structure" may include permanently-hired general counsels based on positions allotted to agencies by law and/or temporarily-hired specialists whose services are needed for only a specific undertaking or duration.

Nature of PSALM's Statutory Duties

It cannot be denied that the power industry or energy sector is indeed a field requiring technical knowledge,⁸³ PSALM is reasonably bound to hire professional services competent enough to address its own specialized needs; most especially so that the EPIRA Law places the burden on its

⁷⁹ Id. at 503.

⁸⁰ 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[.]** (Emphasis supplied)

⁸¹ *Sps. Villaluz vs. Land Bank of the Phils.*, 803 Phil. 407, 415 (2017).

⁸² *Llamado vs. Court of Appeals*, 256 Phil. 328, 341 (1989).

⁸³ See *West Tower Condominium Corporation vs. First Philippine Industrial Corporation*, 760 Phil. 304, 335 (2015). (Citation omitted); *Energy Regulatory Board vs. Court of Appeals*, 409 Phil. 36, 47 (2001). (Citations omitted)

shoulders to perform duties within a specific time frame. To demonstrate, the Court points out the following portions of the EPIRA Law which reads:

Section 47. *NPC Privatization.* - Except for the assets of SPUG, the generation assets, real estate, and other disposable assets as well as IPP contracts of NPC shall be privatized in accordance with this Act. **Within six (6) months from the effectivity of this Act, the PSALM Corp[.] shall submit a plan for the endorsement** by the Joint Congressional Power Commission and the approval of the President of the Philippines, on the total privatization of the generation assets, real estate, other disposable assets as well as existing IPP contracts of NPC and thereafter, **implement the same**, in accordance with the following guidelines, x x x.

x x x x

(i) Not later than three (3) years from the effectivity of this Act, and in no case later than the initial implementation of open access, at least seventy percent (70%) of the total capacity of generating assets of NPC and of the total capacity of the power plants under contract with NPC located in Luzon and Visayas **shall have been privatized**; *Provided*, That any unsold capacity shall be privatized not later than eight (8) years from the effectivity of this Act; and

x x x x

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 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 50. Purpose and Objective, Domicile and Term of Existence. - The principal purpose of the PSALM Corp. 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.

The PSALM Corp. shall have its principal office and place of business within Metro Manila.

The PSALM Corp. 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.

Aside from the 8-year, 3-year, 6-month and 90-day mandates provided by the above-mentioned provisions, PSALM's existence is even fixed at only 25 years from the date of the EPIRA Law's effectivity. Clearly, PSALM is bounded by time constraints to implement the EPIRA Law's salient provisions. As such, if it is to reasonably attain its statutory objectives in a timely manner, PSALM's specialized administrative prerogative to determine for itself what it needs to attain such statutory objectives must be accorded with a decent modicum of respect by the Court and the COA.

Necessity of COA's prior written concurrence

While COA does not prevent PSALM from exercising its prerogative of hiring legal advisors suited to its needs, it, however, is of the position that before PSALM may be allowed to engage the services of private consultants, which in this case pertains to renewal of the contracts of its consultants, PSALM must first secure not only the prior written conformity of the OGCC, but its prior written concurrence as well.

In *PSALM v. COA*,⁸⁴ the Court recognized the requirement to secure prior concurrence from COA to every engagement of private lawyers and consultants, which is an instance of pre-audit and COA's mandate to require the same. This Court ruled:

COA distinguishes the written concurrence from pre-audit **simply because** there is **yet no specific payment** or disbursement being made to the lawyer. This, however, is a **distinction without any difference**. This supposed difference does **not** distinguish a pre-audit from a written concurrence. It is a **minute detail** in the overall goal, process, and scheme of a pre-audit.

More important, as above-quoted, a **pre-audit** is done **to identify suspicious transactions on their face** so as to **avoid the embarrassment and embezzlement or wastage of public funds before implementation and disbursement**. This precisely is what the **written concurrence** is **also meant to achieve**.

Thus, in No.7 of its Memorandum, COA admits that the primary purpose of the review for a written concurrence is the **determination of the reasonableness of the legal fees of the lawyer** and the **assurance of consistency in legal policies and practices of State agencies that transcend the parochial interests of individual State agencies** and **promote the greater good of public interest**.

