



Republic of the Philippines
CENTRAL BOARD OF ASSESSMENT APPEALS
Manila

NATIONAL POWER CORPORATION
and KEPCO ILIJAN CORPORATION,
Petitioners-Appellants,

-versus-

CBAA CASE NO. L-43
(LBAA Case No. 03-005)
City of Batangas

THE LOCAL BOARD OF ASSESSMENT
APPEALS OF THE CITY OF
BATANGAS,

Appellee,

-and-

EMELINDA C. ATIENZA, CITY
ASSESSOR and BENJAMIN S.
PARGAS, CITY TREASURER OF THE
CITY OF BATANGAS,
Respondents-Appellees.

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DECISION

This resolves the appeal filed before this Board by petitioners-appellants National Power Corporation (NPC/NAPOCOR, for brevity) and Kepco Ilijan Corporation (KEILCO, for brevity) in connection with the Decision dated December 12, 2003 rendered by the LBAA of Batangas City, superseding the appeal filed ahead by the first petitioner-appellant, Kepco Ilijan Corporation (KEILCO) the dispositive portion of which reads:

“WHEREFORE, the foregoing considered, this appeal is denied. KEILCO is hereby ordered to pay the real estate taxes as assessed by the City Assessor under Tax Declaration Nos. 052-02200 to 052-02208.

SO ORDERED.” (Annex V, Appeal)

Aggrieved, petitioners-appellants filed their appeal with Us assigning the following errors, namely:

- I. The LBAA committed grave abuse of discretion when the Decision was rendered not in accordance with the provisions of the Local Government

Code and applicable jurisprudence regarding procedural due process requirements;

- II. The LBAA committed grave abuse of discretion when it ruled on the non-binding effect of the ECA between KEILCO and NPC with respect to the City of Batangas;
- III. The LBAA committed grave abuse of discretion when it concluded that KEILCO has impliedly admitted the correctness of the assessment;
- IV. The LBAA committed grave abuse of discretion when it ruled that KEILCO is the actual, direct and exclusive user of the Ilijan Power Plant; and
- V. Assuming that KEILCO is the actual, direct and exclusive user of the plant, whether or not the LBAA erred in not ruling that the environmental and anti-pollution device are tax exempt.

Records disclose the following background facts:

Appellant NPC is a government owned corporation created by virtue of R.A. 6395, with address at NPC Bldg., Complex, corner Quezon Avenue and BIR Road in Diliman, Quezon City. Appellant Kepco Ilijan Corporation (KEILCO) is a private corporation organized under Philippine laws with address at 18th Floor, Citibank Tower, Paseo de Roxas, Makati City.

On November 5, 1997, and as amended on December 14, 2000, KEILCO and NPC entered into an Energy Conversion Agreement (ECA) whereby KEILCO agreed to construct, operate and maintain a 1200 megawatt natural gas and diesel fuel-fired combined cycle power plant (Power Station) on a build, operate and transfer (BOT) basis. Under the ECA, it was stipulated that “**NPC shall be responsible for the payment of real estate taxes and rates levied on the NPC site** (including by reference to the building and other improvements thereon [including the Power Station])”. (Annex B, Appeal)

Subsequently, on January 28, 1998, an Agreement as to Fundamental Rights was entered into between KEILCO and the Republic of the Philippines, represented by the Secretary of the Department of Finance (DOF) wherein it is provided that “**the Government pledges that it shall cause the National**

Power Corporation at all time and from time to time, to pay when due, all real estate taxes and assessments, rates and other charges in respect of the site, buildings and improvements on the site and the Power Station”.

(Annex A, Appeal)

To KEILCO's utter surprise, on January 4, 2002, it received a Tax Assessment Notice from the City Assessor of Batangas City regarding Tax Declaration Nos. 052-02200 to 052-02208 covering KEILCO's properties, namely: land, house, structure, machinery in the total sum of ₱383,728.75.

