

ENERGY REGULATORY BOARD, PETITIONER, VS. COURT OF APPEALS AND PETROLEUM DISTRIBUTORS AND SERVICES CORPORATION, RESPONDENTS.

G.R. No. 113079. April 20, 2001

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

The propriety of building a state-of-the-art gasoline service station along Benigno Aquino, Jr. Avenue in Parañaque, Metro Manila is the bone of contention in these consolidated petitions for certiorari under Rule 45 of the Rules of Court. Petitioners assert that the construction of such a modern edifice is a necessity dictated by the "emerging economic landscapes." Respondents say otherwise.

The factual antecedents of the case are matters of record or are otherwise uncontroverted.

Petitioner Pilipinas Shell Petroleum Corporation (Shell) is engaged in the business of importing crude oil, refining the same and selling various petroleum products through a network of service stations throughout the country.

Private respondent Petroleum Distributors and Service Corporation (PDSC) owns and operates a Caltex service station at the corner of the MIA and Domestic Roads in Pasay City.

On June 30, 1983, Shell filed with the quondam Bureau of Energy Utilization (BEU) an application for authority to relocate its Shell Service Station at Tambo, Parañaque, Metro Manila, to Imelda Marcos Avenue of the same municipality. The application, which was docketed as BEU Case No. 83-09-1319, was initially rejected by the BEU because Shell's old site had been closed for five (5) years such that the relocation of the same to a new site would amount to a new construction of a gasoline outlet, which construction was then the subject of a moratorium. Subsequently, however, BEU relaxed its position and gave due course to the application.

PDSC filed an opposition to the application on the grounds that: 1.] there are adequate service stations attending to the motorists' requirements in the trading area covered by the application; 2.] ruinous competition will result from the establishment of the proposed new service station; and 3.] there is a decline not an increase in the volume of sales in the area. Two other companies, namely Petrophil and Caltex, also opposed the application on the ground that Shell failed to comply with the jurisdictional requirements.

In a Resolution dated March 6, 1984, the BEU dismissed the application on jurisdictional grounds and for lack of "full title" of the lessor over the proposed site. However, on May 7, 1984, the BEU reinstated the same application and thereafter conducted a hearing thereon.

On June 3, 1986, the BEU rendered a decision denying Shell's application on a finding that there was "no necessity for an additional petroleum products retail outlet in Imelda Marcos Avenue, Parañaque." Dissatisfied, Shell appealed to the Office of Energy Affairs (OEA).

Meanwhile, on May 8, 1987, Executive Order No. 172 was issued creating the Energy Regulatory Board (ERB)

and transferring to it the regulatory and adjudicatory functions of the BEU.

On May 9, 1988, the OEA rendered a decision denying the appeal of Shell and affirming the BEU decision. Shell moved for reconsideration and prayed for a new hearing or the remand of the case for further proceedings. In a supplement to said motion, Shell submitted a new feasibility study to justify its application.

The OEA issued an order on July 11, 1988, remanding the case to the ERB for further evaluation and consideration, noting therein that the "updated survey conducted by Shell" cited new developments such as the accessibility of Imelda Marcos Avenue, now Benigno Aquino, Jr. Avenue, to Parañaque residents along Sucat Road and the population growth in the trading area.

After the records of BEU Case No. 83-09-1319 was remanded to the ERB, Shell filed on March 3, 1989 an amended application, intended for the same purpose as its original application, which was docketed as ERB Case No. 89-57. This amended application was likewise opposed by PDSC.

On September 17, 1991, the ERB rendered a Decision allowing Shell to establish the service station in Benigno Aquino, Jr. Avenue. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, the application for authority to relocate a Shell service station from Tambo to Benigno Aquino Avenue, Parañaque, Metro Manila is hereby approved.

Applicant is hereby directed to:

- Start the construction and operation of the retail outlet at the actual approved site appearing in the vicinity map previously submitted to the Board within one (1) year, from the finality of this Decision and thereafter submit a sworn document of compliance therewith;
- Submit photographs showing the left side, right side and front view of the retail outlet within fifteen (15) days from completion of the construction work;
- Submit to the Board a report on the total volume of petroleum products sold each month during the first six (6) months of the operation of the station. The report shall be submitted in the form of an affidavit within ten (10) days after the end of the six-month period;
- Inform the Board in writing and the general public through a notice posted conspicuously within the premises of the station of the (a) intention of applicant or its dealer to stop operation of the retail outlet for a period longer than ninety (90) days; or (b) notice of shutdown of operation of the retail outlet that will likely extend beyond thirty (30) days. Such notice must be given fifteen (15) days before the actual cessation of operations in the case of (a) and in the case of (b) within the first five (5) days of an unplanned stoppage of operations.