Quite clearly, **written concurrence** involves a review that encompasses both the processes and goals of a **pre-audit**. Hence, it is essentially a **pre-audit**.

⁸⁴

Supra note 69.

X X X X

Here and now, we find **no reason** to overturn COA's discretion to require pre-audit in the form of written concurrence to obtaining outside legal services. The rationale for this requirement has been accepted and settled in jurisprudence. We uphold the soundness of this reasoning and the same is reiterated here.⁸⁵

Precisely, a pre-audit is a constitutionally-sanctioned auditing measure accorded to the COA to address inadequate internal control system that some audited agencies may have.⁸⁶ It involves an examination of financial transactions before their consumption or payment and is basically a special development of the control aspect of accountancy as well as an integral part of the accounting and payment process.⁸⁷ It seeks to determine that: (1) the proposed expenditure complies with an appropriation law or other specific statutory authority; (2) sufficient funds are available for the purpose; (3) the proposed expenditure is not unreasonable or extravagant and the unexpended balance of appropriations where it will be charged to is sufficient to cover the entire amount thereof; and (4) the transaction is approved by proper authority and the claim is duly supported by authentic underlying evidence.⁸⁸ Moreover, it could, among others, identify government agency transactions that are suspicious on their face prior to their implementation and prior to the disbursement of funds.⁸⁹

On July 16, 2021, COA issued Circular No. 2021-003⁹⁰ enumerating specific instances when government agencies and GOCCs can hire private lawyers or legal consultants without its prior written concurrence. The circular reads:

3.0 COVERAGE

This Circular lays down the conditions on the exemption of national government agencies and GOCCs from the requirement of COA's prior written concurrence under COA Circular Nos.1986-255, 1995-011, and COA Memorandum No. 2016-010.

4.0 CONDITIONS

4.1 Lawyers under Contract of Service or Job Order Contract.

- a) The engagement is covered by a contract between the government agency and the lawyer, under a Contract of Service or Job Order Contract arrangement, not to exceed one (1) year, renewable at the option of the head of the national government agency or GOCC, but in no case to exceed the term of the head;

⁸⁵ *PSALM vs. COA*, supra note 69. (Emphasis in the original and citation omitted)

⁸⁶ See CONSTITUTION, Art. IX (D), Section 2.

⁸⁷ *Development Bank of the Phils. vs. Commission on Audit*, 301 Phil. 207, 211 (1994).

⁸⁸ *Director Villanueva vs. Commission on Audit*, 493 Phil. 887, 901 (2005). (Citations omitted)

⁸⁹ *Dela Llana vs. The Chairperson, Commission on Audit*, 681 Phil. 186, 196 (2012).

⁹⁰ https://www.coa.gov.ph/wpfd_file/coa-circular-no-2021-003-july-16-2021/

- b) The engagement shall have the written approval of the OSG, in the case of the national government agencies, or the OGCC in the case of GOCCs;
- c) The duties and responsibilities to be assigned to the lawyer are similar to those ordinarily performed by lawyers employed by the government agency or GOCC and holding attorney, legal officer, or other lawyer positions in the *plantilla*;
- d) The government agency or GOCC does not have any *plantilla* positions or does not have sufficient *plantilla* positions to support its current requirement for legal services;
- e) The lawyer meets the minimum eligibility and qualification standards imposed by the Civil Service Commission (CSC) for comparable positions in the government;
- f) The compensation of the lawyer shall be the same as the salary of the comparable position in the government agency or GOCC, with no other entitlements except for a premium of up to twenty percent (20%) which may be paid monthly, lump sum, or in tranches (i.e. mid-year and end of the year) as may be stated in the contract. Comparable position is determined based not solely on salary grade but also on the duties and responsibilities of the positions and level of position in the organizational structure or *plantilla* of the agency. Positions may be considered to be comparable if they belong to the same occupational grouping and the duties and responsibilities of the positions are similar and/or related to each other (CSC Memorandum Circular No. 03, s. 2014); and
- g) The lawyer is not employed nor engaged by any private entity or other government agency or GOCC for the duration of the contract.