(Annex C)

KEILCO forwarded this assessment to NPC (Annex D). It also filed a Petition with the LBAA of Batangas City praying that the Tax Assessment Notice dated January 4, 2002 be recalled because it should have been sent to NPC, the proper party pursuant to the ECA. (Annex E)

A year later, or on February 7, 2003, the City Treasurer of Batangas sent KEILCO, two (2) Tax Assessment Notices, namely:

(a) For properties covered by TD Nos. 052-02200 to 052-02208:

For 2002	-	₱491,172.80
For 2003	-	<u>383,728.75</u>
		₱874,901.55 (Annex F);

(b) For properties covered by TD Nos. 052-03377 to 052-03378:

For 2002	-	₱614,978,938.25
For 2003	-	<u>614,978,938.25</u>
		₱1,229,957,876.50 (Annex F-1)

KEILCO then decided in April, 2003 to request NPC to officially intervene because if the issue would remain unsolved, the operations of the power plant would be affected. NPC agreed and submitted its Motion for Intervention in the LBAA which Motion was granted on May 21, 2003. (Annex L)

To find a resolution to the issue, appellants KEILCO and NPC and the concerned officials of Batangas City met on May 9, 2003 in Batangas City. In said meeting, the NPC pointed out:

- (a) It is responsible for the payment of real estate tax since it is one of the fiscal incentives granted by the national government to entities investing in capital intensive infrastructure projects;
- (b) The Ilijan Power Plant was undertaken by KEILCO, for and in behalf of the NPC, and the Power Plant, together with its machineries and improvements, are utilized solely for the benefit of NPC; and
- (c) As an NPC project, the beneficial ownership of the Ilijan Power Plant belongs to NPC. Thus, the machineries and improvements at the Ilijan Power Plant are exempt from the payment of real estate taxes pursuant to Sec. 234(c) of the Local Government Code.

It was agreed that NPC shall provide a list of the machineries and equipment at the Power Plant to the City Government of Batangas City to determine whether or not these properties are directly related to power generation, and to conduct a joint ocular inspection of the site, if needed.

The list of machineries was submitted by the NPC to the City Government but the ocular inspection was never scheduled.

Meantime, on July 17, 2003, the LBAA issued an Order requiring KEILCO to pay the real estate tax under protest or post a surety bond, otherwise, its appeal would be dismissed (Annex M). As intervenor in said LBAA case, the NPC filed a Petition to Declare the real properties in the Ilijan Plant as actually and exclusively used by NPC in Power Generation as tax exempt. In said Petition, NPC questioned the propriety of the tax assessment of the power plant. (Annex N)

On August 21, 2003, KEILCO filed an appeal before the CBAA seeking for nullification of the July 17, 2003 Order alleging that it is NPC that is the

proper party to pay the real estate tax under protest or post the surety bond.

(Annex O)

While all of these issues are pending, the City Treasurer of Batangas City advertised a Notice of Delinquency of the Ilijan Power Station real properties in the issue of the Batangas Post of September 1-7, 2003. (Annex P)

On September 5, 2003, NPC filed a Motion with the LBAA for extension of time to post a bond until October 7, 2003. (Annex Q). Despite this, on October 2, 2003, the City Treasurer issued a Warrant of Levy to collect the alleged unpaid real estate tax on the machineries and improvements of KEILCO amounting to **One Billion Four Hundred Seventy Six Million Eight Hundred Seventy Thousand Four Hundred Pesos and Seventy-Three Centavos (P1,476,870,400.73)**. (Annex R)

On October 27, 2003, NPC filed the GSIS Surety Bond in the amount of Six Hundred Fifteen Million Four Hundred Seventy Thousand One Hundred Eleven Pesos and Five Centavos (P615,470,111.05). (Annex S)

Because the City of Batangas was intent in enforcing the warrant of levy, on October 27, 2003, appellants filed a Complaint before the RTC of Batangas City for Injunction with prayer for the issuance of a **TRO** regarding the enforcement of the warrant of levy. (Annex T)

At the hearing held on October 29, 2003, the RTC of Batangas City issued an Order stating:

“Upon agreement of the parties, the enforcement of the Warrant of Levy dated October 2, 2003 issued by the Office of the City Treasurer of Batangas is suspended pending the resolution of the appeal filed by the petitioners before the Local Board of Tax Assessment Appeals denominated as LBAA Case No. 03-005 entitled “KEPCO ILIJAN CORPORATION (KEILCO):

The Court takes note of the filing by National Power Corporation of a Surety Bond issued by the Government Service

Insurance System (GSIS) covered by GSIS Bond No. G(16) GIF Bond No. 038369 issued on October 24, 2003, in the amount of ₱615,470,111.05 to guarantee the payment of taxes due on the real property subject of the appeal in LBAA Case No. 03-005.” (Annex U).