SO ORDERED.

PDSC filed a motion for reconsideration of the foregoing Decision. The motion was, however, denied by ERB in an Order dated February 14, 1992.

Aggrieved, PDSC elevated its cause on April 1, 1992 to the Court of Appeals, where the same was docketed as CA-G.R. SP No. 27661.

Thereafter, in a Decision dated November 8, 1993,[1] the appellate court's Tenth Division reversed the ERB judgment thus:

WHEREFORE, the challenged Decision dated September 17, 1991, as well as the Order dated February 14, 1992, both of the respondent Energy Regulatory Board in ERB Case No. 89-57, are hereby REVERSED and SET ASIDE. Correspondingly, the application of respondent Pilipinas Shell Petroleum Corporation to

construct and operate the petroleum retail outlet in question is DENIED.

SO ORDERED.

A motion for reconsideration was denied by the Court of Appeals in a Resolution dated 6 April 1994.[2] Dissatisfied, both Shell and ERB elevated the matter to this Court by way of these petitions, which were ordered consolidated by the Court in a Resolution dated July 25, 1994.[3]

It appears, however, from the record that even as the proceedings in CA-G.R. SP No. 27661 were pending in the appellate court, Caltex filed on January 24, 1992 a similar application for the construction of a service station in the same area with the ERB, docketed as ERB Case No. 87-393. This application was likewise opposed by respondent PDSC, citing the same grounds it raised in opposing Shell's application in ERB Case No. 89-57.

In the aforesaid case, petitioner ERB thereafter rendered a Decision dated June 19, 1992 approving the application of Caltex. This ERB Decision was challenged by PDSC, again on the same grounds it raised in CA-G.R. SP No. 27661, in a petition for review filed with the Court of Appeals, where the same was docketed as CA-G.R. SP No. 29099.

Subsequently, the appellate court's Sixteenth Division dismissed PDSC's petition in a Decision dated May 14, 1993.[4]

As grounds for the petition in the instant case, ERB asserts that -

(1) THE EVIDENCE UPON WHICH THE ERB BASED ITS DECISION IS NEITHER STALE NOR IRRELEVANT AND THE SAME JUSTIFIES THE ESTABLISHMENT OF THE PROPOSED PETROLEUM OUTLET.

(2) THE EVIDENCE PRESENTED BY APPLICANT SHELL REGARDING VEHICLE VOLUME AND FUEL DEMAND SUPPORTS THE CONSTRUCTION OF THE PROPOSED OUTLET.

(3) THE ESTABLISHMENT OF THE SERVICE STATION WILL NOT LEAD TO RUINOUS COMPETITION.

For its part, Shell avers that -

I.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN MAKING FINDINGS OF FACTS CONTRARY TO THOSE OF THE ENERGY REGULATORY BOARD WHOSE FINDINGS WERE BASED ON SUBSTANTIAL EVIDENCE.

II.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN FINDING THAT THE FEASIBILITY STUDY SUPPORTING PETITIONER'S APPLICATION TO CONSTRUCT A SERVICE STATION BEFORE THE ENERGY REGULATORY BOARD HAS BECOME "IRRELEVANT" FOR HAVING BEEN PRESENTED IN EVIDENCE ABOUT TWO (2) YEARS AFTER IT WAS PREPARED.

III.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN PASSING JUDGMENT AND MAKING PRONOUNCEMENTS ON PURELY ECONOMIC AND POLICY ISSUES ON PETROLEUM BUSINESS WHICH ARE WITHIN THE REALM OF THE ENERGY REGULATORY BOARD WHICH HAS A RECOGNIZED EXPERTISE IN OIL ECONOMICS.

IV.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN FINDING THAT THE PROPOSED SERVICE STATION OF PETITIONER WOULD POSE RUINOUS COMPETITION TO PRIVATE RESPONDENT'S SERVICE STATION BASED MAINLY ON EVIDENCE SUBMITTED FOR THE FIRST TIME WITH THE SAID COURT AND WITHOUT CONDUCTING A HEARING THEREON.

V.

ASSUMING THE HONORABLE COURT OF APPEALS HAS THE POWER TO CONSIDER NEW EVIDENCE PRESENTED FOR THE FIRST TIME BEFORE SAID COURT, IT SHOULD HAVE REFERRED SUCH MATTER TO THE ENERGY REGULATORY BOARD UNDER THE DOCTRINE OF PRIOR RESORT OR PRIMARY JURISDICTION.