4.2 Legal Consultants

- a) The engagement is covered by a contract between the government agency or GOCC and the lawyer, as a legal consultant, specifying the activity/project/program, the nature of the engagement (full time or part time), and for a term not to exceed one (1) year, renewable at the option of the head of the government agency or GOCC if the activity/project/program has not yet been completed, but in no case to exceed the term of the head;
- b) The engagement shall have the written approval of the OSG, in the case of national government agencies, or the OGCC in the case of GOCCs;
- c) The lawyer possesses the relevant expertise in the matter to which he has been engaged, and such expertise cannot be found among the lawyers employed by the government agency or GOCC, or if comparable expertise does exist, is unavailable;

- d) The procurement process for the engagement of the lawyer as legal consultant has been complied with;
- e) The lawyer is not employed or engaged as a contract of service or job order contract by any other government agency or GOCC, although the lawyer may be engaged as a part-time consultant in up to two (2) government agencies or GOCCs; and
- f) The consultancy fee of the lawyer, including other remunerations and allowances, does not exceed Fifty Thousand Pesos (P50,000.00) per month.⁹¹

The contract renewals subject of this case, however, do not fall within the purview of the new circular as the said contracts are no longer pending review with the COA.⁹²

Parameters of COA's audit jurisdiction

In the case at hand, records undoubtedly show that despite the necessity of obtaining COA's prior concurrence to the contract renewal of the subject legal advisors, PSALM bypassed such requirement. Understandably, this triggered COA to exercise its duty to scrutinize such transactions and withhold giving its concurrence to the same and disallow disbursements made by way of payment for the consultants' services on the basis of non-compliance with the said requirement. However, in denying concurrence to the said contract renewals and disallowing the resultant disbursement pursuant to the subject consultancy contracts, COA failed to provide for a detailed explanation along with substantial justifications why the subject renewal of legal consultancy contracts were "unreasonable" or "extravagant" within the context of the Constitution. The only explanation offered by COA in rejecting PSALM's claim of urgency and necessity is that the same "are all within the control of PSALM['s] management."⁹³ Relatedly, it harped on its finding that PSALM failed to secure its prior approval as well as that of the OGCC's when it proceeded to execute the renewal of the service contracts with the subject legal advisors.

It must be stressed that the irregularity present in this case only pertains to the bypassing of the process of validating the contracts of private legal services through prior OGCC and COA approval, not the propriety or merit of procuring the said services itself.

It may be said that failure to secure a prior written concurrence from the OGCC and the COA is irregular. However, this is not the irregularity that the Constitution is seeking to remedy in giving COA the power to

⁹¹ Id.

⁹² *PSALM vs. COA*, supra note 69.

⁹³ *Rollo*, p. 36.

prevent or disallow such disbursements or expenditures. This is clearly provided under Article IX (D), Section 2(2) of the Constitution which provides:

(2) The Commission shall have exclusive authority, subject to the limitations in this Article, to define the scope of its audit and examination, establish the techniques and methods required therefor, and promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures or uses of government funds and properties.

From the foregoing text, there is no question that such irregularity pertains to the transactions *per se* (in this case, the procurement of the services of legal advisors itself, more particularly, the renewals thereof), whether proposed or consummated. The reason being is that the word “irregular” was enumerated by the Constitution together with the words “unnecessary,” “excessive,” “extravagant,” and “unconscionable” to refer to expenditures or uses of government funds and properties. Since what is “unnecessary,” “excessive,” “extravagant,” or “unconscionable” pertains to transactions *per se*, it stands to reason that what is “irregular” also pertains to the same governed activity. This is because under the principle of *ejusdem generis*, “where a general word or phrase follows an enumeration of particular and specific words of the same class or where the latter follow the former, the general word or phrase is to be construed to include, or to be restricted to persons, things or cases akin to, resembling, or of the same kind or class as those specifically mentioned.”⁹⁴

As discussed above, PSALM has the authority to hire private consultants to enable it to comply with its mandate under the EPIRA Law given the urgency of its targets as well as its specialized needs. In fact, the OGCC recognized the imperative need of PSALM for legal advisors that it lost no time in giving its concurrence to the renewal of their contracts even if its concurrence *prior* to the said renewal had not been obtained.