On December 12, 2003, the LBAA of Batangas City issued the assailed Decision. (Annex V)

Hence, this appeal with a prayer for the issuance of a Cease and Desist Order. (Records, p. 46)

On February 10, 2004, this Board issued the following Order:

“Before this Board is the Appeal of National Power Corporation and KEPCO Ilijan Corporation, Petitioner-Appellant, with a prayer for the issuance of a ‘Cease and Desist Order, enjoining and restraining the City of Batangas or any person/party acting in its behalf from enforcing the Warrant of Levy issued on October 2, 2003, to collect the assessed real estate tax on the machineries and equipment amounting to ₱1,476,870,400.73 until final resolution of the issues on appeal.’

The ground for the Warrant of Levy having been extinguished by the Surety Bond given by Petitioner-Appellants to effect payment on subject realty tax assessed on Petitioner-Appellants’ properties, the City of Batangas or any person/party acting in its behalf are ordered to Cease and Desist Order from enforcing the said Warrant of Levy of October 2, 2003, in order not to preempt and render ineffectual, nugatory and illurory any resolution or decision by this Board on the instant appeal.” (Records, p. 169)

On February 29, 2004, Appellees filed a Motion for Clarification because the Order mentioned only the properties covered by TD Nos. 052-02200 to 052-02208 and does not cover KEILCO’s properties under TD Nos. 052-03377 and 052-03378. (Records, p. 201)

This was clarified by the Board in its Order dated March 22, 2004 when it said that its “Cease and Desist” Order covered only the properties by KEILCO that are covered by the ₱1,476,870,400.73 assessment by the City of Batangas. (Records, pp. 203-204)

On February 23, 2006, this Board conducted an ocular inspection of the Power Plant of KEILCO in Batangas City. (Records, p. 244)

Appellant's Arguments/Discussion

I. The LBAA of Batangas City disregarded the provisions of the Local Government Code and applicable jurisprudence on procedural due process requirements in rendering the assailed Decision.

Appellants state that the Local Government Code of 1991 (Rep. Act 7160) provides that:

“Sec. 229. Action by the Local Board of Assessment Appeals. – (a) The Board shall decide the appeal within one hundred twenty days (120) days from the date of receipt of such appeal. The Board, after hearing, shall render its decision based on substantial evidence or such relevant evidence on record as a reasonable mind might accept as adequate to support the conclusion.”

x x x

x x x

x x x

It is clear from the above provision that in the exercise of its appellate function, the LBAA should set the case for hearing to afford the parties the opportunity to present their respective evidence in a hearing conducted for the purpose.

This was not followed by the LBAA. It's questioned Decision was merely based on the initiatory pleadings filed. Appellants NPC and KEILCO were not ordered to file their respective Position Papers or Memoranda regarding the matters raised. The issues are complex and the amount involved is big so that the LBAA should have complied with the due process requirements under the Constitution.

Appellants were denied due process because from the filing of the case before the LBAA and until the rendition of its highly questionable Decision, no hearings, formal or informal, were conducted and the parties were not given the opportunity to present evidence, testimonial or documentary, to expound their positions.

Because of the LBAA's disregard to comply with the basic tenets of the due process clause enshrined in our Constitution, the very validity of its assailed Decision is now put in question.

II. The LBAA erred when it ruled on the non-binding effect of the ECA between KEILCO and NPC with respect to the City of Batangas.

The Energy Conversion Agreement (ECA) was entered into between KEILCO and the Department of Finance (DOF) on November 5, 1997. Under the ECA, it was stipulated that **“NPC shall be responsible for the payment of real estate taxes and rates levied on the NPC site (including by reference to the building and other improvements thereon (including the Power Station)”** (Annex B).

In its Decision, the LBAA ruled that the terms of the ECA between KEILCO and NPC cannot affect the right of the City of Batangas to tax KEILCO. Clearly, the LBAA is invoking the rule on “relativity of contracts” as provided in Art. 1311 of the New Civil Code which provides that “contracts take effect only between the parties, their assigns and heirs, x x x.”

