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FIRST DIVISION

[G.R. No. 201715, December 11, 2013]

REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. MANILA ELECTRIC COMPANY (MERALCO), AND NATIONAL POWER CORPORATION (NPC), RESPONDENTS.

D E C I S I O N

BERSAMIN, J.:

The intervening rendition by the trial court of a decision on the merits of the case renders moot and academic the resolution of any issue raised on *certiorari* against interlocutory orders setting the pre-trial and declaring the petitioner to have waived its right to present its evidence. The resolution of the issue, having been pre-empted by the decision in the main action, ceased to have any practical value.

The Case

Under appeal via petition for review on *certiorari* is the decision promulgated on October 14, 2011 in C.A.-G.R. SP No. 116863 entitled *Republic of the Philippines, represented by the Office of the Solicitor General v. Hon. Franco T. Falcon, in his capacity as the Presiding Judge of Branch 71, Regional Trial Court, National Capital Region, Pasig City, Manila Electric Company and National Power Corporation*,[1] whereby the Court of Appeals (CA) dismissed the original and the supplemental petitions for *certiorari*, prohibition and *mandamus* of herein petitioner Republic of the Philippines, and in effect upheld the assailed interlocutory orders of November 3, 2010[2] and November 4, 2010,[3] and the pre-trial order of November 24, 2010,[4] all issued by the Regional Trial Court (RTC), Branch 71, in Pasig City in Special Civil Action No. 3392, an action for declaratory relief entitled *Manila Electric Company v. National Power Corporation, et al*. The CA further ordered the RTC, Branch 71, in Pasig City to proceed with the trial in Special Civil Action No. 3392, and to resolve the case with dispatch.

Additionally, the petitioner prays that respondents Manila Electric Company (MERALCO) and National Power Corporation (NAPOCOR) be directed to resolve their dispute through arbitration pursuant to the arbitration clause of their contract for the sale of electricity (CSE).[5]

Antecedents

The decision of the CA sums up the following uncontested material antecedents.

MERALCO and NAPOCOR had entered into the CSE on November 21, 1994. The CSE would be effective for 10 years starting from January 1, 1995. Under the CSE, NAPOCOR was obliged to supply and MERALCO was obliged to purchase a minimum volume of electric power and energy from 1995 until 2004 at the rates approved by

the Energy Regulatory Board (ERB), now the Energy Regulatory Commission (ERC). A provision of the CSE required MERALCO to pay minimum monthly charges even if the actual volume of the power and energy drawn from NAPOCOR fell below the stated minimum quantities.

In the years 2002, 2003 and 2004, due to circumstances beyond the reasonable control of the parties, MERALCO drew from NAPOCOR electric power and energy less than the minimum quantities stipulated in the CSE for those years. MERALCO did not pay the minimum monthly charges but only the charges for the electric power and energy actually taken. Thus, NAPOCOR served on MERALCO a claim for the contracted but undrawn electric power and energy starting the billing month of January 2002.

MERALCO objected to the claim of NAPOCOR, and served its notice of termination of the CSE. MERALCO submitted its own claim to NAPOCOR for, among others: (*a*) losses suffered due to the delay in the construction of NAPOCOR's transmission lines, which prevented it from fully dispatching the electricity contracted with independent power producers (IPPs) at their respective minimum energy quantities; and (*b*) unrealized revenues owing to NAPOCOR's continuing to supply electricity to directly-connected customers within MERALCO's franchise area in violation of the MERALCO franchise and the CSE.

Recognizing that any delays in the resolution of their dispute was inimical to public interest, MERALCO and NAPOCOR agreed to submit their dispute to mediation.[6] They appointed the late Ambassador Sedfrey A. Ordoñez and Antonio V. del Rosario as their mediators, and the mediation required about 20 meetings, during which NAPOCOR and the Government were represented by high-level officials (including then Energy Secretary Vincent S. Perez, Jr. and PSALM President Edgardo M. del Fonso). The mediation resulted in the execution on July 15, 2003 of a settlement (entitled *An Agreement Resolving The Issues In Mediation Between The National Power Corporation And The Manila Electric Company In Regard To The 1994 Contract For The Sale Of Electricity*),[7] hereafter referred to as Settlement Agreement for brevity.