The issues raised by the parties in these consolidated cases bring to the fore the necessity of rationalizing or reconciling two apparently conflicting decisions of the appellate court on the propriety of building gasoline service stations along Benigno Aquino, Jr. Avenue in Parañaque, Metro Manila. Considering that the questions raised concern within the oil industry, whose impact on the nation's economy is pervasive and far-reaching, the Court is constrained to look into the policy and purposes of its governing statutes to resolve this dilemma.

The policy of the government in this regard has been to allow a free interplay of market forces with minimal government supervision. The purpose of governing legislation is to liberalize the downstream oil industry in order to ensure a truly competitive market under a regime of fair prices, adequate and continuous supply, environmentally clean and high-quality petroleum products.[5] Indeed, exclusivity of any franchise has not been favored by the Court,[6] which is keen on promoting free competition and the development of a free market consistent with the legislative policy of deregulation as an answer to the problems of the oil industry.[7] The Court finds the petitions impressed with merit.

The interpretation of an administrative government agency like the ERB, which is tasked to implement a statute, is accorded great respect and ordinarily controls the construction of the courts.[8] A long line of cases establish the basic rule that the courts 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.[9] More explicitly -

Generally, the interpretation of an administrative government agency, which is tasked to implement a statute, is accorded great respect and ordinarily controls the construction of the courts.[10] The reason behind this rule was explained in *Nestle Philippines, Inc. vs. Court of Appeals*,[11] in this wise:

"The rationale for this rule relates not only to the emergence of the multifarious needs of a modern or modernizing society and the establishment of diverse administrative agencies for addressing and satisfying those needs; it also relates to the accumulation of experience and growth of specialized capabilities by the administrative agency charged with implementing a particular statute. In *Asturias Sugar Central, Inc. v. Commissioner of Customs*,[12] the Court stressed that executive officials are presumed to have familiarized themselves with all the considerations pertinent to the meaning and purpose of the law, and to have formed an independent, conscientious and competent expert opinion thereon. The courts give much weight to the government agency or officials charged with the implementation of the law, their competence, expertness, experience and informed judgment, and the fact that they frequently are drafters of the law they interpret."

As a general rule, contemporaneous construction is resorted to for certainty and predictability in the laws,[13] especially those involving specific terms having technical meanings.

However, courts will not hesitate to set aside such executive interpretation when it is clearly erroneous, or

when there is no ambiguity in the rule,[14] or when the language or words used are clear and plain or readily understandable to any ordinary reader.[15]

Stated differently, when an administrative agency renders an opinion or issues a statement of policy, it merely interprets a pre-existing law and the administrative interpretation is at best advisory for it is the courts that finally determine what the law means.[16] Thus, an action by an administrative agency may be set aside by the judicial department if there is an error of law, abuse of power, lack of jurisdiction or grave abuse of discretion clearly conflicting with the letter and spirit of the law.[17]

However, there is no cogent reason to depart from the general rule because the findings of the ERB conform to, rather than conflict with, the governing statutes and controlling case law on the matter.

Prior to Republic Act No. 8479, the downstream oil industry was regulated by the ERB and from 1993 onwards, the Energy Industry Regulation Board. These regulatory bodies were empowered, among others, to entertain and act on applications for the establishment of gasoline stations in the Philippines. The ERB, which used to be the Board of Energy (BOE), is tasked with the following powers and functions by Executive Order No. 172, which took effect immediately after its issuance on May 8, 1987:

SEC. 3. Jurisdiction, Powers and Functions of the Board. - When warranted and only when public necessity requires, the Board may regulate the business of importing, exporting, re-exporting, shipping, transporting, processing, refining, marketing and distributing energy resources. xxx

The Board shall, upon prior notice and hearing, exercise the following, among other powers and functions:

- (a) Fix and regulate the prices of petroleum products;
- (b) Fix and regulate the rate schedule or prices of piped gas to be charged by duly franchised gas companies which distribute gas by means of underground pipe systems;
- (c) Fix and regulate the rates of pipeline concessionaires under the provisions of Republic Act No. 387, as amended, otherwise known as the 'Petroleum Act of 1949,' as amended by Presidential Decree No. 1700;
- (d) Regulate the capacities of new refineries or additional capacities of existing refineries and license refineries that may be organized after the issuance of this Executive Order, under such terms and conditions as are consistent with the national interest;
- (e) Whenever the Board has determined that there is a shortage of any petroleum product, or when public interest so requires, it may take such steps as it may consider necessary, including the temporary adjustment of the levels of prices of petroleum products and the payment to the Oil Price Stabilization Fund created under Presidential Decree No. 1956 by persons or entities engaged in the petroleum industry of such amounts as may be determined by the Board, which will enable the importer to recover its costs of importation.[18]