Appellants argue that because there was no hearing conducted by the LBAA, appellants failed to introduce Annex A, which is the Agreement as to Fundamental Rights executed between the Republic of the Philippines, represented by the Department of Finance, and appellant KEILCO dated

January 28, 1998. The execution of this Agreement was pursuant to the Full Powers Authorization issued by President Fidel V. Ramos to then Secretary of Finance dated January 5, 1998 to sign for and in behalf of the Republic of the Philippines. (Annex W)

Under the Agreement, it was stipulated that **“as long as NPC remains a government-owned corporation, the Government pledges that it shall cause the National Power Corporation at all time and from time to time, to pay when due, all real estate taxes and assessment rates and other charges in respect of the site, buildings and improvements on the site and the power station.”**

This Agreement is significant because it puts the Ilijan Project out of the realm of simple contract under the New Civil Code between the two (2) entities, but has elevated the same into issues with constitutional implications.

The term “Republic of the Philippine”, being one of the contracting parties in the Agreement, is a broad expression which includes, not only in the central government, but also the provincial and municipal, chartered cities and other government controlled corporations or agencies (Central Bank of the Phils. vs. Court of Appeals, G.R. No. L-33022, April 23, 1975). Consequently, the City of Batangas, as a territorial and political subdivision, cannot claim any right superior to that of the Republic.

III. The LBAA erred when it concluded that KEILCO has impliedly admitted the correctness of the assessment.

This conclusion by the LBAA has no factual and legal basis. Admissions are never to be presumed and that the same must be clear and unambiguous. In the Petition, KEILCO did not admit the correctness of the assessment. It only

stated that any question as to the legality of the assessment or correctness of the rate could be resolved with the actual and active participation of NPC and not by KEILCO alone. Otherwise stated, if there is any question regarding the assessment of the Ilijan Project, the same can only be raised by NPC.

NPC and KEILCO could not assail the rates used in coming up with the assessment because they were not given an opportunity to contest its reasonableness. Moreover, NPC's Petition did not merely question the rates of the assessment but already attacked the propriety or validity of the assessment.

IV. The LBAA gravely erred when it ruled that KEILCO is the actual, direct and exclusive user of the Ilijan Power Plant.

The question that needs to be answered is who is the actual, exclusive and direct user of these properties. This issue could have been clarified by NPC and KEILCO during a hearing.

Perhaps the reason why the LBAA ruled that KEILCO is the actual, exclusive and direct user of the same because it is the most visible entity at the site. Appellants however, tried to correct this perception by discussing the BOT Law (R.A. 6957).

BOT arrangement is a financing arrangement adopted by Congress to implement the infrastructure projects of the government and at the same time reduce its financial burden. It is undisputed that Projects undertaken by the government pursuant to BOT Law, are government projects, and not project of the private sector. Being government projects, all BOT projects are required to be approved by Congress.

Appellants point out that despite NPC's assertion that it is the actual, direct and exclusive user of the plant, the LBAA ruled that its contractor, KEILCO, is the user of the plant because the interest of NPC is only to "buy the electricity generated from the power firm, pursuant to the ECA." (Decision, p. 6)

This is erroneous because whatever payments made by NPC to KEILCO is not the test of usage or ownership of the plant. In fact, these payments, in a form of fees, is consistent with beneficial ownership and actual, direct and exclusive use of the plant since the collection of the fees is the only repayment scheme prescribed by the BOT Law and the only way by which our government can reimburse the contractor of its cost in the project.

Because NPC is the beneficial owner and user of the power plant, NPC legally and appropriately assumed the responsibility of paying any and all taxes and fees that will be imposed in connection with the construction and operation of the Power Plant.

Appellants stress that even granting that KEILCO, the BOT contractor, is the legal owner of the machineries and equipment subject of the questioned assessment, these machineries are nevertheless exempt from real property tax pursuant to Sec. 234(c) of R.A. 7160 which exempts from real property taxes those machineries and equipment that are actually, directly and exclusively used by government-owned and controlled corporations engaged in the generation and transmission of electric power.

The intent here is to grant financial relief to the entities that are performing vital functions with the hope that this would ultimately redound to the benefit of the consuming public who will no longer be made to pay the real estate tax that KEILCO will eventually passed onto them.

