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THIRD DIVISION

[G.R. No. 112702, September 26, 1997]

NATIONAL POWER CORPORATION, PETITIONER, VS. COURT OF APPEALS AND CAGAYAN ELECTRIC POWER AND LIGHT CO., INC. (CEPALCO), RESPONDENTS.

[G.R. NO. 113613. SEPTEMBER 26, 1997]

PHIVIDEC INDUSTRIAL AUTHORITY, PETITIONER, VS. COURT OF APPEALS AND CAGAYAN ELECTRIC POWER AND LIGHTCO., INC. (CEPALCO), RESPONDENTS.

D E C I S I O N

ROMERO, J.:

Offered for resolution in these consolidated petitions for review on certiorari is the issue of whether or not the National Power Corporation (NPC) has jurisdiction to determine whether it may supply electric power directly to the facilities of an industrial corporation in areas where there is an existing and operating electric power franchisee.

On June 17, 1961, the Cagayan Electric and Power Light Company (CEPALCO) was enfranchised by Republic Act No. 3247 "to construct, maintain and operate an electric light, heat and power system for the purpose of generating and/or distributing electric light, heat and/or power for sale within the City of Cagayan de Oro and its suburbs" for fifty (50) years. Republic Act No. 3570, approved on June 21, 1963, expanded the area of coverage of the franchise to include the municipalities of Tagoloan and Opol, both in the Province of Misamis Oriental. On August 4, 1969, Republic Act No. 6020 further amended the same franchise to include in the areas of CEPALCO's authority of "generating and distributing electric light and power for sale," the municipalities of Villanueva and Jasaan, also of the said province.

Presidential Decree No. 243, issued on July 12, 1973, created a "body corporate and politic" to be known as the Philippine Veterans Investment Development Corporation (PHIVIDEC) vested with authority to engage in "commercial, industrial, mining, agricultural and other enterprises" among other powers[1] and "to allow the full and continued employment of the productive capabilities of and investment of the veterans and retirees of the Armed Forces of the Philippines." On August 13, 1974, Presidential Decree No. 538 was promulgated to create the PHIVIDEC Industrial Authority (PIA), a subsidiary of PHIVIDEC, to carry out the government policy "to encourage, promote and sustain the economic and social growth of the country and that the establishment of professionalized management of well-planned industrial areas shall further this objective."[2] Under Sec. 3 of P.D. No. 538, the first area for development shall be located in the municipalities of Tagoloan and Villanueva.[3] This area forms part of the PHIVIDEC Industrial Estate Misamis Oriental (PIE-MO).

As manager of PIE-MO, PIA granted the Ferrochrome Philippines, Inc. (FPI) and Metal Alloys Corporation (MAC) authority to operate in its area of development. On July 6, 1979, PIA granted CEPALCO a temporary authority to retail electric power to the industries operating within the PIE-MO.[4] The Agreement executed by PIA and CEPALCO authorized CEPALCO "to operate, administer, construct and distribute electric power within the PHIVIDEC Industrial Estate, Misamis Oriental, such authority to be co-extensive with the territorial jurisdiction of PHIVIDEC Industrial Estate, as defined in Sec. 3 of P.D. No. 538 and shall be for a period of five (5) years, renewable for another five (5) years at the option of CEPALCO." The parties provided further that:

> 9. At the end of the fifth year, or at the end of the 10th year, should this Agreement be thus renewed, PIA has the option to take over the operation of the electric service and acquire by purchase CEPALCO's assets within PIE-MO. This option shall be communicated to CEPALCO in writing at least 24 months before the date of acquistion of assets and takeover of operation by PIA. Should PIA exercise its option to purchase the assets of CEPALCO in PIE-MO, PIA shall respect the right of ownership of and maintenance by CEPALCO of those assets inside PIE-MO not covered by such purchase. x x x."

According to PIA,[5] CEPALCO proved no match to the power demands of the industries in PIE-MO that most of these companies operating therein closed shop.[6] Impelled by a "desire to provide cheap power costs to power-intensive industries operating within the Estate," PIA applied with the National Power Corporation (NPC) for direct power connection which the latter in due course approved.[7] One of the companies which entered into an agreement with the NPC for a direct sale and supply of power was the Ferrochrome Phils., Inc. (FPI).

