

**NAPOCOR EMPLOYEES AND WORKERS UNION (NEWU) AND ALL
OTHER NAPOCOR EMPLOYEES REPRESENTED BY ITS PRESIDENT,
MELITO LUPANGCO, RICHARD R. MANZANO, EDWIN LARO,
CATHERINE C. SUMAGANG, ...**

Ponente: SADANG, J.

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SADANG, J.:

For the Court's action are petitioners-appellees' 1) Motion for Reconsideration of the Decision dated October 23, 2013 reversing and setting aside the Decision of the Regional Trial Court of Quezon City, Branch 76, in Civil Case No. Q-07-60891, 2) Supplemental Motion for Reconsideration, and 3) Addendum/Supplement to the Supplemental Motion for Reconsideration [With Leave of the Honorable Court], Addendum, for brevity.

Petitioners-appellees point out that fifty percent (50%) of the money appropriated for the Net Increment Adjustment (NIA)[1] of National Power Corporation (NPC) employees have already been paid and the only issue is whether the NPC can renege on its ministerial obligation to release the remaining half which is already in escrow. They contend that the quitclaims for the second tranche as a condition for the release of the first tranche are void because they resulted in diminution of their salaries. They argue that NPC is estopped from denying its liability. In their Addendum, petitioners-appellees contend that they were discriminated against in relation to their peers when they were not given their NIA, hence, they were denied equal protection of the law.

The Solicitor General filed a Comment to the Motion for Reconsideration arguing that regardless of the validity or invalidity of the quitclaims what determines the rightfulness of petitioners-appellees claims is the validity of the circular upon which they are based.

Petitioners-appellees filed Reply to the Solicitor General's Comment insisting that the NPC can not unilaterally withdraw the benefits. They reiterated that NPC is estopped from denying its obligation.

The Solicitor General filed a Comment to the Addendum and counters that petitioners-appellees are barred from raising equal protection at this late stage and even granting that they are not, they are situated differently from the other NPC employees. The Solicitor General also cited the rule that the State cannot be estopped by the omission, mistake or error of its officials and agents.

The Motion for Reconsideration and the supplement and addendum thereto must be denied.

As correctly argued by the Solicitor General, what is determinative of this case is the basis of the right of petitioners-appellees to the NIA. To reiterate, Circular No. 2001-51, the legal basis for the grant of the NIA, can no longer be implemented. As held in *Boncodin v. National Power Corporation Employees Consolidated Union*,[2] said circular has already been rectified by NPC Board Resolution No. 2002-81 considering that the Department of Budget and Management (DBM) had put in question its validity and recommended disapproval of the NIA.

That one-half of the NIA had already been released does not give petitioners-appellees vested rights thereto in

view of the rectification of Circular No. 2001-51. Neither can the initial release estop the government from no longer implementing the NIA. As correctly argued by the Solicitor General, the State cannot be estopped by the mistakes of its officials and agents.

Finally, petitioners-appellees' invocation of equal protection clause cannot be considered. They never raised said issue in their Amended Petition in the lower court. It is only in their Addendum that petitioners-appellees raised the issue. The settled rule is that no question will be entertained on appeal unless it had been raised in the court below. Points of law, theories, issues and arguments not adequately brought to the attention of the lower court need not be, and ordinarily will not be, considered by a reviewing court as they cannot be raised for the first time on appeal. Springing surprises on the opposing party is offensive to the sporting idea of fair play, justice and due process; hence the proscription against raising a new issue for the first time on appeal.[3] In any case, the issue of equal protection is already academic considering that there is no more legal basis for the grant of NIA.

WHEREFORE, the Motion for Reconsideration, the Supplement thereto, and the Addendum to the Supplement are DENIED for lack of merit.

SO ORDERED.

Ybañez, (Acting Chairperson), and Diamante, JJ., concur.

[1] Also called Step Increment Allowance (SIA)

[2] 503 SCRA 611

[3] ARIEL C. SANTOS, vs. People of the Philippines and the Sandiganbayan, G.R. No. 161877. March 23, 2006 citing Union Bank vs. CA, G.R. No. 134068, June 25, 2001, 359 SCRA 480.

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