

FIRST DIVISION

[G.R. No. 156208, September 17, 2008]

NPC DRIVERS AND MECHANICS ASSOCIATION (NPC DAMA), REPRESENTED BY ITS PRESIDENT ROGER S. SAN JUAN, SR., NPC EMPLOYEES & WORKERS UNION (NEWU) - NORTHERN LUZON REGIONAL CENTER, REPRESENTED BY ITS REGIONAL PRESIDENT JIMMY D. SALMAN, IN THEIR OWN INDIVIDUAL CAPACITIES AND IN BEHALF OF THE MEMBERS OF THE ASSOCIATIONS AND ALL AFFECTED OFFICERS AND EMPLOYEES OF NATIONAL POWER CORPORATION (NPC), ZOL D. MEDINA, NARCISO M. MAGANTE, VICENTE B. CIRIO, JR., NECITAS B. CAMAMA, IN THEIR INDIVIDUAL CAPACITIES AS EMPLOYEES OF NATIONAL POWER CORPORATION, PETITIONERS, - VERSUS- THE NATIONAL POWER CORPORATION (NPC), NATIONAL POWER BOARD OF DIRECTORS (NPB), JOSE ISIDRO N. CAMACHO AS CHAIRMAN OF THE NATIONAL POWER BOARD OF DIRECTORS (NPB), ROLANDO S. QUILALA, AS PRESIDENT - OFFICER-IN- CHARGE/CEO OF NATIONAL POWER CORPORATION AND MEMBER OF NATIONAL POWER BOARD, AND VINCENT S. PEREZ, JR., EMILIA T. BONCODIN, MARIUS P. CORPUS, RUBEN S. REINOSO, JR., GREGORY L. DOMINGO AND NIEVES L. OSORIO, RESPONDENTS.

R E S O L U T I O N

CHICO-NAZARIO, J.:

For our resolution are several incidents in the above-entitled case that arose and were submitted to us after the promulgation of our Decision^[1] on 26 September 2006.

The factual antecedents of the case at bar are briefly recounted below:

Petitioners originally filed before us the present special civil action for Injunction to enjoin respondents from implementing National Power Board (NPB) Resolutions No. 2002-124 and No. 2002-125, both dated 18 November 2002, directing, among other things, the termination of all employees of the National Power Corporation (NPC) on 31 January 2003 in line with the restructuring of the NPC.

The assailed NPB Resolutions were issued in compliance with the provisions of Republic Act No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001" (EPIRA Law), which took effect on 26 June 2001. The EPIRA Law provided a framework for the restructuring of the electric power industry, including the privatization of the assets of the NPC and its transition to the desired competitive structure.

Pursuant to the EPIRA Law, a new NPB was constituted, composed of the Secretary of Finance as Chairman, with the Secretary of Energy, the Secretary of Budget and Management, the Secretary of Agriculture, the Director-General of the National Economic and Development Authority, the Secretary of Environment and Natural Resources, the Secretary of Interior and Local Government, the Secretary of the Department of Trade and Industry, and the President of the NPC as members.

Also in accordance with the EPIRA Law, the Department of Energy (DOE) created the Energy Restructuring Steering Committee (Restructuring Committee) to manage the privatization and restructuring of the NPC, the National Transmission Corporation (TRANSCO), and the Power Sector Assets and Liabilities Management Corporation (PSALM). The Restructuring Committee proposed a new NPC Table of Organization to serve as the overall organizational framework for the realigned functions of the NPC mandated under the EPIRA Law, which was approved by the NPB in **NPB Resolution No. 2002-53** dated 11 April 2002.

After reviewing the proposed 2002 NPC Restructuring Plan and assisting in the implementation of its Phase I (Realignment), the Restructuring Committee recommended to the NPB the adoption of measures pertaining to the separation and hiring of NPC personnel. The NPB agreed in the recommendation of the Restructuring Committee and found the need to accordingly amend or refine its Restructuring Plan. The NPB passed **NPB Resolution No. 2002-124** on 18 November 2002, providing for the Guidelines on the Separation Program of the NPC and the Selection and Placement of Personnel in the NPC Table of Organization. Under said Resolution, all NPC personnel shall be legally terminated on 31 January 2003, and shall be entitled to separation benefits. The NPB approved on the same day **NPB Resolution No. 2002-125**, constituting a Transition Team to manage and implement the Separation Program of NPC.