Contending that the said agreement violated its right as the authorized operator of an electric light and power system in the area and the national electrification policy, CEPALCO filed Civil Case No. Q-35945, a petition for prohibition, mandamus and injunction before the Regional Trial Court of Quezon City against the NPC. Notwithstanding NPC's claim that it was authorized by its Charter to sell electric power "in bulk" to industrial enterprises, the lower court rendered a decision on May 2, 1984, restraining the NPC from supplying power directly to FPI upon the ground that such direct sale, supply and delivery of electric power by the NPC to FPI was violative of the rights of CEPALCO under its legislative franchise. Hence, the lower court ordered the NPC to "permanently desist" from effecting direct supply of power to the FPI and "from entering into and/or implementing any agreement or arrangement for such direct power connection, unless coursed through the power line" of CEPALCO.

Eventually, the case reached this Court through G.R. No. 72085.[8] On December 28, 1989, the Court denied the appeal interposed by NPC on the ground that the statutory authority given to the NPC as regards direct supply of power 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."[9] We held further that:

> Nor should we lose sight of the factual findings of the court a quo that petitioner-appellee CEPALCO had not only been authorized by the Phividec Industrial Authority to provide electrical power to the Phividec Industrial Estate within which the FPI plant is located, but that petitioner-appellee CEPALCO had in fact, supplied the latter's power requirements for the construction of its plant, upon FPI's application therefor as early as October 17, 1980.
>
> It bears emphasis then that 'it is only after a hearing (or an opportunity for such a hearing) where it is established that the affected private franchise holder is incapable or unwilling to match the reliability and rates of NPC that a direct connection with NPC may be granted.' Here, petitioner-appellee's reliability as a power supplier and ability to match the NPC rates were never put in issue.
>
> It is immaterial that petitioner-appellee's franchise was not exclusive. A privilege to sell within specified territory, even if not exclusive, is a valuable property right entitled to protection against unauthorized competition."[10]

Notwithstanding said decision, in September 1990, FPI filed a new application for the direct supply of electric power from NPC. The Hearing Committee of the NPC had started hearing the application but CEPALCO filed with the Regional Trial Court of Quezon City a petition for contempt against NPC officials led by Ernesto Aboitiz. On August 10, 1992, the trial court found the respondents in direct contempt of court and accordingly imposed upon them a fine of 500.00 each.

The respondent NPC officials challenged before this Court the judgment holding them in contempt of court through G.R. No. 107809, (Aboitiz v. Regino).[11] In the Decision of July 5, 1993, the Court upheld the contempt ruling and, after quoting the lower court's decision of May 2, 1984 which the Court upheld in G.R. No. 72085, said:

> These directives show that the lower court (and this Court) intended the arrangment between FPI and CEPALCO to be permanent and free from NAPOCOR's influence or intervention. Any attempt on the part of NAPOCOR or its officers and/or employees to strike a deal with FPI would be a clear and direct disobedience to a lawful order and therefore contemptuous.
>
> The petitioners call the attention of the Court to the statement of CEPALCO that 'NAPOCOR has already implemented in full' the May 2, 1984 decision of the lower court as affirmed by this Court. They suggest that in view of this, the decision no longer has any binding effect upon the parties, or to put it another way, has become functus officio. Consequently, when they entertained the re-application of FPI for direct power connection to NAPOCOR, they were not disobeying the May 2, 1984 order of the trial court and so should not be held in contempt.
>
> This argument must be rejected in view of our finding of the permanence and comprehensiveness of the challenged order of the trial court. 'Permanent' is not a difficult word to understand. It means 'lasting or

> intended to last indefinitely without change.' As for the scope of the order, NAPOCOR was directed to 'desist from effecting, causing, and continuing the direct supply, sale and delivery of electricity from its power line to the plant of Ferrochrome Philippines, Inc., and from entering into and/or implementing any agreement or arrangement for such direct power connection, unless coursed through the power line of petitioner." (Underscoring supplied.)

