

GENOVIVA DIMAIWAT, JOSEPHINE LEONIDAS & EVANGELINE LAURENTE, PLAINTIFFS-APPELLEES, VS. CAMARINES SUR II ELECTRIC COOPERATIVE REPRESENTED BY ITS OFFICER-IN-CHARGE JANE BARRAMEDA ...

Ponente: SORONGON, E.D., J.

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SORONGON, E.D., J.

This is an Appeal[1] from the Decision[2] dated July 6, 2010 of the Regional Trial Court of Pili, Camarines Sur, Branch 33 in Civil Case No. P-2547.

From the record we found:

On June 10, 2010, Genoviva Dimaiwat, Josephine Leonidas and Evangeline Laurente (appellees) jointly and in representation of all the members and consumers of Camarines Sur Electric Cooperative (CASURECO II) filed a “class suit” with the Regional Trial Court (RTC) of Camarines Sur for Injunction with prayer for temporary restraining order (TRO) against CASURECO II for the sudden, unexpected and unannounced increase in its Generation Systems Charge beginning the month of April 2010. In support thereof, appellees claimed that prior to April 2010, their electric bill only ranges from Php400-Php600. However, when they received their April 2010 billing they observed the sudden increase in their bill by at least 80% brought about by the increase in the Generation Systems Charge from Php4.8939 to Php7.31 per kilowatt hour.

During the hearing of the TRO, CASURECO II admitted that the increase in the Generation Systems Charge was triggered by the increase in the cost of power it purchased from Whole Sale Electricity Spot Market or WESM when its power supply with Aboitiz Power, Inc., its power supplier, expired. CASURECO II had to necessarily invite other power suppliers to submit their proposal for power supply. At the bidding, IN2POWER emerged the winning bidder. Accordingly, CASURECO II entered into a power supply agreement with IN2POWER. However, on March 18, 2010 CASURECO II received an information[3] from IN2POWER that it can no longer supply the former's power needs due to the inability of Calaca Power Plant to supply IN2POWER's power requirement as an aggregator. Forced by circumstances, CASURECO II had to buy its power from WESM at a much higher price.

CASURECO II further pointed out that under the Energy Regulatory Commission (ERC) Resolution NO. 16, Series of 2009,[4] otherwise known as “Rules Governing Automatic Cost Adjustment and True-Up Mechanisms and Corresponding Confirmation Process for Distribution Utilities”, no prior notice to consumers of the rate of increase in the General Systems Charge is required as it is authorized to make an automatic pass on of the generation charges to consumers without such advance notice.

A TRO valid for 20 days was consequently issued by the RTC[5] to forestall the imposition of the rate increase.

In its Answer to Petition,[6] CASURECO II argued that the RTC has no jurisdiction over the case since it is the ERC which has the original and exclusive power to settle cases involving contests in power rates, fees, fines and

penalties in accordance with Section 43 (u) of R.A. 9136, otherwise known as the EPIRA Law. Section 41 of the same law further provides that the ERC shall have the sole power to handle consumer complaints such as the present controversy. It also informed the trial court of the pendency of ERC Case No. 2010-035 MC[7] which has for its subject a petition for injunction and application for TRO filed by the City of Naga through, its then mayor, the late Jesse M. Robredo.

The RTC issued its assailed Decision the dispositive portion thereof reads:

“WHEREFORE, prescinding from the foregoing, petitioners having established by sufficient and substantial evidence, CASURECO II, represented by its OIC-General Manager, Jane Barrameda and its President Perfecto Nixon Tabora, is hereby PERMANENTLY enjoined from demanding and collecting payments from herein petitioners and the rest of the member-consumers or end-users of CASURECO II for their electric consumption last April 2010 and demandable last May 2010 UNLESS the power rate billing is based on the March 2010 power rate which is P4.8939 per kilowatt hour, less the penalty charge imposable for the duration of the TRO as subsequent to March 25, 2010, the expiry date of the extension by APRI of its power supply agreement with CASURECO II, the latter directly purchased its 100% power needs from WESM (Wholesale Electricity Spot Market) at excessively high rates and without proper notice and hearing.

