

THIRD DIVISION

[G.R. No. 127371, April 25, 2002]

PHILIPPINE SINTER CORPORATION AND PHIVIDEC INDUSTRIAL AUTHORITY, PETITIONERS, VS. CAGAYAN ELECTRIC POWER AND LIGHT CO., INC., RESPONDENT.

D E C I S I O N

SANDOVAL-GUTIERREZ, J.:

Before this Court is a petition for review^[1] questioning the Decision^[2] of the Court of Appeals dated July 23, 1996 in CA-G.R. SP No. 36943, "*Cagayan Electric Power and Light Co., Inc. vs. Hon. Cesar M. Ybañez, et al.*" which reversed the decision of the Regional Trial Court of Cagayan de Oro City, Branch 17, in Civil Case No. 94-186 for injunction.

The antecedents are:

On January 21, 1987, President Corazon C. Aquino and her Cabinet approved a Cabinet Reform Policy for the power sector and issued a Cabinet Memorandum, Item No. 2 of which provides:

"Continue direct connection for industries authorized under the BOI-NPC Memorandum of Understanding of 12 January 1981, **until such time as the appropriate regulatory board determines that direct connection of industry to NPC is no longer necessary in the franchise area of the specific utility or cooperative.** Determination shall be based in the utility or cooperatives meeting the standards of financial and technical capability with satisfactory guarantees of non-prejudice to industry to be set in consultation with NPC and relevant government agencies and reviewed periodically by the regulatory board." (emphasis ours)

Pursuant to such Cabinet Memorandum, respondent Cagayan Electric Power and Light, Co. (CEPALCO), grantee of a legislative franchise^[3] to distribute electric power to the municipalities of Villanueva, Jasaan and Tagoloan, and the city of Cagayan de Oro, all of the province of Misamis Oriental, filed with the Energy Regulatory Board (ERB) a petition entitled "In Re: Petition for Implementation of Cabinet Policy Reforms in the Power Sector," docketed as ERB Case No. 89-430. The petition sought the "discontinuation of all existing direct supply of power by the National Power Corporation (NPC, now NAPOCOR) within CEPALCO's franchise area."^[4]

The ERB issued a notice of public hearing which was published in the newspapers and posted in the affected areas. It likewise furnished NAPOCOR and the Board of Investments (BOI) copies of the petition and directed them to submit their

comments.

After hearing, the ERB rendered a decision^[5] granting the petition, the dispositive portion reads:

“WHEREFORE, in view of the foregoing premises, where the petitioner has been proven to be capable of distributing power to its industrial consumers and having passed the secondary considerations with a passing mark of 85%, judgment is hereby rendered granting relief prayed for. Accordingly, it is hereby declared that all direct connection of industries to NPC within the franchise area of CEPALCO is no longer necessary. Therefore, all existing NPC (now NAPOCOR) direct supply of power to industrial consumers within the franchise area of CEPALCO is hereby ordered to be discontinued. x x x.”^[6]

NAPOCOR filed a motion for reconsideration, which the ERB denied. Thereafter, NAPOCOR filed a petition for review with the Court of Appeals. On October 9, 1992, the Court of Appeals dismissed the petition, holding that the motion for reconsideration filed by NAPOCOR with the ERB was out of time and therefore, the assailed decision became final and executory and could no longer be subject of a petition for review.

On a petition for review on certiorari,^[7] this Court affirmed the Resolution of the Court of Appeals. Judgment was entered on September 22, 1993, thus rendering final the decision of the ERB.^[8]

To implement the decision in ERB Case No. 89-430, CEPALCO wrote Philippine Sinter Corporation (PSC), petitioner, and advised the latter of its desire “to have the power supply of PSC, directly taken from NPC (NAPOCOR), disconnected, cut and transferred” to CEPALCO.^[9] PSC is an entity operating its business within the PHIVIDEC^[10] Industrial Estate (located in the Municipalities of Tagoloan and Villanueva, Misamis Oriental, covered by CEPALCO’s franchise). The Estate is managed and operated by the PHIVIDEC Industrial Authority (PIA).^[11] PSC refused CEPALCO’s request, citing its contract for power supply with NAPOCOR effective until July 26, 1996.

To restrain the execution of the ERB Decision, PSC and PIA filed a complaint for injunction against CEPALCO with the Regional Trial Court of Cagayan de Oro City, Branch 17, docketed as Civil Case No. 94-186. They alleged, *inter alia*, that there exists no legal basis to cut-off PSC’s power supply with NAPOCOR and substitute the latter with CEPALCO since: (a) there is a subsisting contract between PSC and NAPOCOR; (b) the ERB decision is not binding on PSC since it was not impleaded as a party to the case; and (c) PSC is operating within the PHIVIDEC Industrial Estate, a franchise area of PIA, not CEPALCO, pursuant to Sec. 4 (1) of P.D. 538. Moreover, the execution of the ERB decision would cause PSC a 2% increase in its electrical bills.

