

PROVINCE OF ZAMBOANGA DEL NORTE, REPRESENTED BY GOV. ISAGANI S. AMATONG, PETITIONER, VS. COURT OF APPEALS AND ZAMBOANGA DEL NORTE ELECTRIC COOPERATIVE, INC., RESPONDENTS.

G.R. No. 109853. October 11, 2000

Ponente: PARDO, J.

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PARDO, J.:

Which government agency has jurisdiction over a complaint for illegal collection of power bills by an electric cooperative? Petitioner submits that jurisdiction is vested with the Energy Regulatory Board or the regular trial courts, while respondents position is that jurisdiction lies with the National Electrification Administration.

What is before the Court is a petition for review on certiorari assailing the decision of the Court of Appeals,[1] that reversed the orders of the Regional Trial Court, Zamboanga del Norte denying petitioner's motion for dismissal of the complaint.[2]

On July 8, 1991, petitioner Province of Zamboanga del Norte (represented by Gov. Isagani S. Amatong) filed with the Regional Trial Court, Zamboanga del Norte a complaint against Zamboanga del Norte Electric Cooperative (ZANECO) for "Illegal Collection Of Power Bills And Preliminary Injunction With Restraining Order." [3]

Petitioner in its complaint alleged that as per electric bills issued by ZANECO for the month of May 1991, respondent increased the Fuel Compensating Charge (FCC) by P0.29 and Interim Adjustment by P0.02, or a total of P 0.31. This amount is added to the basic charge of P 1.90 per kilowatt.

By June 1991, ZANECO increased the FCC once more to P1.39 instead of only P0.29. The Interim Adjustment also increased to P0.06 instead of only P 0.02.

Petitioner claimed that the increase was arbitrary and illegal, and that the Energy Regulatory Board (ERB) did not sanction the collections.

As a result, the electric bills of the consumers almost doubled in amount.

Further, petitioner alleged that ZANECO cannot increase the bills since the power rate increase from the National Power Corporation (NPC) of P0.17 per kilowatt hour was not implemented yet due to a restraining order issued by the Supreme Court.[4]

On July 22, 1991, ZANECO filed its answer to the complaint. It assailed the jurisdiction of the trial court over the subject of the case.[5]

On July 26, 1991, the trial court issued a writ of preliminary injunction[6] ordering respondent to desist from imposing, charging, billing and collecting the FCC and other additional charges upon its end-users in Zamboanga

del Norte and the cities of Dipolog and Dapitan. The court also ordered respondent to refrain from cutting off the electric lines of those who refused to pay the questioned charges, pending determination of the litigation.

On October 8, 1991, respondent ZANECO filed with the trial court a motion requesting the court to set for hearing the affirmative defenses set in its answer, asking for the dismissal of the case.

On March 27, 1992, respondent filed with the trial court a third-party complaint[7] against the National Power Corporation (NPC) praying for the issuance of a writ of preliminary injunction or a restraining order. On the same date, the trial court issued an order restraining respondent to refrain from disconnecting its electric service on March 28, 1992 or any other date, effective until recalled.[8] Respondent ZANECO alleged that despite NPC's knowledge of the restraining order against the collection of the FCC, which later[9] became known as Incremental Cost Charge (ICC), NPC sent a demand letter[10] with notice of disconnection of electric service if ZANECO did not pay the FCC/ICC bills and extra-hydro rates.

On April 14, 1992, the trial court ordered the issuance of a writ of preliminary injunction against NPC.[11]

On March 28, 1992, the trial court denied respondent ZANECO's motion to dismiss.[12] The court ruled that (1) the nullity of the charges imposed are matters not capable of pecuniary estimation and thus fall within the jurisdiction of the regional trial court; and (2) it is futile to file a complaint with the National Electrification Administration (NEA) or the NPC considering that charges imposed by respondent emanated from these agencies.[13]

On April 18, 1992, respondent ZANECO filed with the trial court a motion for reconsideration of the order dated March 28, 1992.[14]

On October 9, 1992 the trial court denied ZANECO's motion for reconsideration.[15]

On appeal to the Court of Appeals, on November 16, 1992, the Court of Appeals issued a temporary restraining order, the dispositive portion of which reads:

"WHEREFORE, let a temporary restraining order be issued enjoining public respondent, its agents and representative from proceeding with the case and from enforcing all the questioned orders until further notice from this Court.

"In addition, private respondent is hereby given five (5) days from notice to show cause why no writ of preliminary injunction should be issued for the purpose." [16]

On January 28, 1993, the Court of Appeals rendered its decision reversing that of the trial court. The decretal portion reads:

"WHEREFORE, premises considered, the petition is GRANTED, the order dated March 28, 1992 and October 9, 1992 are hereby SET ASIDE and the respondent Court ordered to DISMISS the complaint.

