

## THIRD DIVISION

[ G.R. No. 142943, April 03, 2002 ]

**SPOUSES ANTONIO AND LORNA QUISUMBING, PETITIONERS,  
VS. MANILA ELECTRIC COMPANY (MERALCO), RESPONDENT.**

### DECISION

**PANGANIBAN, J.:**

Under the law, the Manila Electric Company (Meralco) may *immediately* disconnect electric service on the ground of alleged meter tampering, but only if the discovery of the cause is personally witnessed and attested to by an officer of the law or by a duly authorized representative of the Energy Regulatory Board.

#### The Case

Before us is a Petition for Review under Rule 45 of the Rules of Court, assailing the February 1, 2000 Decision<sup>[1]</sup> and the April 10, 2000 Resolution<sup>[2]</sup> of the Court of Appeals (CA) in CA-GR SP No. 49022. The decretal portion of the said Decision reads as follows:

"WHEREFORE, the challenged decision in Civil Case No. Q-95-23219 is hereby **SET ASIDE** and the complaint against defendant-appellant MERALCO is hereby **DISMISSED**. Plaintiffs-appellees are hereby **ORDERED** to pay defendant-appellant MERALCO the differential billing of P193,332.00 representing the value of used but unregistered electrical consumption."<sup>[3]</sup>

The assailed Resolution denied petitioner's Motion for Reconsideration.

#### The Facts

The facts of the case are summarized by the Court of Appeals in this wise:

"Defendant-appellant Manila Electric Company (MERALCO) is a private corporation, authorized by law to charge all persons, including the government, for the consumption of electric power at rates duly authorized and approved by the Board of Energy (now the Energy Regulatory Board).

"Plaintiffs-appellees Spouses Antonio and Lorna Quisumbing are owners of a house and lot located at No. 94 Greenmeadows Avenue, Quezon City, which they bought on April 7, 1994 from Ms. Carmina Serapio Santos. They alleged to be business entrepreneurs engaged in the export of furnitures under the business name 'Loran Industries' and recipient of the 1993 Agora Award and 1994 Golden Shell Award. Mrs. Quisumbing is a member of the Innerwheel Club while Mr. Quisumbing is

a member of the Rotary Club, Chairman of Cebu Chamber of Commerce, and Director of Chamber of Furniture.

"On March 3, 1995 at around 9:00 a.m., defendant-appellant's inspectors headed by Emmanuel C. Orlino were assigned to conduct a routine-on-the-spot inspection of all single phase meters at Greenmeadows Avenue. House no. 94 of Block 8, Lot 19 Greenmeadows Avenue owned by plaintiffs-appellees was inspected after observing a standard operating procedure of asking permission from plaintiffs-appellees, through their secretary which was granted. The secretary witnessed the inspection. After the inspection, defendant-appellant's inspectors discovered that the terminal seal of the meter was missing; the meter cover seal was deformed; the meter dials of the meter was mis-aligned and there were scratches on the meter base plate. Defendant-appellant's inspectors relayed the matter to plaintiffs-appellees' secretary, who in turn relayed the same to plaintiff-appellee, Lorna Quisumbing, who was outraged of the result of the inspection and denied liability as to the tampering of the meter. Plaintiffs-appellees were advised by defendant-appellant's inspectors that they had to detach the meter and bring it to their laboratory for verification/confirmation of their findings. In the event the meter turned out to be tampered, defendant-appellant had to temporarily disconnect the electric services of plaintiffs-appellees. The laboratory testing conducted on the meter has the following findings to wit:

- '1. Terminal seal was missing.
- '2. Lead cover seals ('90 ERB 1-Meralco 21) were tampered by forcibly pulling out from the sealing wire.
- '3. The 1000<sup>th</sup>, 100<sup>th</sup> and 10<sup>th</sup> dial pointers of the register were found out of alignment and with circular scratches at the face of the register which indicates that the meter had been opened to manipulate the said dial pointers and set manually to the desired reading. In addition to this, the meter terminal blades were found full of scratches.'

"After an hour, defendant-appellant's head inspector, E. Orlina returned to the residence of plaintiffs-appellees and informed them that the meter had been tampered and unless they pay the amount of P178,875.01 representing the differential billing, their electric supply would be disconnected. Orlina informed plaintiffs-appellees that they were just following their standard operating procedure. Plaintiffs-appellees were further advised that questions relative to the results of the inspection as well as the disconnection of her electrical services for Violation of Contract (VOC) may be settled with Mr. M. Manuson of the Special Accounts, Legal Service Department. However, on the same day at around 2:00 o'clock in the afternoon defendant-appellant's officer through a two-way radio instructed its service inspector headed by Mr. Orlino to reconnect plaintiffs-appellees' electric service which the latter faithfully complied.

"On March 6, 1995, plaintiffs-appellees filed a complaint for damages

with prayer for the issuance of a writ of preliminary mandatory injunction, despite the immediate reconnection, to order defendant-appellant to furnish electricity to the plaintiffs-appellees alleging that defendant-appellant acted with wanton, capricious, malicious and malevolent manner in disconnecting their power supply which was done without due process, and without due regard for their rights, feelings, peace of mind, social and business reputation.

"In its Answer, defendant-appellant admitted disconnecting the electric service at the plaintiffs-appellees' house but denied liability citing the 'Terms and Conditions of Service,' and Republic Act No. 7832 otherwise known as 'Anti-Electricity and Electric Transmission Lines/Materials Pilferage Act of 1994.'