Meanwhile, the NPC Hearing Committee[12] proceeded with its hearings. CEPALCO was duly notified thereof but it opted to question the committee's jurisdiction. It did not submit any evidence. Consequently, in its Report and Recommendation dated September 27, 1991, the committee gave weight to the evidence presented by FPI that CEPALCO charged higher rates than what the NPC would if allowed to supply power directly to FPI. Although the committee considered as unfounded FPI's claim of CEPALCO's unreliability as a power supplier,[13] it nonetheless held that:

> Form (sic) the foregoing and on the basis of the decision of the Supreme Court in the case of National Power Corporation and Fine Chemicals (Phils.) Inc. v. The Court of Appeals and the Manila Electric Company, G.R. No. 84695, May 8, 1990, FPI is entitled to a direct connection to NPC as applied for considering that CEPALCO is unwilling to match the rates of NPC for directly serving FPI and that FPI is a duly registered BOI registered enterprises (sic). The Supreme Court in the aforestated case has ruled as follows:

'As consistently ruled by the Court pursuant to P.D. No. 380 as amended by P.D. No. 395, NPC is statutorily empowered to directly service all the requirements of a BOI registered enterprise provided that, first, any affected private franchise holder is afforded an opportunity to be heard on the application therefor and second, from such a hearing, it is established that said private franchise holder is incapable or unwilling to match the reliability and rates of NPC for directly serving the latter (National Power Corporation v. Jacinto, 134 SCRA 435 [1985]. National Power Corporation v. Court of Appeals, 161 SCRA 103 [1988]).'"[14]

However, considering the "better and priority right" of PIA, the committee recommended that instead of a direct power connection by the NPC to FPI, the connection should be made to PIA "as a utility user for its industrial Estate at Tagoloan, Misamis Oriental."[15]

For its part, on November 3, 1989, CEPALCO filed with the Energy Regulatory Board (ERB) a petition praying that the ERB "order the discontinuance of all existing direct supply of power by the NPC within petitioner's franchise area" (ERB Case No. 89-430). On July 17, 1992, the ERB ruled that CEPALCO "is relatively efficient and reliable as manifested by its very low system losses (far from the 14% standard) and very high power factors" and therefore CEPALCO is technically capable "to distribute power to its consumers within its franchise area, particularly the industrial customers." It disposed of the petition as follows:

> WHEREFORE, in view of the foregoing premises, when 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 the 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 direct supply of power to industrial consumers within the franchise area of CEPALCO is hereby ordered discontinued. x x x."[16]

However, during the pendency of the Aboitiz case in this Court or on August 3, 1992, PIA contracted the NPC for the construction of a 138 kilovolt (KV) transmission line from Namutulan substation to the receiving and/or substation of PIA.[17]

As expected, on February 17, 1993, CEPALCO filed in the Regional Trial Court of Pasig (Branch 68), a petition for certiorari, prohibition, mandamus and injunction against the NPC and some officials of both the NPC and PIA.[18] Docketed as SCA No. 290, the petition specifically sought the issuance of a temporary restraining order. However, after hearing, the prayer for the temporary restraining order was denied by the court in its order of March 12, 1993.[19] CEPALCO filed a motion for the reconsideration of said order while NPC and PIA moved for the dismissal of the petition.[20]

On June 23, 1993, noting the cases filed by CEPALCO all seeking exclusivity in the distribution of electric power to areas covered by its franchise, the court[21] ruled that "the right of petitioner to supply electric power in the aforesaid area to the exclusion of other entities had been settled once and for all by the Regional Trial Court of Quezon City wherein petitioner obtained a favorable judgment." Hence, the petition was dismissed on the ground of res judicata.[22]

Forthwith, CEPALCO elevated the case to this Court through a petition for certiorari, prohibition and injunction with prayer for the issuance of a preliminary injunction or a temporary restraining order. The petition was docketed as G.R. No. 110686 but on August 18, 1993, the Court referred it to the Court of Appeals pursuant to Sec. 9, paragraph 1 of B.P. Blg. 129 conferring upon the appellate court original jurisdiction to issue writs of prohibition and certiorari and auxiliary writs.[23] In the Court of Appeals, the petition was docketed as CA-G.R. No. 31935-SP.

On September 10, 1993, the Fifteenth Division of the Court of Appeals issued a resolution[24] denying the prayer for the issuance of a temporary restraining order on the strength of Sec. 1 of P.D. No. 1818. It ruled that since the NPC is a public utility, it "enjoys the protective mantle" of said decree prohibiting courts from issuing restraining orders or preliminary injunctions in cases involving infrastructure and natural resource development projects of, and operated by, the government.[25]

However, on September 17, 1993, upon a motion for reconsideration filed by CEPALCO and a re-evaluation of the provisions of P.D. No. 1818, the Court of Appeals set aside its resolution of September 10, 1993 and held that:

> x x x the project intended by respondent NPC, which is the construction, completion and operation of the 138-kv line, is not in consonance with the intendment of said Decree which is to protect public utilities and their projects and activities intended for public convenience and necessity. The