Petitioners, then employed by the NPC, opposed NPB Resolutions No. 2002-124 and No. 2002-125 on the ground that these were not passed by a majority of the NPB. Only three NPB members were actually present during the 18 November 2002 meeting and personally signed the Resolutions in question. Four other NPB members merely sent their representatives or alternates to attend the said meeting, who signed the assailed Resolutions on their behalf.

In their Petition before us, petitioners prayed for the following:

1. A TEMPORARY RESTRAINING ORDER (TRO) to be issued immediately *ex parte* upon the filing of this petition enjoining, prohibiting and restraining respondents from implementing the questioned [NPB] Resolutions and, thus, maintain and pressure the *status quo* pending resolution of the prayer for issuance of a writ of preliminary injunction;
2. Upon notice and hearing, a writ of preliminary injunction be issued enjoining, prohibiting and restraining respondents from implementing the questioned [NPB] Resolutions pending the final resolution and decision of the present petition[; and]
3. After hearing on the merits[,] to grant the petition and declare the writ of preliminary injunction perpetual and permanent.

Other reliefs and remedies as may be just and equitable are also prayed for.^[2]

We did not issue a TRO or a preliminary injunction, the NPC proceeded with the termination of the employment of petitioners on 31 January 2003 pursuant to the assailed Resolutions.

In our Decision dated 26 September 2006, we sustained the position of the petitioners. We found that there was undue delegation of what was already a delegated power by certain NPB members when they sent their representatives to attend board meetings, and pass and sign board resolutions. The Court reasoned that:

In enumerating under Section 48 those who shall compose the National Power Board of Directors, the legislature has vested upon these persons the power to exercise their judgment and discretion in running the affairs of the NPC. Discretion may be defined as "the act or the liberty to decide according to the principles of justice and one's ideas of what is right and proper under the circumstances, without willfulness or favor.["] Discretion, when applied to public functionaries, means a power or right conferred upon them by law of acting officially in certain circumstances, according to the dictates of their own judgment and conscience, uncontrolled by the judgment or conscience of others. It is to be presumed that in naming the respective department heads as members of the board of directors, the legislature chose these secretaries of the various executive departments on the basis of their personal qualifications and acumen which made them eligible to occupy their present positions as department heads. Thus, the department secretaries cannot delegate their duties as members of the NPB, much less their power to vote and approve board resolutions, because it is their personal judgment that must be exercised in the fulfillment of such responsibility.

There is no question that the enactment of the assailed Resolutions involves the exercise of discretion and not merely a ministerial act that could be validly performed by a delegate, thus, the rule enunciated in the case of *Binamira v. Garrucho* is relevant in the present controversy, to wit:

An officer to whom a discretion is entrusted cannot delegate it to another, the presumption being that he was chosen because he was deemed fit and competent to exercise that judgment and discretion, and unless the power to substitute another in his place has been given to him, he cannot delegate his duties to another.

In those cases in which the proper execution of the office requires, on the part of the officer, the exercise of judgment or discretion, the presumption is that he was chosen because he was deemed fit and competent to exercise that judgment and discretion, and, unless power to substitute another in his place has been given to him, he cannot delegate his duties to another.

In the case at bar, it is not difficult to comprehend that in approving NPB Resolutions No. 2002-124 and No. 2002-125, it is the representatives of the secretaries of the different executive departments and not the secretaries themselves who exercised judgment in passing the assailed Resolution, as shown by the fact that it is the signatures of the respective representatives that are affixed to the questioned Resolutions. This, to our mind, violates the duty imposed upon the specifically enumerated department heads to employ their own sound discretion in exercising the corporate powers of the NPC. Evidently, the votes cast by these mere representatives in favor of the adoption of the said Resolutions must not be considered in determining whether or not the necessary number of votes was garnered in order that the assailed Resolutions may be validly enacted. Hence, there being only three valid votes cast out of the nine board members, namely those of [Department of Energy] Secretary Vincent S. Perez, Jr.; Department of Budget and Management Secretary Emilia T. Boncodin; and NPC OIC-President Rolando S. Quilala, NPB Resolutions No. 2002-124 and No. 2002-125 are void and are of no legal effect.^[3]