However, the LBAA is of the view that Sec. 234(c) of the Local Government Code grants real estate exemption to GOCC's only for machineries and equipment that are actually, directly and exclusively used by it in the supply and distribution of electric power. Hence, the LBAA ruled that when the participation is by non-GOCC entity, said provision will not apply. Appellants assert that this ruling is erroneous.

Appellee's Comments

On assigned error I

Appellee LBAA denied that it committed grave abuse of discretion when it rendered the assailed Decision against NPC and KEILCO. It points out that KEILCO merely filed a Motion dated March 4, 2002 instead of Petition or an Appeal. The LBAA still considered it an Appeal on the Notice of Assessment made by the City Assessor. The LBAA also allowed the NPC to intervene, instead of ordering the dismissal of the appeal for failure of petitioners to pay the tax under protest. The LBAA also gave KEILCO and NPC more than sufficient time to pay the assessed tax or file a GSIS surety bond. The NPC was given (2) extensions of time to comply with the requirements set by the LBAA.

Appellee tried to show that appellants filed the following pleadings:

- a) KEILCO's Motion dated March 4, 2002 wherein KEILCO claimed that it is NPC that is liable to pay the tax assessed on the basis of their ECA;
- b) NPC's Comment dated April 22, 2002 wherein NPC claimed that while it truly assumed payment of the tax obligations of KEILCO, it nevertheless, cannot pay them because it is exempt under the provisions of its Charter, R.A. 6395 and Sections 217 and 234 of the Local Government Code of 1991 which exemption is supported by various opinions of government agencies and jurisprudence of the Supreme Court;

- c) NPC's Motion for Intervention dated May 7, 2003 whereby it reiterated that while it assumed the tax liability of KEILCO under the ECA, it is nevertheless exempt from taxation under Sec. 234(c) of the Local Government Code of 1991; and
- d) NPC's Petition to Declare Real Properties in Ilijan Natural Gas Power Plant actually, directly and exclusively used by NAPOCOR in Power Generation as exempt whereby NPC admitted that it has assumed the tax obligations of KEILCO but that NPC is exempt from payment of taxes.

Appellee stresses that in these pleadings, appellants did not raise any issue of facts. KEILCO did not contest the correctness of the Notice of Assessment. KEILCO merely stated in its Motion dated March 4, 2002, that the notice had been sent to the wrong party because it should have been sent to the NPC, the entity liable for the taxes under the ECA. On the part of the NPC, it likewise did not contest the correctness of the assessment but merely acknowledged its assumption of the tax liability of KEILCO and at the same time claiming tax exemption privileges under the provisions of its Charter, the Local Government Code and some pronouncements of the Supreme Court in support thereof. In short, NPC and KEILCO merely raised questions of law.

Appellee alleges that quasi-judicial and administrative bodies are not bound strictly by the rules of procedure and evidence. They can decide a case merely on the basis of Affidavits or Memoranda submitted by the parties. Anyway, it is a rule of procedure that "where an Answer fails to tender an issue, or otherwise admits the material allegations of the adverse party's pleading (*Rule 34, Rules of Court*), a judgment may be rendered on the basis of the allegations in the pleadings."

The LBAA therefore, did not err, much less, abuse its discretion in rendering the questioned Decision.

On assigned error II

Appellee claims that it did not err when it ruled that the ECA executed between KEILCO and NPC is not binding on respondent-appellee City of Batangas or its officials in general. It is a general rule recognized by all that “Contracts take effect only between the parties, their heirs and assigns.” The City of Batangas is not a party to the ECA. Not being a party thereto, the City of Batangas is, therefore, a stranger thereto. Being a stranger, the City of Batangas cannot claim any rights thereunder, and necessarily, it cannot be bound by any obligations therein.

Appellee cited the case of *NPC vs. LBAA of Quezon Province and the Municipality of Pagbilao* (CBA Case No. L-29, August 18, 2003), wherein this Board ruled thus:

“Anent the ECA providing for NAPOCOR to be responsible for the payment of all taxes, binds only the contracting parties, NAPOCOR and HOPEWELL. Neither the Municipality of Pagbilao nor the Province of Quezon are privy thereto. The exemption provided by law is inherent on NPC and cannot be extended or transferred to Hopewell or Mirant without express legislative grant, merely because NPC agreed to pay Hopewell’s realty tax obligation.” (Underscoring Supplied for emphasis)

On assigned error III

Respondent states that the LBAA did not err nor abuse its discretion when it ruled that appellant KEILCO impliedly admitted the correctness of the assessment made by the City Assessor on its property. It further alleges that a close scrutiny of KEILCO’s Motion before the LBAA which the latter elevated to an “Appeal” will show that nowhere therein did KEILCO contest the correctness of the assessment of its real properties by respondent City Assessor.