A distinct worldwide trend towards economic deregulation has been evident in the past decade. Both developed and developing countries have seriously considered and extensively adopted various measures for this purpose. The country has been no exception. Indeed, the buzzwords of the third millennium are "deregulation", "globalization" and "liberalization." [19] It need not be overemphasized that this trend is reflected in our policy considerations, statutes and jurisprudence. Thus, in *Garcia v. Corona*, [20] the Court said:

R.A. 8479, the present deregulation law, was enacted to implement Article XII, Section 19 of the Constitution which provides:

The State shall regulate or prohibit monopolies when the public interest so requires. No combinations in restraint of trade or unfair competition shall be allowed.

This is so because the Government believes that deregulation will eventually prevent monopoly. The simplest form of monopoly exists when there is only one seller or producer of a product or service for which there are no substitutes. In its more complex form, monopoly is defined as the joint acquisition or maintenance by members of a conspiracy, formed for that purpose, of the power to control and dominate trade and commerce in a commodity to such an extent that they are able, as a group, to exclude actual or potential competitors from the field, accompanied with the intention and purpose to exercise such power.[21] xxx xxx xxx xxx

It bears reiterating at the outset that deregulation of the oil industry is policy determination of the highest order. It is unquestionably a priority program of Government. The Department of Energy Act of 1992[22] expressly mandates that the development and updating of the existing Philippine energy program "shall include a policy direction towards deregulation of the power and energy industry."

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Our ruling in Tatad[23] is categorical that the Constitution's Article XII, Section 19, is anti-trust in history and spirit. It espouses competition. We have stated that only competition which is fair can release the creative forces of the market. We ruled that the principle which underlies the constitutional provision is competition. Thus:

Section 19, Article XII of our Constitution is anti-trust in history and spirit. It espouses competition. The desirability of competition is the reason for the prohibition against restraint of trade, the reason for the interdiction of unfair competition, and the reason for regulation of unmitigated monopolies. Competition is thus the underlying principle of Section 19, Article XII of our Constitution which cannot be violated by R.A. No. 8180. We subscribe to the observation of Prof. Gellhorn that the objective of anti-trust law is "to assure a competitive economy based upon the belief that through competition producers will strive to satisfy consumer wants at the lowest price with the sacrifice of the fewest resources. Competition among producers allows consumers to bid for goods and services and, thus matches their desires with society's opportunity costs." He adds with appropriateness that there is a reliance upon "the operation of the 'market' system (free enterprise) to decide what shall be produced, how resources shall be allocated in the production process, and to whom various products will be distributed. The market system relies on the consumer to decide what and how much shall be produced, and on competition, among producers who will manufacture it." [24]

Tested against the foregoing legal yardsticks, it becomes readily apparent that the reasons relied upon by the appellate court in rejecting petitioner's application to set up a gasoline service station becomes tenuous. This is especially clear in the face of such recent developments in the oil industry, in relation to controlling case law on the matter recently promulgated to address the legal issues spawned by these events. In other words, recent developments in the oil industry as well as legislative enactments and jurisprudential pronouncements have overtaken and rendered stale the view espoused by the appellate court in denying Shell's application to put up the gasoline station.

In reversing the ERB, the Court of Appeals first avers in sum that there is no substantial evidence to support ERB's finding of public necessity to warrant approval of Shell's application.

The Court disagrees.

On the contrary, the record discloses that the ERB Decision approving Shell's application in ERB Case No. 89-57 was based on hard economic data on developmental projects, residential subdivision listings, population count, public conveyances, commercial establishments, traffic count, fuel demand, growth of private cars, public utility vehicles and commercial vehicles, etc., [25] rather than empirical evidence to support its conclusions. In approving Shell's application, the ERB made the following factual findings and, on the basis thereof, justified its ruling thus:

In evaluating the merits of the application, the first question that comes to mind is whether there is indeed an

increase in market potential from the time this very same application was disapproved by the then Bureau of Energy Utilization up to the present time that would warrant a reversal of the former decision. The history of this case serves to justify applicant Shell's position on the matter. After a little over a year from vigorously opposing the original application, Caltex and Petron filed their respective applications to construct their own service station within the same vicinity.