SO ORDERED." [17]

Hence, this petition.[18]

Petitioner assails the imposition of the FCC and Incremental Costs Charge (ICC) as void, illegal, and unconstitutional for lack of notice, hearing and consultation of the parties affected, and without prior authority from the Energy Regulatory Board. Petitioner finally prays that the case be remanded to the trial court for trial on the merits.[19]

Petitioner rationalized that the Energy Regulatory Board (ERB) has jurisdiction by virtue of Executive Order 172, Section 3 (a) in that ERB is empowered to fix and regulate the prices of petroleum products. It argued that diesel

fuel is embraced within the term petroleum products. Since the Fuel Compensation Charge was imposed to compensate the cost of diesel fuel, then such imposition must be approved by the ERB.[20]

We disagree.

The real issue is not the compensation of the cost of diesel fuel used to feed the generating set in Mindanao.[21] Precisely, the complaint was for "Illegal Collection of Power Bills." [22]

Since the complaint is one questioning the increase in the power rates, the proper body to investigate the case is the NEA.

The regulation and fixing of power rates to be charged by electric cooperatives remain within the jurisdiction of the National Electrification Administration,[23] despite the enactment of Executive Order No. 172,[24] creating the Energy Regulatory Board.[25] The issue raised in the complaint is the legality of the imposition of the FCC or ICC. Despite the fact that diesel fuel was used to run its machinery, the fact is that respondent charged its consumers to compensate for the increase in the price of fuel. Petitioner did not question the price of diesel fuel. Rather, it questioned the charges passed on to its end users as a result of increase in the price of fuel. And the body with the technical expertise to determine whether or not the charges are legal is the NEA.

Electric cooperatives, such as the respondent, are vested under Presidential Decree No. 269[26] with the power to fix, maintain, implement and collect rates, fees, rents, tolls, and other charges and terms and conditions for service. However, the NEA requires that such must be in furtherance of the purposes and in conformity with the provisions of Presidential Decree No. 269.[27]

NEA, in the exercise of its power of supervision and control over electric cooperatives and other borrowers, supervised or controlled entities, is empowered to issue orders, rules and regulations. It may also, motu proprio or upon petition of third parties, conduct investigations, referenda and other similar actions in all matters, affecting electric cooperatives and other borrower, or supervised or controlled entities.[28]

Thus, a party questioning the rates imposed by an electric cooperative may file a complaint with the NEA as it is empowered to conduct hearings and investigations and issue such orders on the rates that may be charged.[29] Consequently, the case does not fall within the jurisdiction of the ERB.

In case a party feels aggrieved by any order, ruling or decision of the NEA, he may file a petition for review before the Court of Appeals.[30]

Petitioner next maintains that the case qualifies as an exception to the rule on exhaustion of administrative remedies, basing its argument on the unconstitutionality and arbitrariness of the imposition of the charges.

We are not persuaded.

The Court in a long line of cases has held that before a party is allowed to seek the intervention of the courts, it is a pre-condition that he avail himself of all administrative processes afforded him. Hence, if a remedy within the administrative machinery can be resorted to by giving the administrative officer every opportunity to decide on a matter that comes within his jurisdiction, then such remedy must be exhausted first before the court's power of judicial review can be sought. The premature resort to the court is fatal to one's cause of action.[31] Accordingly, absent any finding of waiver or estoppel, the case may be dismissed for lack of cause of action.[32]

The doctrine of exhaustion of administrative remedies is not without its practical and legal reasons. Indeed, resort to administrative remedies entails lesser expenses and provides for speedier disposition of controversies. Our courts of justice for reason of comity and convenience will shy away from a dispute until the system of administrative redress has been completed and complied with so as to give the administrative agency every

opportunity to correct its error and to dispose of the case.[33]

True, the principle of exhaustion of administrative remedies has certain exceptions as embodied in various cases. This doctrine is a relative one and is flexible depending on the peculiarity and uniqueness of the factual and circumstantial settings of a case. It is disregarded: (1) when there is a violation of due process;[34] (2) when the issue involved is purely a legal question;[35] (3) when the administrative action is patently illegal and amounts to lack or excess of jurisdiction;[36] (4) when there is estoppel on the part of the administrative agency concerned;[37] (5) when there is irreparable injury;[38] (6) when the respondent is a department secretary whose acts, as an alter ego of the President, bears the implied and assumed approval of the latter;[39] (7) when to require exhaustion of administrative remedies would be unreasonable;[40] (8) when it would amount to a nullification of a claim;[41] (9) when the subject matter is a private land in land case proceedings;[42] (10) when the rule does not provide a plain, speedy and adequate remedy; (11) when there are circumstances indicating the urgency of judicial intervention;[43] and unreasonable delay would greatly prejudice the complainant;[44] (12) when no administrative review is provided by law;[45] (13) where the rule of qualified political agency applies;[46] and (14) when the issue of non-exhaustion of administrative remedies has been rendered moot.[47]

Petitioner fails to show that the instant case falls under any of the exceptions. Mere allegation of arbitrariness will not suffice to vest in the trial court the power that has been specifically granted by law to special government agencies.