Neither did NPC, in its Motion for Intervention, contest the correctness of the assessment. It merely said that under the ECA between NPC and KEILCO,

NPC assumed responsibility for the payment of real estate tax and rates levied on the power plants and facilities.

Appellee says that it is not only KEILCO which admitted the correctness of the assessment but also NPC itself, by failing to contest the correctness of the assessment by the City Assessor. In fact, from its pleadings, appellant NPC acknowledged and assumed responsibility in the payment of real estate tax and rates levied on the Power Plant and facilities of KEILCO.

On assigned error IV

Respondent LBAA stresses that it did not commit any error when it ruled that appellant KEILCO is the actual, direct and exclusive user of the Kepco Ilijan Power Plant. In its Motion for Intervention, NPC alleged that on December 14, 2000, it entered into an Amended and Restated Energy Conversion Agreement (ECA) with KEILCO to construct, operate and maintain a 1200 MW Natural Gas Fire Combined Cycle Power Plant located in Ilijan, Batangas. That under said Agreement, KEILCO, pursuant thereto and in accordance with BOT Law, bound itself to construct and operate said Power Plant and deliver to NPC is electric energy but with NPC providing for the fuel requirements thereof; and that KEILCO is likewise bound to transfer the said Power Plant and Station to NPC upon the arrival of a certain period as stipulated in their Agreement.

From the very wording in NPC's Motion for Intervention, it clearly appears that KEILCO is the actual, direct and exclusive user of the KEILCO Power Plant. NPC will have actual, direct and exclusive control of the plant upon the transfer by KEILCO to NPC which under the Agreement shall be no less than twenty five (25) years from the execution thereof.

Appellee emphasizes that this Board had already occasion to rule on the same issue in relation to Section 234(c) of the Local Government Code of 1991 in the case of *NPC vs. LBAA of the Province of Quezon and the Municipality of Pagbilao* (supra), where it held that:

“paragraph (c) of Section 234 will point to the fact that the law requires two (2) activities to be engaged in by the Government-Owned Or Controlled corporation (GOCC) to avail of the exemption. One is the generation of electric power, and the other is transmission of electric power. It is of public knowledge, and likewise admitted in the pleadings that it is Hopewell (Mirant) who is doing the generation and NAPOCOR, the transmission of electric power. Regardless, therefore of who the actual, direct and exclusive user is, the claim for tax exemption must fail. In short, both generation and transmission must be performed by the GOCC to avail of the exempting privilege. It may be added that at present, NAPOCOR is not even engaged in any of the two requirements. It is now the National Transmission Co. (TRANSCO) that is doing the transmission of electric power. (Underscoring supplied for emphasis)

“Granting, however, for the sake of argument that Transco is a spun off company from NAPOCOR, and there exist an iota of doubt as to the true intent of the legislature in the use of the word ‘and’ in the law or that the same can be subject to a double interpretation, still petitioner-appellant NAPOCOR is grasping at straws in the wind.

“It is elementary in statutory construction that in case of doubt, the same must be resolved liberally in favor of the taxing authority and ‘strictissimi juris’ against the taxpayer claiming exemption. And in case of tax exempting provisions subject to different interpretations, the one upholding the strongest power of the date, ‘the power to tax as an attribute of sovereignty’ is favored, and the interpretation in derogation of such sovereignty is frowned upon. Truth to tell, there is no need to cite basic principles and a litany of kilometric jurisprudence on the matter, as the language used in the law is clear, plain and unambiguous, it is so simple that even a primary English school teacher and high school students will understand.”

The Board’s Ruling

Be that as it may, Petitioners-Appellants pray “that the decision of the Local Board of Assessment Appeals dated December 12, 2003 be reversed and set aside for having been rendered with grave abuse of discretion x x x”.