The figures in the applicant's feasibility study projects a scenario of growth well up to the year 1994. Where the applicant listed only thirty-five commercial establishments, oppositor is servicing sixty-five. The development of subdivisions along the area provides for a buffer of market potential that could readily be tapped by the applicant service.

Although the applicant's witness could have done better in accentuating this fact, the oppositor did not do well either in downplaying the potentials of the area. The main gist of PDSC's contention is premised on the rising overhead cost of (increase in salaries and rent) in relation to the establishment of new competition. The proposed station expects to target a total volume of 460,151 liters per month with a projected increase of 2.6% per annum and presumably expects to make a corresponding profit thereof. Oppositor PDSC, on the other hand, with its lone Caltex Service Station, expects to suffer income loss even with a projected volume of 600,000 to 800,000 liters per month (Exhibit 5).

Considering this premise, it should be noted that the Board is tasked to protect existing petroleum stations from ruinous competition and not to protect existing establishments from its own ghost. The Board does not exist for the benefit of any individual station but for the interest of the public and the industry as a whole.

In its first application, the applicant's projection was to realize only 255,000 liters per month or some 20 percent of the total potential demand. With its amended application, the 460,151 liters it hopes to realize is almost twice the former volume representing a smaller percentage of the present overall potential demand.

With further growth and development of the businesses in the area, the fuel potential will tremendously increase and the presence of strategically located service stations will greatly benefit the local community as well as the transient motoring public.

The Board believes that the construction and operation of the Shell Station will not lead to ruinous competition since [the] additional retail outlet is necessary.

Time and again this Court has ruled that in reviewing administrative decisions, the findings of fact made therein must be respected as long as they are supported by substantial evidence, even if not overwhelming or preponderant; that it is not for the reviewing court to weigh the conflicting evidence, determine the credibility of the witnesses or otherwise substitute its own judgment for that of the administrative agency on the sufficiency of evidence; that the administrative decision in matters within the executive jurisdiction can only be set aside on proof of grave abuse of discretion, fraud or error of law.[26] Petitioner ERB is in a better position to resolve petitioner Shell's application, being primarily the agency possessing the necessary expertise on the matter. The power to determine whether the building of a gasoline retail outlet in a trading area would benefit public interest and the oil industry lies with the ERB not the appellate courts.

In the hierarchy of evidentiary values, proof beyond reasonable doubt is at the highest level, followed by clear and convincing evidence, preponderance of evidence and substantial evidence, in that order.[27] A litany of cases has consistently held that substantial evidence is all that is needed to support an administrative finding of fact.[28] It means such relevant evidence as a reasonable mind might accept to support a conclusion.[29] Suffice it to state in this regard that the factual landscape, measured within the context of such an evidentiary matrix, is strewn with well-nigh overwhelming proof of the necessity to build such a gasoline retail outlet in the vicinity subject of the application.

In denying Shell's application, the Court of Appeals next pointed to the alleged 'staleness' of Shell's feasibility study because it was submitted in evidence about two (2) years after it was prepared in early 1988.[30] Again, this Court is not persuaded.

The record shows that the feasibility study[31] is accompanied by the following data, namely: 1.] Annual Projection of Estimated Fuel Demand, Base Area; 2.] Projected Volume of the Proposed Shell Station; 3.] Projected Fuel Volume Derived From Base Area; 4.] Estimated Fuel Demand Base Projection - 1993; 5.] Estimated Fuel Demand Base Projection - 1994; 6.] Annual Projection of Population; 7.] Annual Projection Growth of Private Cars in the Area; 8.] Annual Projection Growth of Public Utilities in the Area; and 9.] Annual Projected Growth of Commercial Vehicles in the Area[32]- projects a market scenario from 1989 to 1994.

While the Court of Appeals was initially unconvinced that Shell's feasibility study was up-to-date and proceeded to render the assailed judgment, its attention was subsequently called, in Shell's motion for reconsideration, to the ERB's Decision dated June 19, 1992[33] approving a similar application by Caltex to build a gasoline retail outlet in the same vicinity. Said decision was appealed by PDSC to the Court of Appeals (CA-G.R. SP No. 29099), and was affirmed by the latter in a Decision dated May 14, 1993.[34] The Decision in Caltex's application, where PDSC was the lone oppositor, was challenged before the appellate court on the very same grounds it proffered in opposing Shell's application.[35] In rejecting PDSC's contentions in CA-G.R. SP No. 29099, the Court of Appeals' Sixteenth Division ruled:

