

BATELEC II ELECTRIC COOPERATIVE INC., PETITIONER, VS. ENERGY INDUSTRY ADMINISTRATION BUREAU (EIAB), PUYAT STEEL CORP. AND NATIONAL POWER CORPORATION, RESPONDENTS.

G.R. No. 135925. December 22, 2004

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

...Exclusivity is given by law with the understanding that the company enjoying it is self-sufficient and capable of supplying the needed service or product at moderate or reasonable prices. It would be against public interest where the firm granted a monopoly is merely an unnecessary conduit of electric power, jacking up prices as a superfluous middleman or an inefficient producer which cannot supply cheap electricity to power intensive industries. It is in the public interest when industries dependent on heavy use of electricity are given reliable and direct power at the lower costs thus enabling the sale of nationally marketed products at prices within the reach of the masses.[1]

Impugned, in this petition for review, is the decision[2] dated 25 June 1998 of the Court of Appeals in CA-G.R. SP No. 47880 dismissing the special civil action for certiorari filed by petitioner Batangas II Electric Cooperative, Inc. (BATELEC II), questioning the resolution of the Energy Industry Administration Bureau (Bureau) of the Department of Energy which granted the application of private respondent Puyat Steel Corporation (PSC) for direct power connection with the National Power Corporation (NPC). Petitioner likewise assails the Court of Appeals resolution[3] dated 13 October 1998 denying the motion for reconsideration filed by BATELEC II.

The particulars that ushered the filing of the petition, as culled from the resolution of the Bureau, which we find to be amply supported by the records, follow:

Petitioner BATELEC II is an electric cooperative authorized to distribute electric power in Rosario, Province of Batangas.[4]

Private respondent PSC is a galvanizing steel sheet company in the Philippines having been established in 1956. Granted a pioneer status by the Board of Investments, it embarked to build in Rosario, Batangas Province, its new plant, envisioned as a modern galvanizing plant utilizing a state-of-the-art non-oxidizing furnace-type process, the first of its kind in the country.[5]

As this new plant would entail a delivery voltage of 69 kilovolts (kv), PSC commenced on 14 November 1997 its negotiations for the supply of said energy requirement with BATELEC II, the electric franchise holder in the area. As the 69 kv transmission lines owned by the NPC are located about 1.4 kilometers away from the plant, PSC and BATELEC II entered into an agreement wherein the latter, not having any 69 kv transmission lines at present, shall handle the construction of the needed 69 kv transmission lines.[6]

In a letter dated 02 December 1996, BATELEC II, through its manager Evangel A. Manundo, submitted to PSC a Bill of Materials for the proposed construction of the 69 kv transmission lines amounting to P2,956,838.56 with a proviso that additional costs shall later be incurred for other items. In said letter, BATELEC II requested that the

amount be settled so that the procurement of the needed materials be facilitated.[7]

In a letter dated 18 December 1996, PSC accepted BATELEC II's proposal. PSC further stated that said letter shall serve as a notice of award and to proceed with the construction of the needed 69 kv transmission lines.[8]

BATELEC II vouched to complete the installation of the needed facilities by April 1997. yet, BATELEC II botched in making good its part of the bargain. The scheduled completion was never fulfilled by BATELEC II even several months after the targeted date.[9]

On 17 November 1997, PSC filed with the Bureau an application for direct connection with the NPC.[10] The Bureau, under the umbrella of the Department of Energy, derives its mandate from Section 12(c) of Republic Act No. 7638,[11] known as An Act Creating the Department of Energy, Rationalizing The Organization and Functions of Government Agencies Related To Energy, And for Other Purposes, approved on 09 December 1992. Its functions embrace the following-

- (1) Assist in the formulation of regulatory policies to encourage and guide the operations of both government and private entities involved in energy resource supply activities such as independent power production, electricity distribution, as well as the importation, exportation, stockpiling, storage, shipping, transportation, refinement, processing, marketing, and distribution of all forms of energy and energy products, whether conventional or nonconventional;
- (2) Draw up plans to cope with contingencies of energy supply interruptions; and
- (3) Assist in the formulation of financial and fiscal policies, rules, guidelines, and requirements relative to the operations of entities involved in the supply of energy resources such as oil companies, petroleum product dealers, coal importing and distributing companies, natural gas distributing companies, independent power producers, and all other entities involved in conventional energy supply activities and implement and enforce said policies. (Emphases supplied)