The Decision of the Local Board of Assessment Appeals of the City of Batangas ordered KEILCO “to pay the real estate taxes as assessed by the

City Assessor under the Tax Declaration Nos. 052-02200 to 052-02208. To reverse and set aside said decision is for this Board to rule that KEILCO is exempted from real property tax. This is untenable.

Petitioners-Appellants allege, first of all, that the “Agreement as to Fundamental Rights” is a contract of the Republic of the Philippines, represented by the Department of Finance, with KEILCO. “As a necessary implication, the City of Batangas is a territorial or political subdivision of the Republic of the Philippines. As a territorial and political subdivision, it cannot claim any right superior to that of the Republic.” That there is a Constitutional implication, so that “(u)nless the Constitution is amended to prescribe a federal form of government, the local government is an intra-sovereign subdivision of one sovereign nation, but not intended to be an imperium in imperio”.

This is a tall order. It appears that KEILCO is in the league and level of the Republic of the Philippines by virtue of a contract, hence above any political subdivision, and not within the authority thereof. The City of Batangas is apt to collect its realty tax on the Ilijan Power Plant, and it has already done so, when the City Treasurer of Batangas issued “a warrant of levy to collect the alleged unpaid real tax on the machineries and improvements amounting to ONE BILLION FOUR HUNDRED SEVENTY SIX MILLION EIGHT HUNDRED SEVENTY THOUSAND FOUR HUNDRED PESOS AND 73/100 (₱1,476,874,400.73). Pursuant thereto “NPC, on October 27, 2003, filed the necessary GSIS Surety Bond in the amount of Six Hundred Fifteen Million Four Hundred Seventy Thousand One Hundred Eleven Pesos and 05/100 (₱615,470,111.05).”

Petitioner-Appellant had to file a “Complaint” before the Regional Trial Court of Batangas City with a prayer for Injunction with Urgent Application for a

Temporary Restraining Order and Writ of Preliminary Injunction on the enforcement of the levy. Hence, by Order of the Regional Trial Court “the enforcement of the Warrant of Levy x x x is suspended pending the resolution of the appeal x x x before the Local Board of Assessment Appeals x x x.”

Will there be a Constitutional crisis because of the levy? Should the Constitution be amended pursuant thereto? The fact, however, is that the Constitution has provided for local government units to levy taxes, fees and charges, as follows:

“Sec. 5. Each local government unit shall have the power to create its own sources of revenues to levy taxes, fees and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local governments.”

Second of all, “NPC had to avail of the provisions of Republic Act No. 6975, as amended, otherwise known as the BOT Law to respond to the looming crisis and to fulfill its mandate of providing full electrification of the country under its charter”. Hence, “NAPOCOR’s assertion that it is the actual, direct and exclusive user of the plant.”

Apropos, the actual, direct and exclusive use of machineries and equipment exempts “government-owned or-controlled corporations engaged in the supply and distribution of water and/or generation and transmission of electric power,” from real property tax, under par. (c), Sec. 234, R.A. 7160. NPC is one such corporation hence it could avail of said exemption. This means, therefore, that NPC’s exemption under its R.A. 6395 Charter no longer applies to real property tax as this has already been withdrawn under the last paragraph of the same Sec. 234.

Section 234 provides as follows:

“Sec. 234. *Exemptions from Real Property Tax.* – The following are exempted from payment of the real property tax:

(a) Real property owned by the Republic of the Philippines or any of its political subdivisions except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person;

(b) x x x;

(c) All machineries and equipment that are actually, directly and exclusively used by local water districts and government-owned or controlled corporations engaged in the supply and distribution of water and/or generation and transmission of electric power;

(d) x x x;

(e) x x x

Except as provided herein, any exemption from payment of real property tax previously granted to, or presently enjoyed by, all persons, whether natural or juridical, including all government-owned or controlled corporations are hereby withdrawn upon the effectivity of this Code.”

On the other hand, the BOT Law, R.A. 6957 amended by R.A. 7718

defines Build-operate-and-transfer thus:

“Sec. 2(b). A contractual arrangement whereby the project proponent undertakes the construction, including financing, of a given infrastructure facility, and the operation and maintenance thereof. The project proponent operates the facility over a fixed term during which it is allowed to charge facility users appropriate tolls, fees, rentals, and charges not exceeding those proposed in its bid or as negotiated and incorporated in the contract to enable the project proponent to recover its investment, and operating and maintenance expenses in the project. The project proponent transfers the facility to the government agency or local government unit concerned at the end of the fixed term which shall not exceed fifty (50) years.”