As to the first ground -

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The petitioner had assumed that the entire Sucat Road (starting from as far away as its intersection with the South Expressway going towards Alabang and further South), Quirino Avenue, Domestic Road (which passes in front of the Domestic Terminal), MIA Road, and Ninoy Aquino Avenue, constitute what it refers to as the "trading area." Thus, the herein petitioner invites attention to the fact that in Sucat Road there are five existing gasoline stations; two along Quirino Avenue (from Sucat Road); four along Domestic Road; and two along MIA Road, one of which is the Caltex-Nayong Pilipino station at the corner of MIA Road and Benigno Aquino Avenue. Except for the gas station at one end of Benigno Aquino Avenue (located in front of the Nayong Filipino), the petitioner admits that there has been as yet no gasoline station existing along the entire stretch of the said Benigno Aquino Avenue, although the ERB had recently approved Shell's application to put up one therein.

This court is of the view that the aforementioned assumption adopted by petitioner is fallacious or incorrect considering the conclusion of ERB's Manuel Alvarez in his "Ocular Inspection Report and In-Depth Analysis of Feasibility Study" that no outlet presently exists along the whole stretch of the Ninoy Aquino Avenue (Rollo, p. 126) and that the outlets along Sucat Road are "far from the proposed site, a distant several kilometers away along Dr. A. Santos Avenue in Sucat which can already be considered a different trading area" (ibid., - underscoring supplied)

Assuming in gratia argumenti that the entirety of the above-specified road/avenues may be considered as a single trading area, the petitioner had failed to show why Caltex's 9.7% share of the total market potential, as found in Alvarez's Market Study, is not attainable or that it would result in ruinous competition. As pointed by the respondents (citing MD Transit & Taxi Co., Inc. v. Pepito, 6 SCRA 140 and Raymundo Trans. Co. v. Cervo, 91 Phil. 313), even if a new station would bring about a decline in the sales of the existing outlets, it need not necessarily result in ruinous competition, absent adequate proof to that effect.

As to the second and third grounds -

Concerning the averment that the evidence of Caltex is stale, this Court notes that the said evidence refers

principally to a revalidation study conducted by ERB's Alvarez who undertook an ocular inspection of the proposed site on November 23 to 27, 1987. The hearings of the instant case continued up to early 1992 (ERB Decision, p. 4). The Decision was rendered on June 19, 1992 (Rollo, p. 36). It may be conceded that substantial time had elapsed since the time of the aforementioned revalidation study. However, it is this court's view that unless the petitioner is able to prove by competent evidence that significant changes have occurred sufficient to invalidate the afore-stated study, the presumption is that the said study remains valid, as found by the ERB in its decision. Bare and self-serving manifestations cannot be accepted by Us as proof; especially if We take into account that hearings (as in the case at bar) would take time and it would be quite absurd if what was once applicable and acceptable evidence would be ipso facto rendered stale through mere lapse of time absent any controverting evidence. Sound procedural policy requires that the burden of proof relative to the present invalidity of the Alvarez report rests not with Caltex but on the herein petitioner.

The petitioner had attempted to make comparisons between the figures specified in the 1987 study and those of the Bureau of Energy Utilization or BEU (which were given earlier in 1986). Thus, the petitioner points out that while the BEU's decision indicated that 9,034 cars on the average passed by going in both directions along Ninoy Aquino Avenue, the Alvarez revalidation study gave an average car traffic of only 8,395 resulting in a decline of 639 cars. The petitioner, however, conveniently ignored or failed to note that the 9,034 figure was that given by applicant Shell and not be the government agency itself. The BEU refers to the said figure as the applicant's estimated potential demand. It is natural to expect that an applicant would try to give up as high an estimated potential demand as possible to support its application.

The contention of the petitioner that the Alvarez study/report is hearsay on the ground inter alia that Alvarez was not presented as a witness deserves scant consideration by this Court. In the first place, the ERB is not bound by technical rules of procedure as contained in the Rules of Court, the latter being made applicable to ERB only "in a suppletory character" (Rule 16 of the Rules of Practice and Procedure Governing Hearings Before the ERB). More importantly, Section 2, paragraph 2 and Section 7, paragraph 2 of the above-mentioned ERB Rules provides as follows:

The Board may, in the disposition of cases, before it, take judicial notice of any data or information existing in its judicial records, that may be relevant, pertinent or material to the issues involved,

x x x x

The Board may also, on its own initiative or upon a motion of a party, conduct such investigation or studies on any matter pertinent, related or material to the issues involved in a case the results of which may be sued by the Board as bases for the proper evaluation of the said issues. (Rollo, pp. 205-207 - underscoring supplied)

The petitioner asserts that the island divider along Benigno Aquino Avenue in front of the proposed site was not taken into consideration in the 1987 survey. It could not be denied that the construction of such divider could have an effect on the matter of potential demand. Neither can it be denied however that the gas station that would be affected would be Caltex itself. It is not alleged that there exists a divider along the whole of Sucat Road for example. Hence, the existing outlets have no reason to complain about the divider.