As a standard operating procedure, the Bureau, in its evaluation of an application for direct power connection, whether new or for renewal, takes into account the technical or financial capability of the electric franchise holder in the applicant's site, in this case BATELEC II, to serve the energy needs of the applicant. Thus, on 04 December 1997, the Electricity Division of the Bureau endorsed to the Hearing Division its evaluation report on the technical and financial capability of BATELEC II.[12]

For the purpose of looking for any possibility of settlement, the parties concerned were invited to a conference on 17 December 1997. In said meeting, representatives of BATELEC II explained their difficulties in acquiring the right of way for the 69 kv transmission lines. PSC, on the other hand, averred that it is precisely because of BATELEC II's failure to accomplish its undertaking that prompted it to file its application with the Bureau to source its direct power supply from NPC, inasmuch as it is a business enterprise with a crucial timetable.[13]

The Bureau then directed BATELEC II and PSC to submit their respective position papers on the matter on or before 15 January 1998, after which the application was deemed submitted for resolution.[14]

PSC reiterated in its position paper that it was BATELEC II's breach of their contract that impelled it to file an application for direct connection with the NPC.[15] For its part, BATELEC II, in its Comment and Manifestation, claimed that it has finally solved the problem with the owner of the land where the 69 kv lines were to cross and that said 69 kv lines were finally constructed and ready for use by the PSC.[16] However, the Bureau decreed that BATELEC II's claim that it had already constructed the needed 69 kv transmission lines has remained a bare claim, not supported by evidence on record as BATELEC II itself admitted in the meeting of 17 December 1997 that it has yet to construct said facility.[17]

Further, the Bureau made the determination that BATELEC II was neither technically nor financially capable of supplying the 69 kv of power supply to PSC. The following were the specific findings of the Bureau concerning BATELEC II's technical and financial capability:

The technical capability evaluation covered the system loss, the power factor, and the average voltage variation.

On the system loss, records show that BATELEC II improved in 1996 having registered 24.70 percent against the cooperative's system loss for 1994 and 1995 of 27.98 percent and 28.57 percent, respectively. Notwithstanding, with the set standard at 22%, BATELEC II failed.

For its Power Factor, it is significant to note that BATELEC II's reactive metering was only installed in April, 1996. Thus, the cooperative's system power factor was only established in that same year. Nonetheless, having registered an 84.33 percent power factor, BATELEC II failed to meet the prescribed 90 percent power factor standard.

Regarding the system's average voltage variation ... BATELEC II passed.

For the Financial Capability, the following were discovered:

For its Outstanding Debt to NPC (ODNPC), BATELEC II incurred unpaid power bills in 1994 but was current for the years 1995 and 1996. The set standard is at no outstanding/overdue account with the National Power Corporation.

As to its Amortization Payments (AP) records show that in 1994, BATELEC II was three (3) quarters behind with its amortization payments while for 1995 and 1996 it was one (1) quarter behind its payment schedule with the National Electrification Administration (NEA). Under this parameter, the set standard is a maximum of one (1) month delayed payment.

As to its Average Collection Period (ACP), BATELEC II improved its collection efficiency having posed an average collection period from 1994 to 1996 of 60 days, 48 days, and 32 days, respectively. The set standard is 45 days.

For its Operating Expense Ratio (OER), BATELEC II posed 95.1 percent, 92.1 percent, and 91.62 percent, respectively, for the three years of 1994 to 1996. The set standard is 95%.

From all of the above, it is clear that BATELEC II failed to meet the performance standards set forth by ER 1-97. It is thus concluded that it is not capable of serving applicant's bulk energy needs.

Further, the Bureau took note that the National Electrification Administration (NEA), the overseer of electric cooperatives, rated BATELEC II's performance as under Category "E" "C" and "D" for the years 1994, 1995 and 1996. These are equivalent to "POOR" performance based on NEA's Annual Categorization Reports.[18]

Accordingly, in a resolution dated 16 March 1998, the Bureau approved PSC's application for bulk power supply with the NPC after it made the determination that BATELEC II is not technically and financially capable of serving the bulk energy needs of psc. The Bureau concluded, with a fallo in this wise:

WHEREFORE, in view of all the foregoing, the Bureau is convinced that BATELEC II is not technically and financially capable of serving the energy requirements of applicant and hereby APPROVES the instant application for bulk power supply with the National Power Corporation by Puyat Steel Corporation.