CASURECO II shall refund, by way of credit to subsequent monthly billings, all member-consumers and/or end users, who have earlier paid their May consumption consumed last April 2010 and payable on May 2010. To cushion the adverse impact of the refund on the financial viability of CASURECO II, said refund, by way of the aforesaid credit scheme shall in no case exceed three (3) subsequent monthly billings.

June 2010 billings and onwards based on the correct and approved power rates by the ERC shall be allowed and be made demandable and payable PROVIDED that this Court be furnished with compliance certifications as to adherence of prior notice and hearings as well as to certification from the ERC as to approval of the power rate adjustments.

Finally, as to the culpability or non-culpability of the concerned officers as well as to the members of the Board of Directors of CASURECO II relative to their personal liabilities to the utility firm and/or its member consumers due to their mismanagement of the electric cooperative, suffice it to state that it is beyond the purview of this petition and of this Court's jurisdiction. Persons or entities adversely affected have their recourse in law and in another proper forum.

SO ORDERED.”

Displeased, CASURECO II interposed this appeal alleging that:

THE REGIONAL TRIAL COURT COMMITTED AN IRREVERSIBLE ERROR IN HOLDING THAT IT HAS JURISDICTION OVER THE SUBJECT MATTER OF THE PETITION.

ASSUMING THAT THE REGIONAL TRIAL COURT HAS JURISDICTION OVER THE SUBJECT MATTER OF THE PETITION IT COMMITTED AN ERROR IN HOLDING THAT THE PETITION CAN BE CLASSIFIED AS A CLASS SUIT EVEN IF ALL TYPES OF MEMBER-CONSUMERS WERE NOT REPRESENTED IN THE PETITION.

In fine, the issue may be restated to whether or not the trial court has jurisdiction over the subject matter of the petition for injunction.

We grant the appeal for being meritorious. The trial court had erroneously arrogated upon itself the jurisdiction to pass upon the issue of whether or not CASURECO II is authorized to collect unannounced increase in the Generation Systems Charge to its member-consumers given the fact that authority to resolve this controversy, the jurisdiction of which is initially lodged with the administrative body of special competence, is the ERC.

Our legal system had always adhered to the "doctrine of primary jurisdiction" which holds that if a case is such that its determination requires the expertise, specialized training and knowledge of an administrative body, relief must first be obtained in an administrative proceeding before resort to the courts is had even if the matter may well be within their proper jurisdiction.[8] It applies where a claim is originally cognizable in the courts and comes into play whenever enforcement of the claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative agency.[9] Unfortunately, this doctrine was not followed by the trial court. Verily, it was grievous error for it to insist its jurisdiction notwithstanding that early on it was already advised of the pendency of the petition for injunction the City of Naga, through then the late Mayor Robredo, had instituted invoking a case of the same nature, i.e. CASURECO II's imposition of additional generation charge. On that score alone, the RTC should have outrightly dismissed the case and let the ERC take over.

Also, the RTC set aside the pertinent provisions of the EPIRA Law granting exclusive and original jurisdiction upon issues concerning electricity and power conflict between the power utilities and their respective consumers. The case of *BF Homes, Inc. et al. vs. MERALCO*[10] provides a clear discussion on this issue. Thus:

In *Manila Electric Company v. Energy Regulatory Board*, the Court traced the legislative history of the regulatory agencies which preceded the ERC, presenting a summary of these agencies, the statutes or issuances that created them, and the extent of the jurisdiction conferred upon them, viz:

1. The first regulatory body, the Board of Rate Regulation (BRR), was created by virtue of Act No. 1779. Its regulatory mandate under Section 5 of the law was limited to fixing or regulating rates of every public service corporation.
2. In 1913, Act No. 2307 created the Board of Public Utility Commissioners (BPUC) to take over the functions of the BRR. By express provision of Act No. 2307, the BPUC was vested with jurisdiction, supervision and control over all public utilities and their properties and franchises.
3. On November 7, 1936, Commonwealth Act (C.A.) No. 146, or the Public Service Act (PSA), was passed creating the Public Service Commission (PSC) to replace the BPUC. Like the BPUC, the PSC was expressly granted jurisdiction, supervision and control over public services, with the concomitant authority of calling on the public force to exercise its power, to wit:

"SEC. 13. Except as otherwise provided herein, the Commission shall have general supervision and regulation of, jurisdiction and control over, all public utilities, and also over their property, property rights, equipment, facilities and franchises so far as may be necessary for the purpose of carrying out the provisions of this Act, and in the exercise of its authority it shall have the necessary powers and the aid of the public force x x x."