"After trial on the merits, the lower court rendered judgment, ruling in favor of plaintiffs-appellees."<sup>[4]</sup> (Citations omitted)

### **Ruling of the Trial Court**

The trial court held that Meralco (herein respondent) should have given the Quisumbing spouses (herein petitioners) ample opportunity to dispute the alleged meter tampering.

It held that respondent had acted summarily and without procedural due process in immediately disconnecting the electric service of petitioners. Respondent's action, ruled the RTC, constituted a *quasi delict*.

### **Ruling of the Court of Appeals**

The Court of Appeals overturned the trial court's ruling and dismissed the Complaint. It held that respondent's representatives had acted in good faith when they disconnected petitioners' electric service. Citing testimonial and documentary evidence, it ruled that the disconnection was made only after observing due process. Further, it noted that petitioners had not been able to prove their claim for damages. The appellate court likewise upheld respondent's counterclaim for the billing differential in the amount of P193,332<sup>[5]</sup> representing the value of petitioners' used but unregistered electrical consumption, which had been established without being controverted.

Hence, this Petition.<sup>[6]</sup>

### **The Issues**

In their Memorandum,<sup>[7]</sup> petitioners submit the following issues for our consideration:

"4.1 Whether a prima facie presumption of tampering of electrical meter enumerated under Sec. 4 (a) iv of RA 7832 (Anti-Electricity and Electric Transmission Lines/Materials Pilferage Act of 1994) may be had despite the absence of an ERB representative or an officer of the law?

"4.2 Whether the enumeration of instances to establish a prima facie

presumption of tampering of electrical meter enumerated under Sec. 4 (a) iv of RA 7832 (Anti-Electricity and Electric Transmission Lines/Materials Pilferage Act of 1994) is exclusive?

"4.3 What constitutes notice prior to disconnection of electricity service? Corollarily, whether the definition of notice under *Meralco v. Court of Appeals* (157 SCRA 243) applies to the case at bar?

"4.4 Whether a prima facie presumption may contradict logic?

"4.5 Whether documentary proof is pre-requisite for award of damages?"<sup>[8]</sup>

In sum, this Petition raises three (3) main issues which this Court will address: (1) whether respondent observed the requisites of law when it disconnected the electrical supply of petitioners, (2) whether such disconnection entitled petitioners to damages, and (3) whether petitioners are liable for the billing differential computed by respondent.

### **The Court's Ruling**

The Petition is partly meritorious.

#### **First Issue:** **Compliance with Requisites of Law**

Petitioners contend that the immediate disconnection of electrical service was not validly effected because of respondent's noncompliance with the relevant provisions of RA 7832, the "Anti-Electricity and Electric Transmission Lines/Materials Pilferage Act of 1994." They insist that the immediate disconnection of electrical supply may only be validly effected only when there is prima facie evidence of its illegal use. To constitute prima facie evidence, the discovery of the illegal use must be "personally witnessed and attested to by an officer of the law or a duly authorized representative of the Energy Regulatory Board (ERB)."

Respondent, on the other hand, points out that the issue raised by petitioners is a question of fact which this Court cannot pass upon. It argues further that this issue, which was not raised in the court below, can no longer be taken up for the first time on appeal. Assuming *arguendo* that the issue was raised below, it also contends that petitioners were not able to specifically prove the absence of an officer of the law or a duly authorized representative of the ERB when the discovery was made.

#### **Prima facie Evidence of** **Illegal Use of Electricity**

We agree with petitioners. Section 4 of RA 7832 states:

- (a) The presence of any of the following circumstances shall constitute *prima facie* evidence of illegal use of electricity, as defined in this Act, by the person benefited thereby, and shall be the basis for: (1) the immediate disconnection by the electric utility to such person after due notice, x x x

x x x

x x x

x x x

(viii) x x x *Provided, however, That the discovery of any of the foregoing circumstances, in order to constitute prima facie evidence, must be personally witnessed and attested to by an officer of the law or a duly authorized representative of the Energy Regulatory Board (ERB).*"<sup>[9]</sup>  
(Italics supplied)

Under the above provision, the prima facie presumption that will authorize immediate disconnection will arise only upon the satisfaction of certain requisites. One of these requisites is the personal witnessing and attestation by an officer of the law or by an authorized ERB representative when the discovery was made.

As a rule, this Court reviews only questions of law, not of facts. However, it may pass upon the evidence when the factual findings of the trial court are different from those of the Court of Appeals, as in this case."<sup>[10]</sup>

A careful review of the evidence on record negates the appellate court's holding that "the actions of defendant-appellant's service inspectors were all in accord with the requirement of the law."<sup>[11]</sup>

Respondent's own witnesses provided the evidence on who were actually present when the inspection was made. Emmanuel C. Orlino, the head of the Meralco team, testified:

Q When you were conducting this inspection, and you discovered these findings you testified earlier, who was present?

A The secretary, sir."<sup>[12]</sup>

"ATTY. REYES - Who else were the members of your team that conducted this inspection at Greenmeadows Avenue on that day, March 3, 1995?

A The composition of the team, sir?

Q Yes.

A Including me, we are about four (4) inspectors, sir.

Q You were four (4)?

A Yes, sir.

Q Who is the head of this team?

A I was the head of the team, sir."<sup>[13]</sup>

Further, Catalino A. Macaraig, the area head of the Orlino team, stated that only Meralco personnel had been present during the inspection:

"Q By the way you were not there at Green Meadows on that day, right?