In view of PSALM’s esoteric and peculiar needs, and consistent with the limits of COA’s audit jurisdiction under the Constitution, COA’s refusal to grant concurrence to the subject contract renewals must center on the irregularity of PSALM’s act of procuring the services of legal advisors *per se*, or the renewal of their contracts. In other words, any violation of the required pre-audit process cannot be in itself a proper justification to withhold concurrence to the hiring of legal advisors or the renewal of their contracts. It is the expenditure itself, whether proposed or consummated — not the process of securing the necessary approval of key government agencies — that is the proper subject of COA’s audit jurisdiction to

⁹⁴ *Alia Vista Golf and Country Club vs. The City of Cebu*, 778 Phil. 685, 704 (2016). (Citations omitted)

safeguard against “irregular, unnecessary, excessive, extravagant, or unconscionable expenditures or uses of government funds and properties.”⁹⁵ This is consistent with the ruling in *PSALM vs. COA*⁹⁶ which stressed that the purpose of requiring the concurrence of COA is to curtail the unauthorized and unnecessary disbursement of public funds:

In another vein, the purpose of requiring the concurrences of COA and GOCC is to curtail the unauthorized and unnecessary disbursement of public funds to private lawyers for services rendered to the government, which is in line with the COA’s constitutional mandate to promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant or unconscionable expenditures or uses of government funds and properties.

Here, COA has not presented any valid reason for denying its concurrence, albeit it was too late in the day, other than the supposed lapse on the part of PSALM to secure its concurrence. There was **no ruling on the merits; the COA did not determine the necessity of hiring an external counsel and the reasonableness of the proposed rates** based on the novelty or difficulty of the case and the extent of the engagement when it issued its denial. In other words, there was **no finding** that PSALM’s payment to Mr. John T. K. Yeap and Atty. Michael B. Tantoco for their services constituted irregular, unnecessary, excessive, extravagant or unconscionable expenditures or uses of government funds and properties.⁹⁷

Just as courts give weight to the factual findings of specialized administrative agencies in the performance of its quasi-adjudicative functions owing to their expertise,⁹⁸ this Court and the COA should likewise accord respect to purely administrative functional undertakings or assessments of specialized agencies as regards their own peculiar needs. The only limitation to such administrative assessments is that the same should not result in irregular, unnecessary, excessive, extravagant, or unconscionable expenditures or uses of government funds and properties proscribed by the Constitution.

It is not disputed that COA has the power to prevent excessive expenditures. But in so doing, especially in the pre-audit state where the determination of need or necessity is reasonably and primarily lodged with the procuring agency, such preventive power cannot be exercised by the COA in a baseless, unpredictable or haphazard manner as it treads along the lines of arbitrariness—a salient attribute of grave abuse. Thus, what the COA should have done here was to show that substantial evidence exists pointing to the irregularity, unreasonableness, excessiveness, or extravagance of the renewal of the contracts *per se* of the subject legal advisors. It could not simply deny concurrence to the said contracts merely on the ground that PSALM deviated from the required procedure in hiring

⁹⁵ CONSTITUTION, Art. IX (B), Section 2 (2).

⁹⁶ *Supra* note 69.

⁹⁷ *Id.* (Emphasis in the original and citation omitted)

⁹⁸ *Land Bank of the Philippines vs. Sps. Costo*, 700-Phil. 290, 299 (2012). (Citations omitted)

legal advisors. Such denial cannot also be justified by the statement that the consultancy fees of the subject legal advisors are excessive given that COA did not show that other individuals rendering the same kind of services, and necessarily of the same caliber as the subject legal advisors, offer their services for a fee below that those granted to the legal advisors subject of this case. To stress, the denial of COA's concurrence to contracts or its renewal for the hiring of legal advisors must pertain to the excessiveness and unreasonableness of the transaction itself. This must be so if COA were to remain true to its mandate under the Constitution. Having failed to do so, COA gravely abused its discretion when it withheld giving its concurrence to the contract renewals of the subject legal advisors despite the inadequacy of the quantum of proof tending to establish such unreasonableness, excessiveness or extravagance, and disallowing in audit disbursements made by reason of the said contracts. In the absence of such findings, the renewal for the contract of PSALM's legal advisors and/or consultants must be deemed as concurred in by the COA.