Section 14 of C.A. No. 146 defines the term "public service" or "public utility" as including "every individual, co partnership, association, corporation or joint-stock company, . . . that now or hereafter may own, operate, manage or control within the Philippines, for hire or compensation, any common carrier, x x x, electric light, heat, power, x x x, when owned, operated and managed for public use or service within the Philippines x x x." Under the succeeding Section 17(a), the PSC has the power even without prior hearing –

(a) To investigate, upon its own initiative, or upon complaint in writing, any matter concerning any public service as regards matters under its jurisdiction; to require any public service to furnish safe, adequate and proper service as the public interest may require and warrant, to enforce compliance with any standard, rule, regulation, order or other requirement of this Act or of the Commission, x x x.

4. Then came Presidential Decree (P.D.) No. 1, reorganizing the national government and implementing the Integrated Reorganization Plan. Under the reorganization plan, jurisdiction, supervision and control over public services related to electric light, and power heretofore vested in the PSC were transferred to the Board

of Power and Waterworks (BOPW).

Later, P.D. No. 1206 abolished the BOPW. Its powers and function relative to power utilities, including its authority to grant provisional relief, were transferred to the newly-created Board of Energy (BOE).

5. On May 8, 1987, then President Corazon C. Aquino issued E.O. No. 172 reconstituting the BOE into the ERB, transferring the former's functions and powers under P.D. No. 1206 to the latter and consolidating in and entrusting on the ERB "all the regulatory and adjudicatory functions covering the energy sector." Section 14 of E.O. No. 172 states that "(T)he applicable provisions of [C.A.] No. 146, as amended, otherwise known as the 'Public Service Act'; x x x and [P.D.] No. 1206, as amended, creating the Department of Energy, shall continue to have full force and effect, except insofar as inconsistent with this Order."²⁵

Thereafter, on June 8, 2001, Republic Act No. 9136, known as the Electric Power Industry Reform Act of 2001 (EPIRA), was enacted, providing a framework for restructuring the electric power industry. One of the avowed purposes of the EPIRA is to establish a strong and purely independent regulatory body. The Energy Regulatory Board (ERB) was abolished and its powers and functions not inconsistent with the provision of the EPIRA were expressly transferred to the ERC.²⁶

The powers and functions of the ERB not inconsistent with the EPIRA were transferred to the ERC by virtue of Sections 44 and 80 of the EPIRA, which read:

Sec. 44. Transfer of Powers and Functions. – The powers and functions of the Energy Regulatory Board not inconsistent with the provisions of this Act are hereby transferred to the ERC. The foregoing transfer of powers and functions shall include all applicable funds and appropriations, records, equipment, property and personnel as may be necessary.

Sec. 80. Applicability and Repealing Clause. – The applicability provisions of Commonwealth Act No. 146, as amended, otherwise known as the "Public Service Act." Republic Act 6395, as amended, revising the charter of NPC; Presidential Decree 269, as amended, referred to as the National Electrification Decree; Republic Act 7638, otherwise known as the "Department of Energy Act of 1992"; Executive Order 172, as amended, creating the ERB; Republic Act 7832 otherwise known as the "Anti-Electricity and Electric Transmission Lines/Materials Pilferage Act of 1994"; shall continue to have full force and effect except insofar as they are inconsistent with this Act.

The provisions with respect to electric power of Section 11(c) of Republic Act 7916, as amended, and Section 5(f) of Republic Act 7227, are hereby repealed or modified accordingly.

Presidential Decree No. 40 and all laws, decrees, rules and regulations, or portions thereof, inconsistent with this Act are hereby repealed or modified accordingly.