The contention that when construction is completed (connecting Sucat Road to the coastal road), a good number of vehicles would pass through the coastal road instead of along Benigno Aquino [Avenue] appears to Us as speculative. There is no need for the petitioner, which it failed to do, to show qualitatively and convincingly that the effect would be such as to make the sales level go down to such an extent that the viability of the existing outlets would be seriously endangered or threatened.

The foregoing pronouncement of the Court of Appeals' Sixteenth Division is more in keeping with the policy of the State and the rationale of the statutes enacted to govern the industry.

In denying Shell's application, the Court of Appeals finally states that the proposed service station would cause ruinous competition to respondent PDSC's outlet in the subject vicinity.

We remain unconvinced.

It must be pointed out that in determining the allowance or disallowance of an application for the construction of a service station, the appellate court confined the factors thereof within the rigid standards governing public utility regulation, where exclusivity, upon the satisfaction of certain requirements, is allowed. However, exclusivity is more the exception rather than the rule in the gasoline service station business. Thus, Rule V, Section 1, of the Rules and Regulations Governing the Establishment, Construction, Operation, Remodelling and/or Refurbishing of Petroleum Products Retail Outlets issued by the Oil Industry Commission,[36] and adopted by the ERB, enumerates the following factors determining the allowance or disallowance of an application for outlet construction, to wit:

- (a). The operation of the proposed petroleum products retail outlet will promote public interest in a proper and suitable manner considering the need and convenience of the end-users.
- (b) Reasonable expectation of a commercially viable operation.
- (c) The establishment and operation thereof will not result in a monopoly, combination in restraint of trade and ruinous competition.
- (d) The requirements of public safety and sanitation are properly observed.
- (e) Generally, the establishment and operation thereof will help promote and achieve the purposes of Republic Act No. 6173.[37] While it is probable that the operation of the proposed Shell outlet may, to a certain extent, affect PDSC's business, private respondent nevertheless failed to show that its business would not have sufficient profit to have a fair return of its investment. The mere possibility of reduction in the earnings of a business is not sufficient to prove ruinous competition.[38] Indeed -

In order that the opposition based on ruinous competition may prosper, it must be shown that the opponent would be deprived of fair profits on the capital invested in its business. The mere possibility of reduction in the earnings of a business is not sufficient to prove ruinous competition. It must be shown that the business would not have sufficient gains to pay a fair rate of interest on its capital investment.[39] Mere allegations by the oppositor that its business would be ruined by the establishment of the ice plants proposed by the applicants are not sufficient to warrant this Court to revoke the order of the Public Service Commission.[40]

It would not be remiss to point out that Caltex, PDSC's principal, whose products are being retailed by private respondent in the service outlet it operates along the MIA/Domestic Road in Pasay City, never filed any opposition to Shell's application. All told, a climate of fear and pessimism generated by unsubstantiated claims of ruinous competition already rejected in the past should not be made to retard free competition, consistently with legislative policy of deregulating and liberalizing the oil industry to ensure a truly competitive market under a regime of fair prices, adequate and continuous supply, environmentally clean and high-quality petroleum products.

WHEREFORE, in view of all the foregoing, the challenged Decision of the Court of Appeals dated November 8, 1993, as well as the subsequent Resolution dated April 6, 1994, in CA-G.R. SP No. 27661, is REVERSED and SET ASIDE, and another one rendered REINSTATING the Order dated September 17, 1991 of the Energy Regulatory Board in ERB Case No. 89-57, granting the amended application of Pilipinas Shell Petroleum Corporation to relocate its service station to Benigno Aquino Jr., Avenue, Paranaque, Metro Manila.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Puno, Kapunan, and Pardo, JJ., concur.

[1] G.R. No. 114923 Rollo, pp. 37-46.

[2][2] Ibid., pp. 48-50.

[3] G.R. No. 113079 Rollo, p. 75.

[4] Ibid., p. 21.

[5] *Garcia v. Corona*, 321 SCRA 218 [1999], Concurring Opinion of Mr. Justice Quisumbing, p. 263.

[6] *NPC v. CA*, 279 SCRA 506 [1997].

[7] *Garcia v. Corona*, *supra*, pp. 229, 231.

[8] *Republic v. Sandiganbayan*, 293 SCRA 440 [1998]

[9] *First Lepanto Ceramics, Inc. v. Court of Appeals*, 253 SCRA 552 [1996], citing *Ysmael, Jr. & Co. v. Deputy Executive Secretary*, 190 SCRA 673 [1990].

[10] *Nestle, Philippines, Inc. v. Court of Appeals*, 203 SCRA 504 [1991], citing *In re Allen*, 2 Phil. 630 [1903].

[11] Ibid., pp. 510-511.

[12] 29 SCRA 617 [1969].

[13] *Lim Hoa Ting v. Central Bank of the Philippines*, 104 Phil. 573 [1958], citing Erwin N. Griswold of Harvard Law School.

[14] *Divinagracia, Jr. v. Sto. Tomas*, 244 SCRA 595 [1995].

[15] *Melendres, Jr. v. Comelec*, 319 SCRA 262 [1999], citing *Leveriza v. IAC*, 153 SCRA 282 [1988].

[16] *Peralta v. Civil Service Commission*, 212 SCRA 425 [1992], citing *Victorias Milling Co., Inc. v. SSS*, 114 Phil. 555 [1962].

[17] Ibid., citing *Sagun v. PHHC*, 162 SCRA 411 [1988].

[18] R.A. No. 7638 has since transferred the non-price regulatory jurisdiction, powers and functions of the ERB to the Department of Energy.

[19] *Garcia v. Corona*, *supra*; See Separate Opinion of Mr. Justice Panganiban.

[20] Ibid.

[21] *American Tobacco Co. v. U.S.*, 328 U.S. 781; 90 L Ed. 1575.

[22] R.A. No. 7638.

[23] *Tatad v. Secretary of the Department of Energy*, 281 SCRA 330 [1997].

[24] Id., p. 358, citing Gellhorn, *Anti Trust Law and Economics in a Nutshell*, 1986 ed. p. 45.

- [25] G.R. No. 114923 Rollo, pp. 122-147.
- [26] *Lo v. CA*, G.R. No. 128667, 17 December 1999, 321 SCRA 190, citing *Timbancaya v. Vicente*, 9 SCRA 854 [1963]; *Itogon-Suyoc Mines v. Office of the President*, 270 SCRA 63 [1997].
- [27] *Manalo v. Roldan-Confesor*, 215 SCRA 808 [1992].
- [28] *Atlas Consolidated Mining & Development Corporation v. Factoran*, 154 SCRA 49 [1987]; *Naval v. Panday*, 321 SCRA 290 [1999], citing *Lachica v. Flordeliza*, 254 SCRA 278 [1996], citing *Santos v. CA*, 229 SCRA 524 [1994]; *Trans-Asia, Phils. Employee's Association v. NLRC*, 320 SCRA 547 [1999]; *Benguet Corporation v. NLRC*, 318 SCRA 106 [1999]; *Phil. Veteran's Bank v. NLRC*, 317 SCRA 510 [1999]; *Consolidated Food Corp. v. NLRC*, 315 SCRA 129 [1999]; *GSIS v. Gabriel*, 308 SCRA 705 [1999]; *Pimentel v. CA*, 307 SCRA 38 [1999].
- [29] *Gonzales v. NLRC*, 313 SCRA 169 [1999], citing *Ang Tibay v. CIR*, 69 Phil. 635 [1940]; *Audion Electric Co., Inc. v. NLRC*, 308 SCRA 340 [1999]; *Association of Independent Unions in the Phils. v. NLRC*, 305 SCRA 219 [1999].
- [30] CA Decision, p. 5, par. 4.
- [31] G.R. No. 114923 Rollo, pp. 122-124.
- [32] *Ibid.*, pp. 125-147 *passim*.
- [33] *Id.*, pp. 253-259.
- [34] *Id.*, pp. 244-252.
- [35] *Id.*, p. 247.
- [36] *Id.*, pp. 260-266.
- [37] *Id.*, p. 263.
- [38] *Meralco v. Pasay Transportation Co.*, 66 Phil. 36 [1938].
- [39] *Ibid.*
- [40] *Ice and Cold Storage v. Valero*, 85 Phil. 10 [1949], citing *Santos Vda. de Pilares v. Arranze*, G.R. No. 45462, 28 July 1938.

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