

THIRD DIVISION

[G.R. NO. 159149, June 26, 2006]

**THE HONORABLE SECRETARY VINCENT S. PEREZ, IN HIS
CAPACITY AS THE SECRETARY OF THE DEPARTMENT OF ENERGY,
PETITIONER, VS. LPG REFILLERS ASSOCIATION OF THE
PHILIPPINES, INC., RESPONDENT.**

DECISION

QUISUMBING, J.:

Before us is a petition for review on certiorari under Rule 45, assailing the Decision^[1] and Order^[2] of the Regional Trial Court of Pasig City, Branch 161, in SCA Case No. 2318, which nullified Circular No. 2000-06-010 of the Department of Energy (DOE).

The facts are undisputed.

Batas Pambansa Blg. 33, as amended, penalizes illegal trading, hoarding, overpricing, adulteration, underdelivery, and underfilling of petroleum products, as well as possession for trade of adulterated petroleum products and of underfilled liquefied petroleum gas (LPG) cylinders.^[3] The said law sets the monetary penalty for violators to a minimum of P20,000 and a maximum of P50,000.^[4]

On June 9, 2000, Circular No. 2000-06-010 was issued by the DOE to implement B.P. Blg. 33, thus:

SECTION 4. NO PRICE DISPLAY BOARD –

LPG Marketer/LPG Dealer/LPG Retail Outlet

- 1st Offense - Reprimand/warning letter
- 2nd Offense - Recommend suspension of business operation to the proper local government unit
- 3rd Offense - Recommend business closure to the proper local government unit and initiate criminal proceedings

SECTION 5. NO WEIGHING SCALE –

A. LPG Refiller/Marketer

- 1st Offense - Fine of P5,000
- 2nd Offense - Fine of P10,000
- 3rd Offense - Recommend business closure to the proper local government unit

B. Dealer

- 1st Offense - Fine of ₱3,000
- 2nd Offense - Fine of ₱7,000
- 3rd Offense - Recommend business closure to the proper local government unit

C. LPG Retail Outlet

- 1st Offense - Reprimand
- 2nd Offense - Fine of ₱500.00
- 3rd Offense - Fine of ₱1,000.00

SECTION 6. NO TARE WEIGHT OR INCORRECT TARE WEIGHT MARKINGS. (REQUIREMENT ON ENGRAVED TARE WEIGHT SHALL TAKE EFFECT TWO (2) YEARS AFTER EFFECTIVITY OF THIS CIRCULAR)

A. LPG Refiller/Marketer

- 1st Offense - Fine of ₱3,000 for each cylinder
- 2nd Offense - Fine of ₱5,000 for each cylinder
- 3rd Offense - Recommend business closure to the proper local government unit

B. Dealer

- 1st Offense - Fine of ₱2,000 for each cylinder
- 2nd Offense - Fine of ₱4,000 for each cylinder
- 3rd Offense - Recommend business closure to the proper local government unit

C. LPG Retail Outlet

- 1st Offense - Fine of ₱1,000 for each cylinder
- 2nd Offense - Fine of ₱2,000 for each cylinder
- 3rd Offense - Recommend business closure to the proper local government unit

SECTION 7. NO APPROPRIATE OR AUTHORIZED LPG SEAL

A. LPG Refiller/Marketer

- 1st Offense - Fine of ₱3,000 for each cylinder
- 2nd Offense - Fine of ₱5,000 for each cylinder
- 3rd Offense - Recommend business closure to the proper local government unit

B. Dealer

- 1st Offense - Fine of ₱2,000 for each cylinder
- 2nd Offense - Fine of ₱4,000 for each cylinder
- 3rd Offense - Recommend business closure to the proper local government unit

C. LPG Retail Outlet

- 1st Offense - Fine of ₱1,000 for each cylinder
- 2nd Offense - Fine of ₱2,000 for each cylinder
- 3rd Offense - Recommend business closure to the proper local government unit

SECTION 8. NO TRADE NAME, UNBRANDED LPG CYLINDERS, NO SERIAL NUMBER, NO DISTINGUISHING COLOR, NO EMBOSSED IDENTIFYING MARKINGS ON CYLINDER OR DISTINCTIVE COLLAR OR DESIGN (REQUIREMENT ON SERIAL NUMBER AND DISTINCTIVE COLLAR OR DESIGN SHALL TAKE EFFECT TWO (2) YEARS AFTER EFFECTIVITY OF THIS CIRCULAR)

A. LPG Refiller/Marketer

- 1st Offense - Fine of ₱4,000 for each cylinder
- 2nd Offense - Fine of ₱5,000 for each cylinder
- 3rd Offense - Recommend business closure to the proper local government unit

B. Dealer

- 1st Offense - Fine of ₱3,000 for each cylinder
- 2nd Offense - Fine of ₱4,000 for each cylinder
- 3rd Offense - Recommend business closure to the proper local government unit

C. LPG Retail Outlet

- 1st Offense - Fine of ₱1,000 for each cylinder
- 2nd Offense - Fine of ₱2,000 for each cylinder
- 3rd Offense - Recommend business closure to the proper local government unit