The doctrine of primary jurisdiction does not warrant a court to arrogate unto itself the authority to resolve a controversy the jurisdiction over which is initially lodged with an administrative body of special competence.[48]

We have held that while the administration grapples with the complex and multifarious problems caused by unbridled exploitation of our resources, the judiciary will stand clear. A long line of cases establishes the basic rule that the court will not interfere in matters which are addressed to the sound discretion of government agencies entrusted with the regulation of activities coming under the special technical knowledge and training of such agencies.[49]

In fact, a party with an administrative remedy must not merely initiate the prescribed administrative procedure to obtain relief, but also pursue it to its appropriate conclusion before seeking judicial intervention.[50] The underlying principle of the rule on exhaustion of administrative remedies rests on the presumption that when the administrative body, or grievance machinery, is afforded a chance to pass upon the matter, it will decide the same correctly.[51]

The premature invocation of the jurisdiction of the trial court warrants the dismissal of the case.

WHEREFORE, we AFFIRM in toto the decision of the Court of Appeals in CA-G.R. SP No. 29361, promulgated on January 28, 1993 setting aside the trial court's orders dated March 28, 1992 and October 9, 1992, in Civil Case No. 4386 and ordering the trial court to dismiss the complaint.

No costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Ynares-Santiago, JJ., concur.

[1] In CA-G. R. SP No. 29361, promulgated on January 28, 1993, Herrera, M.C., J., ponente, Isnani and Galvez, JJ., concurring.

- [2] In Civil Case No. 4386, Petition, Annex "L", Rollo, pp. 90-93 and Petition, Annex "N", Rollo, p. 103.
- [3] Complaint, Rollo, pp. 43-49.
- [4] Petition, Annex "C", Rollo, pp. 43-49, at p. 45.
- [5] Petition, Annex "F", Rollo, pp. 53-67.
- [6] Petition, Annex "G", Rollo, p. 68.
- [7] Rollo, pp. 75-83.
- [8] Petition, Annex "J", Rollo, pp. 84-85.
- [9] On October 26, 1991.
- [10] Dated March 23, 1992.
- [11] Petition, Annex "K", Rollo, pp. 86-89.
- [12] Petition, Annex "L", *supra*, Note 2.
- [13] *Ibid*.
- [14] Petition, Annex "M", Rollo, pp. 94-102.
- [15] Petition, Annex "N", *supra*. Note 2.
- [16] Petition, Rollo, pp. 105-106.
- [17] Rollo, pp. 34-40, at p. 39.
- [18] Filed on March 29, 1993, Rollo, pp. 3-33. We gave due course to the petition on September 20, 1993, Rollo, p. 449.
- [19] Petition, Rollo, pp. 30-31, Note 16.
- [20] *Ibid.*, at p. 22.
- [21] Petition, Rollo, p. 22.
- [22] Petition, *supra*, Note 4.
- [23] Presidential Decree No. 1206, Section 9 (c), which took effect on October 6, 1977.
- [24] Effectivity date is May 8, 1987.
- [25] Executive Order No. 172, Sections 4 and 14.
- [26] Creating the National Electrification Administration.
- [27] Presidential Decree No. 269, Section 16 (o).
- [28] P. D. No. 1645, Section 10, Enforcement Powers and Remedies.
- [29] P. D. No. 269, Section 47.
- [30] Rule 43, 1997 Rules of Civil Procedure, as amended.
- [31] *Paat vs. Court of Appeals*, 266 SCRA 167 [1997], citing *National Development Company vs. Hervilla*, 151

SCRA 520 [1987]; Atlas Consolidated Mining Company vs. Mendoza, 2 SCRA 1064 [1961]; Aboitiz vs. Collector of Customs, 83 SCRA 265 [1978]; Pestañas vs. Dyogi, 81 SCRA 574 [1978]; DARAB vs. Court of Appeals, 266 SCRA 404 [1997], citing Beguioro vs. Basa, 214 SCRA 437 [1992].

[32] Escaño vs. Court of Appeals, G. R. No. 101932, January 24, 2000; Paat vs. Court of Appeals, *supra*, citing Soto vs. Jareno, 144 SCRA 116 [1986]; Hodges vs. Mun. Board, 19 SCRA 28 [1967]; Abe-Abe vs. Manta, 90 SCRA 524 [1979]; Gone vs. District Engineer, 66 SCRA 335 [1975].