On April 11, 1994, the trial court rendered judgment^[12] in favor of PSC and PIA, thus:

"WHEREFORE, premises considered, judgment is hereby rendered, by preponderance of evidence, in favor of plaintiffs PSC and PIA and against defendant CEPALCO and the petition for injunction should be, as it is hereby, GRANTED. Accordingly, the defendant CEPALCO, its agents and/or representative, and all those acting in its behalf, are hereby ordered to refrain, cease and desist from cutting and disconnecting and/or causing to be cut and disconnected the direct electric power supply of the plaintiff PSC from the NPC and from transferring the same to defendant CEPALCO, now and until July 26, 1996, when the contract between plaintiff PSC and the NPC for direct power supply shall have expired. The counter-claim filed by defendant CEPALCO is DISMISSED. No pronouncement as to costs.

SO ORDERED."^[13]

CEPALCO filed a motion for reconsideration but was denied by the trial court in its order dated December 13, 1994. Aggrieved, CEPALCO appealed to the Court of Appeals. On July 23, 1996, the Court of Appeals rendered its decision,^[14] the dispositive portion of which reads:

"WHEREFORE, IN VIEW OF THE FOREGOING, the petition is hereby GRANTED. The assailed Decision dated April 11, 1994 and the Order dated December 13, 1994 are SET ASIDE. The writ of preliminary injunction earlier issued is DISSOLVED. No pronouncement as to costs.

SO ORDERED."^[15]

PSC and PIA filed a motion for reconsideration, which was denied in a Resolution^[16] dated December 2, 1996. Hence the instant petition.

Petitioners submit the following issues for our resolution:

- I. THE DECISION OF THE ERB IS CONTRARY TO THE CABINET POLICY REFORM.
- II. THE ERB DECISION INVOLVED ADJUDICATION OF RIGHTS TO THE PREJUDICE OF PETITIONERS PIA AND PSC.
- III. THE CABINET POLICY REFORM CANNOT AMEND THE CHARTER OF PIA, PD 538, AS AMENDED.
- IV. PETITIONERS PIA AND PSC WERE NOT NOTIFIED BY CEPALCO OF ITS PETITION WITH THE ERB.
- V. CIVIL CASE NO. 91-383 ENTITLED PHIVIDEC INDUSTRIAL AUTHORITY VS. CEPALCO BEFORE BRANCH 17, REGIONAL TRIAL COURT OF CAGAYAN DE ORO CITY REINFORCES THE ISSUE THAT THE ERB DECISION MUST NECESSARILY BE ENJOINED FROM BEING ENFORCED AGAINST PIA AND PSC.
- VI. THE ERB DECISION IS NOT FINAL AND EXECUTORY.^[17]

Petitioners contend that the ERB decision is contrary to the Cabinet Policy Reform since PIA, one of the relevant government agencies referred to in the Cabinet Memorandum, was not consulted, much less notified by the ERB before it rendered its decision; that since PIA is not a party in ERB Case No. 89-430, then the decision therein does not bind it; that P.D. 538 (the charter of PIA) excluded the municipalities of Tagoloan and Villanueva, Misamis Oriental, from the franchise area of CEPALCO and transferred the same to PIA; and that the ERB decision is not final and executory since the same is subject to periodic review under the Cabinet Memorandum.

For its part, respondent CEPALCO maintains that the ERB decision shows that it has met the requirements of the Cabinet Policy Reforms on financial and technical capability of the utility or cooperative. Anent petitioners' argument that the ERB decision does not bind them for lack of personal notice, respondent explains that such notice is not required since the proceedings in the ERB are *in rem*. Besides, the only issue in the ERB case is whether or not CEPALCO has met the standards mandated by the Cabinet Policy Reforms. Lastly, respondent contends that what is subject to periodic review under the Cabinet Memorandum is only the capability standards.

This is not the first time that a controversy arose involving the franchise of CEPALCO vis-à-vis the authority of NAPOCOR to supply power directly. In *National Power Corporation vs. Court of Appeals*,^[18] this Court held that CEPALCO is the lawful provider of the increased power supply to the Philippine Packing Corporation under PD 40^[19] promulgated on November 7, 1972. The Court ruled that distribution of electric power, whether an increase in existing voltage or a new and separate electric service, shall be undertaken by cooperatives, private utilities (such as CEPALCO), local governments and other entities duly authorized subject to state regulation.

Subsequently, this Court, in *Cagayan Electric Power and Light Company, Inc. vs. National Power Corporation*,^[20] sustained the decision of the trial court ordering NAPOCOR to permanently desist from continuing the direct supply, sale and delivery of electricity to Ferrochrome Philippines, Inc., an industry operating its business within the PHIVIDEC Industrial Estate, Tagoloan, Misamis Oriental, because it violates the right of CEPALCO under its legislative franchise. The Court stressed that the statutory authority (PD 395) given to NAPOCOR with respect to sale of energy in bulk directly to BOI-registered enterprises should always be subordinate to the "total-electrification-of-the-entire-country-on-an-area-coverage-basis policy" enunciated in P.D. No. 40.

In *National Power Corporation vs. Court of Appeals*,^[21] this Court struck down as irregular the determination by the NAPOCOR on whether or not it should supply power directly to the PIA or the industries within the PHIVIDEC Industrial Estate-Misamis Oriental (PIE-MO); and held that such authority pertains exclusively to the ERB which was transferred to the Department of Energy (DOE) pursuant to Republic Act No. 7638. Consequently, the Court remanded the case to the DOE to determine whether it is CEPALCO or the NAPOCOR, through the PIA, which should supply electric power to the industries in the PIE-MO.

In the present case, the only issue for our determination is whether or not injunction