Furthermore, “(t)he CRP under the ECA are mere payments for KEILCO’s investment. Therefore under the scheme, NAPOCOR is already the beneficial owner of the plant although the naked ownership is retained by KEILCO until after the cooperation period. In short, the ECA is merely a financing agreement whereby NAPOCOR is the beneficial owner and actual, direct and exclusive user of the plant and KEILCO is the lender/creditor.” The ECA provides:

“7.5 Payment by NPC of Certain Taxes

a. NPC shall be responsible for the payment of all real estate taxes and rates levied on the NPC Site (including by reference to buildings and other improvements thereon [including the Power Station]). x x x”

Petitioners-Appellants would employ rationalization to establish exemption. Facts, however, are already in existence. They have already happened. They have just to be unraveled to be discerned.

According to Justice Oliver Wendell Holmes “the life of the law is not logic but experience.” How about facts? Should not facts be unveiled and beholden and not shrouded in the mist of justification?

Still within memory is a similarly, if not identically situated case of *National Power Corporation, Petitioner-Appellant versus Local Board of Assessment Appeals, the Province of Quezon, Appellee, and The Municipality of Pagbilao, Quezon, Respondent-Appellee* (the Pagbilao case).

The same issue of actual, direct and exclusive use by NAPOCOR of the Pagbilao Power Plant was raised therein. This Board denied NAPOCOR’s assertion as follows:

“Against the fact there is no argument – an argument against the fact is an argument in ambiguity, hence in futility. The fact is, that the use of the Pagbilao Power Plant has been granted to Hopewell/Mirant by virtue of the BOT Law (R.A. 7718, as amended), and provided for under the Energy Conversion Agreement (ECA) between the National Power Corporation and Hopewell Energy International Limited. This is the hard fact that vests in Hopewell/Mirant the existing ownership, operation, hence, use of the Pagbilao Power Plant.” (Mirant/Hopewell are the respective proponents of the Pagbilao Power Plant under the BOT Law).

This Board cannot just ignore the Pagbilao case in favor of the case at bar. The principle of *Stare Decisis* impels this Board to abide by its Decision to stand as precedents for future judgments.

On petition for review on *certiorari* the Supreme Court declared the following on the Pagbilao¹ case:

“That Mirant operates the machineries solely in compliance with the will of the NPC only underscores the fact that NPC does not *actually, directly, and*

¹ National Power Corporation vs. Province of Quezon and Municipality of Pagbilao, G.R. No. 171586, July 15, 2009.

exclusively use them. The machineries must be actually, directly, and exclusively used by the government-owned or controlled corporation for the exemption under Section 234(c) to apply.”

The Supreme Court, then concluded with the following:

“Lastly, from the points of view of essential fairness and the integrity of our tax system, we find it essentially wrong to allow the NPC to assume in its BOT contracts the liability of the other contracting party for taxes that the government can impose on that other party, and at the same time allow NPC to turn around and say that no taxes should be collected because the NPC is tax-exempt as government-owned and controlled corporation. We cannot be a party to this kind of arrangement; for us to allow it without congressional authority is to intrude into the realm of policy and to debase the tax system that the Legislature established. We will then also be grossly unfair to the people of the Province of Quezon and the Municipality of Pagbilao who, by law, stand to benefit from the tax provisions of the LGC.”

Finally, it bears noting that inspite of being given ample opportunity during the ocular inspection conducted on February 23, 2006, the appellant did not present any evidence thereat as to its entitlement to exemption from real property tax, especially on those installation at the facilities thereat which they allege should have entitled them to exemption from real property tax. Much as the CBAA recognize the vital role that the KEILCO project plays in the local economy, it remains to be just like the DOF itself a creature of the law.

WHEREFORE, premises considered, and pursuant to the Decision of the Supreme Court in the Pagbilao case, the Appeal is hereby **DISMISSED** for lack of merit.

SO ORDERED.

Manila, Philippines, December 12, 2011.

(Signed)
OFELIA A. MARQUEZ
Chairman

(Signed)
RAFAEL O. CORTES
Member

ROBERTO D. GEOTINA
Member
(declined to sign)