[33] Seagull Shipment Management and Transport, Inc. vs. NLRC, G. R. No. 123619, June 8, 2000.

[34] Salinas vs. NLRC, November 24, 1999, citing Samson vs. NLRC, 253 SCRA 112 [1996], Commissioner of Immigration vs. Vamenta, Jr., 45 SCRA 342 [1972], Del Mar vs. Philippine Veterans Administration, 51 SCRA 340 [1973], Bagatsing vs. Ramirez, 74 SCRA 306 [1976]; Paat vs. Court of Appeals, 266 SCRA 167 [1997], citing Quisumbing vs. Judge Gumban, 193 SCRA 520 [1991]; Carale vs. Abarintos, 269 SCRA 132 [1997], citing Severiano S. Tabios, Annotation on Failure to Exhaust Administrative Remedies as a Ground for Motion to Dismiss, 165 SCRA 352, 357-362 [1988]; Jariol vs. COMELEC, 270 SCRA 255 [1997].

[35] Paat vs. Court of Appeals, *supra*; Eastern Shipping Lines vs. POEA, 166 SCRA 533 [1988]. Aquino-Sarmiento vs. Morato, 203 SCRA 515 [1991], citing Valmonte vs. Valmonte, 170 SCRA 256 [1989], Aguilar vs. Valencia 40 SCRA 210 [1971]; Carale vs. Abarintos, *supra*; Jariol vs. COMELEC, *supra*; China Banking Corporation vs. Members of the Board of Trustees, HDMF, 307 SCRA 443 [1999].

[36] *Ibid.*, citing Industrial Power Sales, Inc. vs. Sinsuat, 160 SCRA 19 [1988]; Aquino-Sarmiento vs. Morato, *supra*, citing Azur vs. Provincial Board, 27 SCRA 50 [1969], National Development Co. vs. Collector of Customs of Manila, 9 SCRA 429 [1963]; China Banking Corporation vs. Members of the Board of Trustees, HDMF, *supra*, citing Alindao vs. Joson, 264 SCRA 211 [1996], Gonzales vs. Hechanova, 9 SCRA 230 [1963], Madrigal vs. Lecaroz, 191 SCRA 20 [1990].

[37] *Ibid.*, citing Vda. De Tan vs. Veterans Backpay Commission, 105 Phil. 377 [1959].

[38] *Ibid.*, citing De Lara vs. Cloribel, 142 SCRA 269 [1965].

[39] *Ibid.*, citing Demaisip vs. Court of Appeals, 106 Phil 237 [1959], Bartulata vs. Peralta, 59 SCRA 7 P[1974].

[40] *Ibid.*, citing Cipriano vs. Marcelino, 43 SCRA 29 [1972]; Sarmiento vs. Morato, *supra*, citing Cipriano vs. Marcelino, 43 SCRA 29 [1972].

[41] *Ibid.*, citing Alzate vs. Aldana, 107 Phil 298 [1960].

[42] *Ibid.*, citing Soto vs. Jareno, 144 SCRA 116 [1986].

[43] *Ibid.*, citing Quisumbing vs. Judge Gumban, *supra*.

[44] Sarmiento vs. Morato, *supra*, citing Bravador vs. Mamigo, 20 SCRA 742 [1967], Azuelo vs. Arnaldo, 108 Phil. 293 [1960].

[45] *Ibid.*

[46] *Ibid.*, citing Demaisip vs. Court of Appeals, *supra*.

[47] Carale vs. Abarintos, *supra*; Jariol vs. COMELEC, *supra*.

[48] Paat vs. Court of Appeals, *supra.*, citing Vidad vs. RTC, 227 SCRA 271 [1993].

[49] Sta. Ines Melale Forest Products Corporation vs. Macaraig, 299 SCRA 491 [1998]; Felipe Ysmael, Jr. and

Co. vs. Deputy Executive Secretary, 190 SCRA 673 [1993]; Concerned Officials of MWSS vs. Vasquez, 240 SCRA 502 [1995].

[50] Diamonon vs. DOLE, G.R. No. 108951, March 7, 2000, citing Carale v. Abarintos, 269 SCRA 132, 142 [1997]; Cruz vs. Del Rosario, 9 SCRA 755, 758 [1963]; Ledesma vs. Opinion, 14 SCRA 973, 976 [1965]; Manuel vs. Jimenez, 17 SCRA 55, 57 [1966].

[51] Diamonon vs. DOLE, supra., citing Union Bank of the Philippines vs. Court of Appeals, 290 SCRA 198, 219 [1998]; University of the Philippines v. Catungal, Jr., 272 SCRA 221, 240 [1997], citing De los Santos vs. Limbaga, 4 SCRA 224, 226 [1962]; Carale vs. Abarintos, supra., citing De los Santos vs. Limbaga, supra.

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