As such, the Court finds no more necessity to belabor the second and third issues as they are rendered moot by reason of the above pronouncements.

WHEREFORE, in view of the foregoing premises, the Court **GRANTS** the Petition for *Certiorari* and **SETS ASIDE** the July 18, 2014 Decision in Decision No. 2014-136 and April 6, 2015 Resolution in Decision No. 2015-159 of the Commission on Audit. The engagement of petitioner Power Sector Assets and Liabilities Management Corporation of legal advisors and/or consultants for the year 2010, namely, Atty. Michael B. Tantoco, Atty. Angelito C. Imperio, Atty. Jay Angelo N. Anastacio, Atty. Maria Belen M. Nera, and Mr. John T.K. Yeap is deemed concurred in by the Commission on Audit.


Accordingly, payments for the services actually rendered by the above-named legal advisors and/or consultants under the service contracts that were renewed and subject of this case shall be allowed in audit.

No pronouncement as to costs.

SO ORDERED.


JHOSEP LOPEZ
Associate Justice

WE CONCUR:



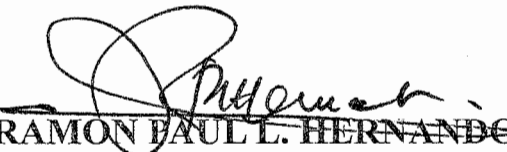
ALEXANDER G. GESMUNDO
Chief Justice



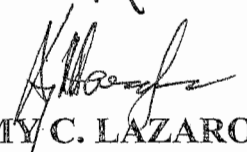
MARVIC M.V.F. LEONEN
Senior Associate Justice




ALFREDO BENJAMINS S. CAGUIOA
Associate Justice



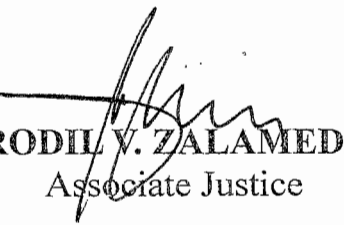
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Associate Justice



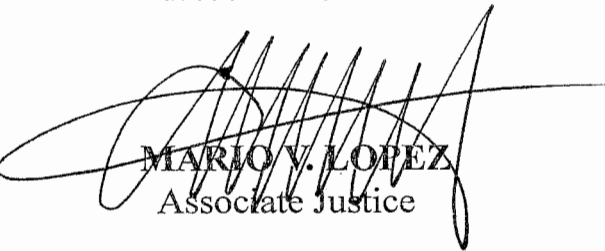
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Associate Justice




HENRI JEAN PAUL B. INTING
Associate Justice



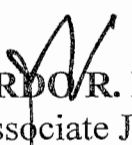
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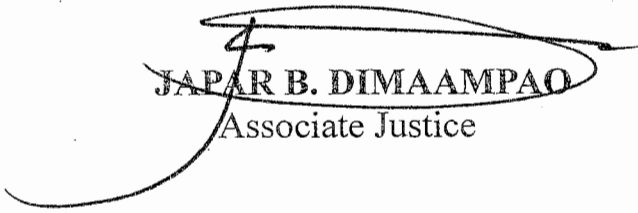
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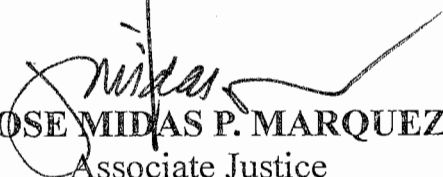
SAMUEL H. GAERLAN
Associate Justice



RICARDO R. ROSARIO
Associate Justice



JAPAR B. DIMAAMPAO
Associate Justice



JOSE MIDAS P. MARQUEZ
Associate Justice



ANTONIO T. KHO, JR.
Associate Justice



MARIA FILOMENA D. SINGH
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.


ALEXANDER G. GESMUNDO
Chief Justice