The Settlement Agreement covered the charges being imposed by NAPOCOR and the National Transmission Corporation (TRANSCO) under Section 2.1 (Contract Demand and Contract Energy of MERALCO) in relation to Section 5.2 (Transmission Service) and Section 7 (Direct Connection within MERALCO's franchise area), all of the CSE. MERALCO therein agreed to pay to NAPOCOR P27,515,000,000.00 (i.e., the equivalent of 18,222 gigawatt hours valued at P1.51 per kilowatt hour), which amount represented the value of the difference between the aggregate contracted energy for the years 2002, 2203 and 2004, on the one hand, and the total amount of energy MERALCO actually purchased from NAPOCOR from January 2002 until April 30, 2003 and the amount of energy MERALCO was scheduled to purchase thereafter and until December 31, 2004, on the other. NAPOCOR reciprocated by agreeing to give credit to MERALCO for the delayed completion of the transmission facilities as well as for the energy corresponding to NAPOCOR's sales to directly-connected customers located within MERALCO's franchise area. The credit, valued at P7,465,000,000.00, reduced the net amount payable by MERALCO to NAPOCOR under the Settlement Agreement to P20,050,000,000.00.

Mediators Amb. Ordoñez and del Rosario rendered their joint attestation to the Settlement Agreement, as follows:

> We, Ambassador Sedfrey A. Ordoñez and Antonio V. del Rosario, do hereby attest and certify that we have been duly appointed by the Parties and acted as Mediators in the foregoing Settlement and that the agreements contained therein are the results of the painstaking efforts exerted by the Parties to resolve the issues and differences between them through reasonable, fair and just solution that places above all considerations the highest concern for the welfare of the consumers. x x x[8]

It is noted that from the time the Settlement Agreement was executed on June 15, 2003 until December 31, 2004, MERALCO took further electricity from NAPOCOR, and made payments toward the total Minimum charge under the CSE that exceeded the parties' estimate. As a result, the net amount due to NAPOCOR under the Settlement Agreement was further reduced to about P14,000,000,000.00.

The Settlement Agreement contained a pass-through provision that allowed MERALCO to pay NAPOCOR the net settlement amount from collections recovered from MERALCO's consumers once the ERC approved the pass-through. The net amount due under the Settlement Agreement was to be paid by MERALCO to NAPOCOR over a period of five to six years, starting on the first billing month immediately following the ERC's approval of the pass-through of that amount to MERALCO's consumers, and ending 60 months after the last billing month. Spreading payment to NAPOCOR over a moving five- to six-year period was intended to minimize the impact of the adjustment on the consumers, which was estimated to be about P0.12 per kilowatt hour.

The Settlement Agreement was duly approved by the respective Boards of MERALCO and NAPOCOR.

Considering that the Settlement Agreement stipulated in its Section 3.1 that it would take effect "upon approval by the ERC of the recovery of the settlement amounts in this Agreement from consumers, for which the parties shall file a joint petition with the [ERC]," NAPOCOR and MERALCO filed on April 15, 2004 their joint application in the ERC,[9] seeking the approval of the pass-through provision of the Settlement Agreement, and a provisional authority to implement the pass-through provision subject to a final decision after hearing on the merits.

The joint application was set for initial hearing, with notice to the Office of the Solicitor General (OSG) with a request for the OSG to send a representative to participate in the proceedings. Hearings were conducted on the application from July 22, 2004 until October 7, 2005, at which NAPOCOR was represented by its OSG-designated counsel.

On July 10, 2006, MERALCO submitted its memorandum, and the case was deemed submitted for resolution.

However, on May 13, 2008, or almost two years after the case was submitted for resolution, the OSG, representing herein petitioner, filed in the ERC a motion for leave to intervene with motion to admit its attached opposition.[10] Considering the

opposition by the OSG to the validity of the Settlement Agreement, the ERC suspended the proceedings and deferred the approval of the joint application. This prompted MERALCO to initiate on November 23, 2009 in the RTC in Pasig an action for declaratory relief (Special Civil Action No. 3392).[11]

On August 20, 2010, the petitioner filed its comment on the petition for declaratory relief,[12] praying for the stay of the proceedings and for NAPOCOR and MERALCO to be directed to resort to arbitration.