SECTION 9. UNDERFILLED LPG CYLINDERS

A. LPG REFILLER/MARKETER

- 1st Offense - Fine of ₱4,000 for each cylinder
- 2nd Offense - Fine of ₱6,000 for each cylinder
- 3rd Offense - Recommend business closure to the proper local government unit

B. DEALER

- 1st Offense - Fine of ₱3,000 for each cylinder
- 2nd Offense - Fine of ₱4,000 for each cylinder
- 3rd Offense - Recommend business closure to the proper local government unit

C. LPG RETAIL OUTLET

- Fine of ₱1,000 for each cylinder

- 1st Offense
- 2nd Offense - Fine of P2,000 for each cylinder
- 3rd Offense - Recommend business closure to the proper local government unit

SECTION 10. TAMPERING, ALTERING, OR MODIFYING OF LPG CYLINDER THRU ANY MEANS SUCH AS BUT NOT LIMITED TO CHANGING THE VALVE, REPAINTING, AND RELABELLING BY ANY PERSON OR ENTITY OTHER THAN THE LEGITIMATE AND REGISTERED OWNER OF THE SAME. FOR THIS PURPOSE, LPG REFILLER, MARKETER, DEALER, OR RETAIL OUTLET, AS THE CASE MAY BE, WHO HAS POSSESSION OF SUCH ILLEGALLY TAMPERED, ALTERED, OR OTHERWISE MODIFIED LPG CYLINDER SHALL BE HELD LIABLE FOR THIS OFFENSE

A. LPG Refiller/Marketer

- 1st Offense - Fine of P5,000 for each cylinder
- 2nd Offense - Fine of P10,000 for each cylinder
- 3rd Offense - Recommend business closure to the proper local government unit

B. Dealer

- 1st Offense - Fine of P3,000 for each cylinder
- 2nd Offense - Fine of P5,000 for each cylinder
- 3rd Offense - Recommend business closure to the proper local government unit

C. LPG Retail Outlet

- 1st Offense - Fine of P1,500 for each cylinder
- 2nd Offense - Fine of P3,000 for each cylinder
- 3rd Offense - Recommend business closure to the proper local government unit

SECTION 11. UNAUTHORIZED DECANTING OR REFILLING OF LPG CYLINDERS

- 1st Offense - Fine of P5,000 for each cylinder
- 2nd Offense - Fine of P10,000 for each cylinder
- 3rd Offense - Recommend business closure to the proper local government unit

SECTION 12. HOARDING OF PETROLEUM PRODUCTS INCLUDING LIQUEFIED PETROLEUM GAS

- 1st Offense - Fine of P10,000 for each cylinder
- 2nd Offense - Recommend business closure to the proper local government unit plus the filing of appropriate criminal action

SECTION 13. REFUSAL TO ALLOW OR COOPERATE WITH DULY AUTHORIZED INSPECTORS OF THE ENERGY INDUSTRY ADMINISTRATION BUREAU (EIAB) OF THE DEPARTMENT OF ENERGY IN THE CONDUCT OF THEIR INSPECTION/INVESTIGATION, WHETHER REGULAR AND ROUTINARY OR COMPLAINT-INITIATED

1st Offense - Fine of P10,000

2nd Offense - Recommend business closure to the proper local government unit

SECTION 14. REFUSAL OR FAILURE TO PAY FINE – *The Department of Energy shall recommend to the proper local government unit the closure of business of a respondent who refuses or fails to pay any administrative fine without prejudice to the filing of an appropriate criminal action if warranted.*^[5]

Respondent LPG Refillers Association of the Philippines, Inc. asked the DOE to set aside the Circular for being contrary to law. The DOE, however, denied the request for lack of merit.

Respondent then filed a petition for prohibition and annulment with prayer for temporary restraining order and/or writ of preliminary injunction before the trial court.

After trial on the merits, the trial court nullified the Circular on the ground that it introduced new offenses not included in the law.^[6] The court intimated that the Circular, in providing penalties on a per cylinder basis for each violation, might exceed the maximum penalty under the law. The decretal part of its Decision reads:

IN VIEW OF THE FOREGOING, this Court renders judgment declaring DOE Circular No. 2000-06-010 null and void and prohibits the respondent from implementing the same.

SO ORDERED.^[7]

The trial court denied for lack of merit petitioner's motion for reconsideration. Hence this petition, raising the following issues:

I

WHETHER OR NOT THE COURT **A QUO** GRAVELY ERRED IN HOLDING THAT "A CLOSE SCRUTINY OF BP 33, PD 1865 AND R.A. NO. 8479 SHOWS THAT OFFENSES LIKE NO PRICE DISPLAY [BOARD], NO WEIGHING SCALE, ETC. SET FORTH IN THE CIRCULAR ARE NOT PROVIDED FOR IN ANY OF THE THREE (3) LAWS".

II

WHETHER OR NOT THE COURT **A QUO** GRAVELY ERRED IN HOLDING THAT "A SCRUTINY OF THE NEW SET OF PENALTIES PROVIDED BY THE CIRCULAR SHOWS THAT THE PENALTIES THIS TIME ARE BASED ON PER CYLINDER BASIS"; THAT "BEING SUCH, NO CEILING WAS PROVIDED