In addition to the foregoing, the EPIRA also conferred new powers upon the ERC under Section 43, among which are:

SEC. 43. Functions of the ERC. – The ERC shall promote competition, encourage market development, ensure customer choice and penalize abuse of market power in the restructured electricity industry. In appropriate cases, the ERC is authorized to issue cease and desist order after due notice and hearing. Towards this end, it shall be responsible for the following key functions in the restructured industry:

x x x x

(f) In the public interest, establish and enforce a methodology for setting transmission and distribution wheeling rates and retail rates for the captive market of a distribution utility, taking into account all relevant considerations, including the efficiency or inefficiency of the regulated entities. The rates must be such as to allow the recovery of just and reasonable costs and a reasonable return on rate base (RORB) to enable the entity to operate viably. The ERC may adopt alternative forms of internationally-accepted rate-setting

methodology as it may deem appropriate. The rate-setting methodology so adopted and applied must ensure a reasonable price of electricity. The rates prescribed shall be non-discriminatory. To achieve this objective and to ensure the complete removal of cross subsidies, the cap on the recoverable rate of system losses prescribed in Section 10 of Republic Act No. 7832, is hereby amended and shall be replaced by caps which shall be determined by the ERC based on load density, sales mix, cost of service, delivery voltage and other technical considerations it may promulgate. The ERC shall determine such form of rate-setting methodology, which shall promote efficiency. x x x.

x x x x

(u) The ERC shall have the original and exclusive jurisdiction over all cases contesting rates, fees, fines and penalties imposed by the ERC in the exercise of the abovementioned powers, functions and responsibilities and over all cases involving disputes between and among participants or players in the energy sector.

All notices of hearings to be conducted by the ERC for the purpose of fixing rates or fees shall be published at least twice for two successive weeks in two (2) newspapers of nationwide circulation.

A careful review of the material allegations of BF Homes and PWCC in their Petition before the RTC reveals that the very subject matter thereof is the off-setting of the amount of refund they are supposed to receive from MERALCO against the electric bills they are to pay to the same company. This is squarely within the primary jurisdiction of the ERC.

The right of BF Homes and PWCC to refund, on which their claim for off-setting depends, originated from the MERALCO Refund cases. In said cases, the Court (1) authorized MERALCO to adopt a rate adjustment in the amount of P0.017 per kilowatthour, effective with respect to its billing cycles beginning February 1994; and (2) ordered MERALCO to refund to its customers or credit in said customers' favor for future consumption P0.167 per kilowatt hour, starting with the customers' billing cycles that begin February 1998, in accordance with the ERB Decision dated February 16, 1998.

It bears to stress that in the MERALCO Refund cases, this Court only affirmed the February 16, 1998 Decision of the ERB (predecessor of the ERC) fixing the just and reasonable rate for the electric services of MERALCO and granting refund to MERALCO consumers of the amount they overpaid. Said Decision was rendered by the ERB in the exercise of its jurisdiction to determine and fix the just and reasonable rate of power utilities such as MERALCO.

Presently, the ERC has original and exclusive jurisdiction under Rule 43(u) of the EPIRA over all cases contesting rates, fees, fines, and penalties imposed by the ERC in the exercise of its powers, functions and responsibilities, and over all cases involving disputes between and among participants or players in the energy sector. Section 4(o) of the EPIRA Implementing Rules and Regulation provides that the ERC "shall also be empowered to issue such other rules that are essential in the discharge of its functions as in independent quasi-judicial body."

Indubitably, the ERC is the regulatory agency of the government having the authority and supervision over MERALCO. Thus, the task to approve the guidelines, schedules, and details of the refund by MERALCO to its consumers, to implement the judgment of this Court in the MERALCO Refund cases, also falls upon the ERC. By filing their Petition before the RTC, BF Homes and PWCC intend to collect their refund without submitting to the approved schedule of the ERC, and in effect, enjoy preferential right over the other equally situated MERALCO consumers.

Administrative agencies, like the ERC, are tribunals of limited jurisdiction and, as such, could wield only such as are specifically granted to them by the enabling statutes. In relation thereto is the doctrine of primary jurisdiction involving matters that demand the special competence of administrative agencies even if the question involved is also judicial in nature. Courts cannot and will not resolve a controversy involving a

question within the jurisdiction of an administrative tribunal, especially when the question demands the sound exercise of administrative discretion requiring special knowledge, experience and services of the administrative tribunal to determine technical and intricate matters of fact. The court cannot arrogate into itself the authority to resolve a controversy, the jurisdiction of which is initially lodged with the administrative body of special competence.²⁷

Since the RTC had no jurisdiction over the Petition of BF Homes and PWCC in Civil Case No. 03-0151, then it was also devoid of any authority to act on the application of BF Homes and PWCC for the issuance of a writ of preliminary injunction contained in the same Petition. The ancillary and provisional remedy of preliminary injunction cannot exist except only as an incident of an independent action or proceeding.²⁸

Incidentally, BF Homes and PWCC seemed to have lost sight of Section 8 of Executive Order No. 172 which explicitly vested on the ERB, as an incident of its principal function, the authority to grant provisional relief, thus:

Section 8. Authority to Grant Provisional Relief. — The Board may, upon the filing of an application, petition or complaint or at any stage thereafter and without prior hearing, on the basis of supporting papers duly verified or authenticated, grant provisional relief on motion of a party in the case or on its own initiative, without prejudice to a final decision after hearing, should the Board find that the pleadings, together with such affidavits, documents and other evidence which may be submitted in support of the motion, substantially support the provisional order: Provided, That the Board shall immediately schedule and conduct a hearing thereon within thirty (30) days thereafter, upon publication and notice to all affected parties.

The aforequoted provision is still applicable to the ERC as it succeeded the ERB, by virtue of Section 80 of the EPIRA. A writ of preliminary injunction is one such provisional relief which a party in a case before the ERC may move for.

The Office of the Solicitor General (OSG) had initially subscribed to the foregoing doctrine. However, it made a turn-around by recanting and changing its position based on the theory that since the tenor of the petition is based on the alleged failure of CASURECO II to observe due process in imposing the increase in the generation charges, the RTC had the jurisdiction to pass upon appellee's petition for injunction.

We disagree. To sustain the OSG's position would be diminishing the exclusive and original jurisdiction given by law to the ERC. Moreover, to go with the OSG's position would open the gates to litigants to evade the jurisdiction of the ERC by tailoring their petitions in a manner which would involve any violation of due process. This court will not countenance such procedural shortcut. As long as we adhere to the doctrine of primary jurisdiction, no exception of this sort would be allowed by Us.

Verily, with the dismissal of the petition for injunction of appellees the auxiliary remedy of injunction previously issued by the RTC must perforce be disallowed. For that matter, the same is consequently dissolved. In fine, with the foregoing determination there is no more need to discuss the other arguments presented by CASURECO II in this appeal.

WHEREFORE, the Appeal is hereby GRANTED and the impugned Decision dated July 6, 2010 of the Regional Trial Court of Pili, Camarines Sur, Branch 33 in Civil Case No. P-2547 is hereby REVERSED and SET ASIDE. Accordingly, the Petition for Injunction filed by Genoviva Dimaiwat, Josephine Leonidas, and Evangeline Laurente is ordered DISMISSED and the Permanent Injunction issued by the trial court is hereby DISSOLVED.

SO ORDERED.

Carandang (Chairperson) and Gonzales-Sison, JJ., concur.

- [1] Rollo, pages 19-42.
- [2] Rollo, pages 50-54.
- [3] Record, Exh. 22, page 22.
- [4] Record, pages 56-57.; Exhibit “E” pages 58-90.
- [5] Record, pages 177-179.
- [6] Record, pages 205-216,
- [7] Record, Annex “3”, pages 219-222.
- [8] Euro-Med Laboratories, Phil., Inc. vs. The Province of Batangas. G.R. No. 148106, July 17, 2006.
- [9] Ibid.
- [10] G.R. No. 171624, December 6, 2010.

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