On September 16, 2010, the representative from the OSG appeared in the RTC and moved to suspend the proceedings, but the RTC denied the motion. Subsequently, on September 30, 2010, the OSG filed a motion to dismiss or to stay the proceedings, and to refer the parties to arbitration.

On October 28, 2010, the OSG presented an urgent supplemental motion to cancel the November 4, 2010 hearing. However, on November 3, 2010, the RTC denied the motion to dismiss or to stay the proceedings and to refer the parties to arbitration through the first assailed order,[13] stating in its pertinent portions as follows:

> The motions filed by the OSG raise a common issue: whether or not the parties, MERALCO and NPC, should be referred to arbitration?
>
> After a judicious evaluation of the arguments by the parties, this Court rules that MERALCO and NPC are not required to undergo arbitration.
>
> An examination of the Settlement Agreement, which is the subject matter of this petition for declaratory relief shows that it does not require the parties therein to resolve their dispute arising from said agreement through arbitration.
>
> The arbitration clause referred to by the OSG is found in the Contract for the Sale of Electricity (CSE). Said contract is not the one being litigated in this proceedings. The instant petition for declaratory relief does not concern the CSE. Besides, there is no unsettled dispute between MERALCO and NPC arising from the CSE that would require resort to arbitration.
>
> Further, the parties to the Settlement Agreement have not requested that any dispute between them should be resolved through arbitration. The OSG, who is not a party to the Settlement Agreement or to the CSE, has no standing to demand that MERALCO and NPC should proceed to arbitration consistent with the Supreme Court's ruling in Ormoc Sugarcane Planter's Association vs. Court of Appeals, G.R. No. 156660, August 24, 2009, were (sic) it ruled that-
>
> > By their own allegation, petitioners are associations duly existing and organized under Philippine law, i.e. they have juridical personalities separate and distinct from that of their member Planters. It is likewise undisputed that the eighty (80) milling contracts that were presented were signed only by the member Planter concerned and one of the Centrals as parties. In other words, none of the petitioners were parties or

> signatories to the milling contracts. This circumstance is fatal to petitioners' cause since they anchor their right to demand arbitration from the respondent sugar centrals upon the arbitration clause found in the milling contracts. There is no legal basis for petitioners' purported right to demand arbitration when they are not parties to the milling contracts, especially when the language of the arbitration clause expressly grants the right to demand arbitration only to the parties to the contract.

As for OSG's contention that the instant petition should be dismissed because it would not terminate the controversy between the parties due to the existing ERC Proceedings, this Court is mindful of the fact that the ERC itself has ruled in its order of September 14, 2009 that the issues raised by the OSG in the earlier proceedings before it are outside its jurisdiction. This means that these issues may be properly resolved by this Court and is in fact duty-bound to consider and rule the issues presented before it in this case.

This Court therefore holds that there is no impediment for it to continue this proceedings and to determine the validity of the Settlement Agreement.

WHEREFORE, the office (sic) Office of the Solicitor General's Motion to Dismiss or Stay the Proceedings and Refer the Parties to Arbitration and the Motion for Reconsideration (of the Honorable Court's Order dated September 16, 2010) are DENIED.

SO ORDERED.[14]

On November 4, 2010, the pre-trial was held, but the Presiding Judge of Branch 71 of the RTC ultimately reset it through the second assailed order due to the non-appearance of the representative of the OSG,[15] *viz*:

> When this case was called, Atty. Jonas Emmanuel S. Santos, for the petitioner, Atty. Julieta S. Baccutan-Estamo, for defendant PNC, appeared.
>
> Over the vehement objection of Atty. Santos and Atty. Baccutan-Estamo on the Urgent Supplemental Motion to Cancel November 4, 2010 Hearing filed by the Office of the Solicitor General, considering that they were both ready, the pre-trial conference set for today is cancelled and reset to November 24, 2010 at 8:30 A.M., which is an intransferrable date. The manifestation of Atty. Baccutan-Estamo that if in the next hearing the respondent OSG still fails to appear they be declared as in default, is noted.
>
> SO ORDERED.

Upon learning that the next scheduled hearing would be on November 24, 2010, the OSG filed on November 22, 2010 a motion to cancel that pre-trial, and a motion for the inhibition of the RTC Judge. It set both motions for hearing on November 24, 2010.