

ERNESTO M. ABOITIZ, HECTOR N. CAMPOS, CELESTINO C. ALCANTARA, ELEUTERIO M. OLAER AND ARMANDO MINIA, PETITIONERS, VS. THE HON. TEODORO P. REGINO, IN HIS CAPACITY AS PRESIDING JUD...

G.R. No. 107809. July 05, 1993

Ponente: CRUZ, J.

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CRUZ, J.:

On August 20, 1980, the National Power Corporation entered into an agreement with Ferrochrome Phils. Inc. (FPI) for the direct sale and supply by the former of all the latter's plant operations requirements. FPI is a power intensive industry registered with the Board of Investments.[1] Its facilities are located at PHIVIDEC Industrial Estate, Tagoloan, Misamis Oriental, within the area covered by Cagayan Electric Power and Light Co., Inc. (CEPALCO) franchise.[2]

Contending that the aforesaid agreement violated its franchise rights and the national electrification policy under existing laws, CEPALCO filed before the Regional Trial Court of Quezon City a petition for prohibition, mandamus and injunction with prayer for a temporary restraining order and preliminary injunction against NAPOCOR.[3] The petition was docketed as Civil Case No. Q-35945.

On May 2, 1984, the trial court rendered judgment disposing as follows:

WHEREFORE, for all the foregoing considerations, judgment is hereby rendered as prayed for by the petitioner, and the Court hereby orders the respondent to permanently 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 the petitioner. Accordingly, the Court declares that any and all acts, arrangements and/or contracts entered into by respondent for direct power connection, and the direct sale, supply and delivery of electric power by respondent to Ferrochrome without coursing the same through petitioner, are violative of the rights of the petitioner under its legislative franchise, and are therefore illegal, null and void. If in the meantime the respondent has already caused or made a direct connection of its power line to Ferrochrome Phil., Inc., the respondent is ordered to immediately relinquish to petitioner all its facilities intended for such power connection without causing any undue interruption of Ferrochrome's operations, upon proper reimbursement by petitioner of the actual cost thereof, and petitioner is likewise ordered to immediately assume the obligation to supply power to Ferrochrome after the appropriate contract is executed for the purpose. (Emphasis supplied)

Finally, the respondent is ordered to pay to the petitioner all sums which it has already collected representing the difference between respondent's sale of power at non-utility rates and the amounts computed at utility rates covering all the months from the time Ferrochrome started to draw electricity directly from respondent on August 17, 1982, together with all the sums withdrawn by respondent from the Bank of America, in accordance with the respondent's own voluntary commitment in the "Joint Supplemental Manifestation and

Motion" of the parties dated September 26, 1983.

No pronouncement as to costs and attorney's fees.

The decision was affirmed by this Court in G.R. No. 72085 on December 28, 1989, where Chief Justice Fernan declared:

The statutory authority given to respondent-appellant NPC in respect of sales of energy in bulk direct 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. Thus, in NPC vs. CEPALCO, supra, this Court held:

x x x The law on the matter is clear. PD 40 promulgated on 7 November 1973 expressly provides that the generation of electric power shall be undertaken solely by the NPC. However, Section 3 of the same decree also provides that the distribution of electric power shall be undertaken by cooperatives, private utilities (such as the CEPALCO), local governments and other entities duly authorized, subject to state regulation.

Sometime in September 1990, FPI filed a new application for the direct supply of electric power from NAPOCOR for its ferro-alloy plant located at the PHIVIDEC Industrial Estate in Tagoloan, Misamis Oriental. The NAPOCOR Hearing Committee on Direct Power Connection commenced to hear the application.

On June 26, 1991, CEPALCO filed with the trial court in Civil Case No. Q-35945 a petition for contempt against the petitioners, as officers of NAPOCOR, for disobedience to the decision dated May 2, 1984. A Motion for Alias Writ of Execution was later also filed by CEPALCO.

On August 10, 1992, Judge Teodoro P. Regino rendered judgment disposing as follows:

WHEREFORE, finding respondents Messrs. Ernesto M. Aboitiz, Hector N. Campos, Celestino C. Alcantara, Eleuterio M. Olaer, and Armando Minia guilty of indirect contempt, this Court hereby sentences each of them to pay a fine of Five Hundred Pesos (P500.00) each. Ferrochrome Philippines, Inc. Reinhold Schlohsnagel are absolved therefrom.

As further prayed for, let an alias writ of execution issue to enforce the permanent injunction contained in the final decision of this Court.

SO ORDERED.

Reconsideration was denied in an order dated October 29, 1992.

This petition challenges the above orders.

The petitioners allege that the underlying rationale of this Court in G.R. No. 72085, which affirmed the May 2, 1984 decision of the lower court, was the failure to give CEPALCO a hearing on FPI's first application for direct connection. In the determination of the culpability of the petitioners for contempt, the crucial issue to be determined is the scope of the injunction issued by the court below in its decision dated May 2, 1984, in light of the decision of the Supreme Court of December 28, 1989. Their position is that the injunction against NAPOCOR is confined only to the previous application of FPI as granted by NAPOCOR and does not cover future applications.

CEPALCO contends otherwise. It argues that the decisions of the trial court and this Court are explicit and unambiguous. NAPOCOR is permanently enjoined from directly servicing FPI. This injunction applies not only to the direct connection already made at the time the decisions were rendered but likewise extends to similar future acts of the same nature.

The sole issue in this petition is the propriety of the finding of contempt by the court a quo.

The scope of the injunction, as affirmed by this Court, was defined in the decision of the lower court dated May 2, 1984. Thus, it categorically stated that the prohibition against NAPOCOR was "permanent." It declared in advance as illegal "any and all acts, arrangements and/or contracts (to be) entered into by NAPOCOR for direct power connection, and the direct sale, supply and delivery of electric power by NAPOCOR" because the property rights of CEPALCO under its legislative franchise would be breached by such deeds. It also ordered NAPOCOR to "immediately relinquish to CEPALCO all its facilities intended for such power connection without causing any undue interruption of Ferrochrome's operations, upon proper reimbursement by petitioner of the actual cost thereof," and CEPALCO to "immediately assume the obligation to supply power to Ferrochrome after the appropriate contract is executed for the purpose."

These directives show that the lower court (and this Court) intended the arrangement 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 court 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."^[4] 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 the petitioner."

Finally, the petitioners are reminded that the order finding them in contempt holds them personally liable as officers of NAPOCOR. There is no finding against NAPOCOR itself. In fact, as pointed out by CEPALCO, NAPOCOR is not even a party in the contempt proceedings.

The Court is convinced that the trial court correctly implemented its decision of May 2, 1984, and committed no reversible error in finding the petitioners in contempt for defiance of that judgment.

WHEREFORE, the petition is DENIED, with costs against the petitioners. The temporary restraining order dated January 11, 1993, is LIFTED. It is so ordered.

Griño-Aquino and Bellosillo, JJ., concur.

Quiason, J., no part.

[1] Cagayan Electric Power and Light Company, Inc. vs. National Power Corporation, 180 SCRA 628.

[2] Ibid.

[3] Rollo, pp. 35-43.

[4] Webster's New World Dictionary, College Edition, 1968, p. 1090.

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