Hence, we ultimately decreed -

WHEREFORE, premises considered, National Power Board Resolutions No. 2002-124 and No. 2002-125 are hereby declared **VOID** and **WITHOUT LEGAL EFFECT**. The Petition for Injunction is hereby **GRANTED** and respondents are hereby [**ENJOINED**] from implementing said NPB Resolutions No. 2002-124 and No. 2002-125.^[4]

Respondent NPC filed a Motion for Reconsideration (Of Decision dated 26 September 2006),^[5] which we denied with finality in a Resolution^[6] dated 24 January 2007. Respondent NPC subsequently filed a Motion for Leave to File 2nd Motion for Reconsideration (Of Decision dated 26 September 2006) with Motion to Refer Case *En Consulta* to the Court *En Banc*,^[7] attaching thereto its Second Motion for Reconsideration.^[8] However, in a Resolution^[9] dated 4 June 2007, we denied both motions of respondent NPC.

Several more pleadings were filed following the promulgation of our Decision of 26 September 2006.

Petitioners filed a Motion for Clarification and/or Amplification,^[10] with the following averments:

3. It appears that the assailed NPB resolutions were implemented by respondents after this petition was filed and pending resolution thereof effected, among others, the reorganization of the National Power Corporation (NPC), and termination of all NPC personnel as of January 31, 2003;
4. As this Honorable Court has ruled in its Decision that [NPB] Resolutions No. 2002-124 and No. 2002-125 are **VOID** and **WITHOUT LEGAL EFFECT**, it is petitioners' considered position

that its logical implications/consequences are, as follows:

1. The reorganization of NPC is null and void, which means that NPC must revert to its organizational structure prior to the implementation of [NPB] Resolution Nos. 2002-124 and 2002-125 (status quo ante);
2. The termination of all NPC personnel on January 31, 2003 is void and illegal, which entitles them to reinstatement to their previous positions and payment of back wages and other benefits and wage adjustments reckoned from January 31, 2003 until their actual reinstatement.
5. This motion is being made in order to clarify and/or amplify the Decision in this case as to its logical and necessary implications/consequences when the same will be eventually executed.

Petitioners, thus, pray that we clarify and/or amplify our Decision of 26 September 2006 by confirming their afore-quoted position as regards their reinstatement and payment of backwages/salaries, etc., as the logical and necessary implications/consequences of the said Decision rendered in their favor.

Shortly thereafter, counsels for petitioner, namely, Atty. Cornelio P. Aldon (Atty. Aldon) of the Cornelio P. Aldon Law Office and Atty. Victoriano V. Orocio (Atty. Orocio) of V.V. Orocio and Associates Law Offices, filed, on their own behalf, a Motion for Approval of Charging (Attorney's) Lien.^[11] Their Motion alleged that on 7 December 2002, a Mr. Zol D. Medina (Medina), in his own individual capacity and on behalf of all similarly affected/situated NPC personnel, entered into a legal retainer agreement with Atty. Aldon and Atty. Orocio for the urgent and immediate filing with the Supreme Court of a petition for injunction with prayer for TRO and/or preliminary injunction, in order to enjoin the implementation of NPB Resolutions No. 2002-124 and No. 2002-125. The agreement contains the following terms and conditions:

1. No Acceptance Fee;
2. Miscellaneous/out-of-pocket expenses in the amount of P25,000.00;
3. Twenty Five Percent (25%) of whatever amounts/monies are recovered in favor of said NPC personnel contingent on the success of the case.^[12]

Pursuant to the foregoing agreement, Atty. Aldon and Atty. Orocio filed before us, on behalf of petitioners, the instant Petition for Injunction, Reply to the respondents' Comment, and petitioners' Memorandum. With the promulgation of our Decision dated 26 September 2006 enjoining the implementation of NPB Resolutions No. 2002-124 and No. 2002-125, and issuance of our Resolution dated 24 January 2007 denying with finality respondents' Motion for Reconsideration, Atty. Aldon and Atty. Orocio assert their right to attorney's fees and pray that we issue a resolution to the following effect: