

ENERGY REGULATORY BOARD AND ILIGAN LIGHT & POWER, INC., PETITIONERS, VS. COURT OF APPEALS AND ASSOCIATION OF MINDANAO INDUSTRIES (AMI), REPRESENTING AMONG OTHERS THE FOLLOWING M...

G.R. No. 127373. March 25, 1999

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Normally, electric power generated by the National Power Corporation (NPC) is sold through private utility firms authorized to operate within a franchise area. In the present case, the private respondents bypassed the franchise holder in their area and obtained power directly from the NPC. Petitioner, on the other hand, wants a disconnection of such direct supply. Which agency of the government has Jurisdiction to hear and decide the dispute - the Energy Regulatory Board (ERB) or the Department of Energy (DOE)?

The Case

This is the main question posed in the Petition for Review before us, which seeks to set aside the September 27, 1994 Decision[1] and November 19, 1996 Resolution[2] of the Court of Appeals[3] (CA) in CA-GR SP No. 33969. In its assailed Decision, the CA held that it was the DOE, no longer the ERB, which had Jurisdiction over direct connection and disconnection issues. The dispositive portion of its Decision reads:[4]

"IN VIEW OF ALL THE FOREGOING, the instant petition for certiorari and prohibition is GRANTED. Accordingly, the order dated April 7, 1994 of respondent Energy Regulatory Board in ERB Case No. 93-97 entitled 'In re: Petition for Implementation of Cabinet Policy Reforms in the Power Sector,' is ANNULLED and SET ASIDE, and said respondent ERB is 'directed to cease and desist from proceeding with the trial of and to dismiss said ERB Case No. 93-97 for lack of jurisdiction over the subject matter of the petition therein."

The assailed Resolution denied the motions for reconsideration filed separately by the ERB and the Iligan Light and Power, Inc. (ILPI).

The Facts

The factual antecedents of this case are not disputed. They are related by the CA as follows:[5]

"xxx The members of the Association of Mindanao Industries are enterprises based in Mindanao and registered with the Board of Investments which were among those granted direct connection facility by the National Power Corporation although operating within the franchise area of private respondent Iligan Light and Power, Inc. (Iligan for short).

"On October 12, 1993, Iligan filed with the respondent Energy Regulatory Board (ERB for short) a petition for the implementation of the 1987 Cabinet Policy Reforms in the Power Sector, docketed as ERB-93-97, praying specifically that the direct supply of power to industries within its franchise area be discontinued by the National Power Corporation (NPC, for short).

"The Cabinet Policy Reforms referred to were among those approved by the President of the Philippines and her cabinet on January 21, 1987, the pertinent portion of which is quoted as follows:

'2. Continue direct connections for industries authorized under the BOI-NPC Memorandum of Understanding of 12 January 1981, until such time as the appropriate regulatory board determines that direct connection of industry to NPC is no longer necessary in the franchise area of the specific utility or cooperative meeting standards of financial and technical capability, with satisfactory guarantees of non-prejudice to industry, to be set in consultation with NPC and relevant government agencies; and reviewed periodically by the regulatory board.' xxx

"In its Petition, ILPI alleged, inter alia, that it can meet, even surpass, the set of financial standards adopted by the ERB pursuant to the policy guidelines set by the Cabinet xxx.

"AMI filed its 'Answer with Affirmative Defenses and/or Motion to Dismiss,' 'without accepting jurisdiction of the Honorable Board over the subject matter of the petition,' on the following grounds, to wit: 1) lack of jurisdiction to hear the petition for implementation of Cabinet Policy Reforms in the Power Sector following the transfer of its non-price regulatory jurisdiction and functions to the Department of Energy under Rep. Act No. 7638; 2) the petition failed to state a cause of action for non-averment of petitioner's ability and willingness to match the rates of NPC; and 3) non-joinder of indispensable parties xxx.

"On January 4, 1994, the ERB denied in open court AMI's motion to dismiss the petition. Likewise, AMI's motion for reconsideration was denied by the ERB in its order dated April 7, 1994 xxx. Hence, the instant petition for certiorari and prohibition to annul the aforesaid order dated April 7, 1994 and to prohibit respondent ERB from proceeding with the hearing of ILPI's petition."

Ruling of the Court of Appeals

The appellate court Justified its ruling in favor of private respondents in this wise:[6]

"To resolve the issues raised in the case at bar, it is necessary to first characterize the petition filed by ILPI with the respondent [herein petitioner] ERB. It seems quite clear that ILPI sought therein to discontinue the direct supply of power by the NPC to BOI-registered enterprises operating within its (ILPI's) franchise area. Although the petition is styled as one seeking the implementation of the Cabinet Policy Reforms in the Power Sector, the core of the action, as well as the ultimate relief sought, is related to the distribution or marketing of energy resources. The matter treated is thus not concerned with the fixing of power rates. Under the applicable provisions of law, the matter of direct supply of power, which is a ma[tt]er of energy distribution and which is undoubtedly a non-price regulatory matter, is among those granted to the jurisdiction of the Department of Energy under Republic Act No. 7638."

The ERB and the ILPI filed their separate motions for reconsideration, which were, however, denied in the assailed November 19, 1996 Resolution of respondent court.

Hence, this petition.[7]

Issues

Petitioner ILPI presents the following issues for resolution:[8]

"I

"WHETHER THE COURT OF APPEALS ERRED IN HOLDING THAT THE ERB HAS NO JURISDICTION TO HEAR AND DECIDE CASES INVOLVING THE IMPLEMENTATION OF THE POLICY REFORMS.

II

"WHETHER THE POLICY REFORMS COULD VALIDLY CONFER ON THE ERB THE AUTHORITY TO DETERMINE THAT NPC DIRECT CONNECTIONS ARE NO LONGER NECESSARY;

III

"WHETHER THE DECISION IN THE NPC AND PHIVIDEK CASES IS APPLICABLE TO THIS CASE."

In sum, the pivotal issue in this case, as stated by Petitioner ERB is "whether the ERB has Jurisdiction to hear and decide cases involving direct connection issues."

The Court's Ruling

The petition has failed to show any reversible error on the part of the Court of Appeals.

Main Issue: Jurisdiction

Petitioners submit that ERB's Jurisdiction to hear and decide cases on direct connection of power supply with the NPC was conferred by the January 23, 1987 Cabinet Memorandum approving a set of Policy reforms in the power sector, specifically Item No. 2 thereof which provides:

"Continue direct connection for industries authorized under the BOI-NPC Memorandum of Understanding of 12 January 1981 until such time as the appropriate regulatory board determines that direct connection of industry to NPC is no longer necessary in the franchise area of the specific utility or cooperative. xxx"

Petitioners claim that RA 7638 transferred to the DOE the ERB's non-price regulatory powers and functions relative to the petroleum industry only, as enumerated under Section 3 of Executive Order No. 172 (EO 172), which they quote as follows:

"Section 3 -- Jurisdiction, Powers and Functions of the Board -- [W]hen 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. Energy resource means any substance or phenomenon which by itself or in combination with others, or after processing or refining or the application to it of technology, emanates, generates, or causes the emanation or generation of energy, such as but not limited to petroleum or petroleum products, coal, marsh gas, methane gas, geothermal and hydroelectric sources of energy, uranium and other similar radioactive materials, solar energy, tidal power, as well as non-conventional existing and potential sources.

"The Board shall, upon proper 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 system;
- 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 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 cost of importation."

While conceding that the regulation of the marketing and the distribution of energy resources has been expressly transferred to the DOE, petitioners contend, however, that electric power is not an energy resource. They allege

that since the authority to pass upon issues of direct electric power connection was not mentioned at all in the above-quoted provision, it could not have been included among the functions given to the DOE.

Respondents, on the other hand, insist that Jurisdiction over the connection issue in the case at bar now belongs to the DOE. In support of their stand, they cite the consolidated cases (1) National Power Corp. v. Court of appeals and Cagayan Electric Power and Light Co.[9] and (2) Phividec Industrial Authority v. Court of Appeals and Cagayan Electric Power and Light Co.,[10] in which this Court stated:

"The determination of which of the two public utilities has the right to supply electric power to an area which is within the coverage of both is certainly not a rate fixing function which should remain with ERB. It deals with the regulation of the distribution of energy resources which, under Executive Order No. 172, was expressly a function of ERB. However, with the enactment of Republic Act No. 7638, the Department of Energy took over such function. Hence, it is this Department which should then determine whether CEPALCO or PIA [Phividec Industrial Authority] should supply power to PIE-MO [Phividec Industrial Estate-Misamis Oriental]."

Consequently, the Court disposed of the consolidated cases as follows:[11]

"WHEREFORE, both petitions in G.R. No[s]. 112702 and 113613 are hereby DENIED. The Department of Energy is directed to conduct a hearing with utmost dispatch to determine whether it is the Cagayan Electric Power and Light Co., Inc. or the National Power Corporation, through the PHIVIDEC Industrial Authority, which should supply electric power to the industries in the PHIVIDEC Industrial Estate-Misamis Oriental."

While the core question raised in these consolidated cases was whether the NPC could supply power directly to the PIE-MO area, where CEPALCO had a franchise, we find the Court's pronouncements on them relevant to the instant controversy. Corollary to the main question was the issue of whether the NPC had the power to hear and decide cases involving direct power connection. This Court held that "the NPC is not the proper authority xxx, not only because the subject matter of the hearing is a matter involving the NPC itself, but also because the law has created the proper administrative body vested with authority to conduct a hearing.[12] As to which was the "proper administrative body," the Court made the following illuminating disquisition:[13]

"The ERB, which used to be the Board of Energy, 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 proper 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 system"
- (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 cost of importation.'

"As may be gleaned from said provisions, the ERB is basically a price or rate-fixing agency. Apparently recognizing this basic function, Republic Act No. 7638 (An Act Creating the Department of Energy, Rationalizing the Organization and Functions of Government Agencies Related to Energy, and for Other Purposes), which was approved on December 9, 1992 and which took effect fifteen days after its complete publication in at least two (2) national newspapers of general circulation, specifically provides as follows:

'SEC. 18. Rationalization or Transfer of Functions of Attached or Related Agencies. -- The non-price regulatory jurisdiction, powers, and functions of the Energy Regulatory Board as provided for in Section 3 of Executive Order No. 172 are hereby transferred to the Department.

'The foregoing transfer of powers and functions shall include all applicable funds and appropriations, records, equipment, property, and such personnel as may be necessary. Provided, That only such amount of funds and appropriations of the Board as well as only the personnel thereof which are completely or primarily involved in the exercise by said Board of its non-price regulatory powers and functions shall be affected by such transfer.

'The power of the NPC to determine, fix, and prescribe the rates being charged to its customers under Section 4 of Republic Act No. 6395, as amended, as well as the power of electric cooperatives to fix rates under Section 16 (o), Chapter 11 of Presidential Decree No. 269, as amended, are hereby transferred to the Energy Regulatory Board. The Board shall exercise its new powers only after due notice and hearing and under the same procedure provided for in Executive Order No. 172.'

"Upon the effectivity of Republic Act No. 7638, then Acting Chairman of the Energy Coordinating Council Delfin Lazaro transmitted to the Department of Justice the query of whether or not the 'non-power rate powers and functions' of the ERB are included in the 'jurisdiction, powers and functions transferred to the Department of Energy.' Answering the query in the affirmative, the Department of Justice rendered Opinion No. 22 dated February 12, 1993 the pertinent portion of which states:

'xxx we believe that since the provision of Section 18 on the transfer of certain powers and functions from ERB to DOE is clear and unequivocal, and devoid of any ambiguity, in the sense that it categorically refers to 'non-price jurisdiction, powers and functions' of ERB under Section 3 of E.O. No. 172, there is no room for interpretation, but only for application, of the law. This is a cardinal rule of statutory construction.

'Clearly, the parameters of the transfer of functions for ERB to DOE pursuant to Section 18, are circumscribed by the provision of Section 3 of E.O. No. 172 alone, so that, If there are other 'related' functions of ERB under other provisions of E.O. No. 172 or other energy laws, these 'related' functions, which may conceivably refer to what you call 'non-power rate powers and functions' of ERB, are clearly not contemplated by Section 18 and are, therefore, not to be deemed included in the transfer of functions from ERB to DOE under the said provision.

'It may be argued that Section 26 of R.A. No. 7638 contains a repealing clause which provides that:

'All laws, presidential decrees, executive orders, rules and regulations, or parts thereof, inconsistent with the provisions of this Act, are hereby repealed or modified accordingly. xxx.'

and, therefore, all provisions of E.O. No. 172 and related laws which are inconsistent with the policy, purpose and intent of R.A. No. 7638 are deemed repealed. It has been said, however, that a general repealing clause of such nature does not operate as an express repeal because it fails to identify or designate the act or acts that are intended to be repealed. Rather, it is a clause which predicates the intended repeal upon the condition that a substantial conflict must be found[ed] on existing and prior acts of the same subject matter. Such being the case,

the presumption against implied repeals and the rule on strict construction regarding implied repeals shall apply *ex proprio vigore*. For the legislature is presumed to know the existing laws so that, if repeal of particular or specific laws is intended, the proper step is to so express it. The failure to add a specific repealing clause particularly mentioning the statute to be repealed indicates that the intent was not to repeal any existing law on the matter, unless an irreconcilable inconsistency and repugnancy exists in the terms of the new and the old laws (*Iloilo Palay and Corn Planters Association, Inc. vs. Feliciano*, 13 SCRA 377; *City of Naga vs. Agna*, 71 SCRA 176, cited in *Agpalo*, *Statutory Construction*, 1990 Edition, pp. 191-192).

'In view of the foregoing, it is our opinion that only the non-price regulatory functions of ERB under Section 3 of E.O. 172 are transferred to the DOE.' All the powers of ERB which are not within the purview of its 'non-price regulatory jurisdiction, powers and functions' as defined in Section 3 are not so transferred to DOE and accordingly remain vested in ERB.'

"The determination of which of two public utilities has the right to supply electric power to an area which is within the coverage of both is certainly not a rate-fixing function which should remain with the ERB. It deals with the regulation of the distribution of energy resources which, under Executive Order No. 172, was expressly a function of ERB. However, with the enactment of Republic Act No. 7638, the Department of Energy took over such function. Hence, it is this Department which shall then determine whether CEPALCO or PIA should supply power to PIE-MO."

The foregoing sufficiently indicates that it is now the Department of Energy that has Jurisdiction over the regulation of the marketing and the distribution of energy resources. It may be true that this function formerly belonged to the ERB, by virtue of the "Cabinet Policy Reforms in the Energy Sector" embodied in the Cabinet Memorandum of January 23, 1987, and EO 172 issued May 8, 1987. However, pursuant to Section 18 of RA 7638, which was subsequently enacted by Congress on December 9, 1992, the non-rate-fixing Jurisdiction powers and functions of the ERB have been transferred to the Department of Energy. The applications for the NPC's direct supply or disconnection of power involve essentially the distribution of energy resources, not by any incident the determinations of power rates. Consequently, these application be resolved by the DOE.

It is of no moment that the petition instituted by ILPI before the ERB was captioned "for the Implementation of the 1987 Cabinet Policy Reforms in the Power Sector." The relief it specifically sought was the discontinuation of NPC's direct supply of power to private respondent's member-companies. Definitely then, the distribution of an energy resource was its main purpose.

Neither does the Court agree with the petitioners' claim that the regulatory functions of the ERB that were transferred to the DOE concerned those relating to the petroleum industry only and not to electric power. Section 3 of EO 172 broadly defines energy resource as "any substance or phenomenon which by itself or in combination with others xxx emanates, [or] generates xxx energy, xxx." Electric power or electricity has been in turn defined as "an imponderable and invisible agent producing light, heat, chemical decomposition, and other physical phenomena." [14] Undoubtedly electricity produces or generates energy. By simple logic, it is an energy resource. The regulation of its distribution 's, therefore, among those functions formerly belonging to the ERB, which have been transferred to the DOE as expressly directed in Section 18 of RA 7638. Nowhere in this provision is there any restriction of its scope to petroleum and its products only. The reference to petroleum is merely by way of example of what an energy resource is. In fact, the set of examples of energy resources enumerated in the law is prefaced with "such as but not limited to." This can only mean that the enumeration is nonrestrictive.

Moreover, Section 5 of RA 7638 defines the powers and functions of the DOE as follows:

"SEC. 5. Powers and Functions. The Department shall have the following powers and functions:

xxx xxx xxx

(d) Exercise supervision and control over all government activities relative to energy projects in order to attain the goods embodied in Section 2 of this Act.

(e) Regulate private sector activities relative to energy projects as provided for under existing laws; Provided, That the Department shall endeavor to provide for an environment conducive to free and active private sector participation and involvement in all energy activities."

As to what energy projects encompass, Section 3 of the same law gives this definition:

"Sec. 3. Definition of Terms. -- (a) 'Energy projects' shall mean activities or projects relative to the exploration, extraction, production, importation-exportation, processing, transportation, marketing, distribution, utilization, conservation, stockpiling or storage of all forms of energy products and resources." (Italics supplied.)

Definitely, the exploration, the production, the marketing, the distribution, the utilization or any other activity involving any energy resource or product falls within the supervision and control of the DOE.

WHEREFORE the petition is hereby DENIED and the assailed Decision is AFFIRMED.

SO ORDERED.

Romero (Chairman), Vitug, Purisima, and Gonzaga-Reyes, JJ., concur.

[1] Rollo, pp. 93-109.

[2] Ibid., pp. 111-113.

[3] Seventh Division composed of JJ. Fermin A. Martin Jr., ponente; Antonio M. Martinez, chairman (now a retired Justice of the Supreme Court); and Delilah Vidallon-Magtolis, member.

[4] Rollo, pp. 108-109.

[5] Assailed Decision, pp. 2-3; Ibid., pp. 94-95.

[6] Assailed Decision, p. 4.

[7] This case was deemed submitted for resolution upon receipt by this Court of Petitioner ILPI's Memorandum on November 24, 1998.

[8] Petitioner ILPI's Memorandum, pp. 3-4.

[9] GR No. 112702, 279 SCRA 506, September 26, 1997, per Romero, J.

[10] GR No. 113613, *ibid.*

[11] Ibid., p. 531.

[12] Ibid., p. 526.

[13] Ibid., pp. 526-530.

[14] 29 CJS 859, citing *US v. City and County of San Francisco*, D.C. Cal., 23 F. Supp. 40, 52.

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