It is to be noted however that the applicant will be provided bulk service at 69 kv due to technical limitations. Furthermore since under ER 1-97 the prescribed minimum transmission voltage level in the Luzon area is 230 kv, the rates to be applied in the instant application shall permit the recovery by NPC of all costs associated with said 230 kv service. Finally, it is understood that applicant will comply with the rules and regulations that

the DOE will issue governing bulk power supply.

Accordingly, applicant PUYAT STEEL CORPORATION is hereby directed to pay the amount of ONE THOUSAND PESOS (p1,000.00) to the Bureau pursuant to the DOF-DBM Circular No. 2-94 within thirty (30) days from receipt of this Resolution.[19]

Consequently, private respondent PSC filed a complaint for Damages With Prayer for Preliminary Injunction and Temporary Restraining Order with the Regional Trial Court (RTC), Branch 87, Rosario, Batangas to enjoin petitioner BATELEC II from committing acts that would prevent direct power connection between respondents PSC and the NPC. In its complaint, PSC alleged that on 28 May 1998 BATELEC II maliciously switched off the air brake switch and removed cables and insulators from the transmission poles supplying electricity from the NPC to PSC resulting in complete electric power failure to the facilities of the latter in Rosario, Batangas.

On 08 June 1998, the trial court issued a temporary restraining order[20] valid for twenty (20) days enjoining petitioner BATELEC II to desist from committing acts that would prevent the supply of electric power from NPC to PSC's plant in Rosario, Batangas, pursuant to respondent Bureau's Resolution of 16 March 1998.

Displeased, Batelec ii filed before the Court of Appeals a petition for certiorari with a prayer for the issuance of a writ of preliminary injunction and temporary restraining order. BATELEC II ascribed grave abuse of discretion to the Bureau for issuing a resolution allegedly sans the benefit of a hearing and for its alleged failure to resolve inter alia the issue of NPC's disqualification from distributing electric power directly to consumers within the franchised area of BATELEC II.[21] Later, BATELEC II amended its petition to include the RTC, Branch 87, Rosario, Batangas which issued a temporary restraining order valid for twenty (20) days in favor of PSC.

The Court of Appeals denied the petition on the grounds of: (1) failure to exhaust administrative remedies as petitioner did not file a motion for reconsideration of the Bureau's resolution; and (2) failure to attach a certified true copy or duplicate original copy of the Bureau's resolution in defiance of Supreme Court Administrative Circular No. 3-96. The dispositive portion of the Court of Appeals decision provides:

ACCORDINGLY, the instant special civil action is hereby DISMISSED.[22]

Petitioner was met with similar lack of success in its motion for reconsideration, denied by the Court of Appeals for lack of merit in a resolution dated 13 October 1998.[23]

In this appeal, petitioner lays the following errors at the door of the Court of Appeals:

- ... IN NOT DELVING INTO THE MERITS OF THE ABOVE PETITION, ABNEGATED ITS AUTHORITY TO DECIDE A QUESTION OF SUBSTANCE NOT THERETOFOR DETERMINED BY THE HONORABLE SUPREME COURT;
- ... IN DISMISSING THE PETITION FILED, THE COURT OF APPEALS OVERLOOKED THE FACT THAT THE PETITION FOR CERTIORARI FILED UNDER RULE 65 (RULES OF COURT) IS AN EXCEPTION TO THE RULE THAT A MOTION FOR RECONSIDERATION SHOULD FIRST BE FILED AND/OR THAT ADMINISTRATIVE REMEDIES SHOULD BE EXHAUSTED BEFORE RESORT TO COURT IS HAD;
- ... IN DISMISSING THE PETITION FILED, THE COURT OF APPEALS ERRED IN RULING THAT PETITIONER DID NOT COMPLY WITH SUPREME COURT ADMINISTRATIVE CIRCULAR NO. 3-96 AND ITS REVISED ORDER NO. 1-88.[24]

This petition brings to the fore the following issues that call for resolution, namely:

- (1) Did the Court of Appeals commit a reversible error in dismissing CA-G.R. SP No. 47880 on purely

technical grounds, i.e., that the attached copy of the NLRC decision is a mere photocopy of the original decision?

(2) Did the Court of Appeals commit a reversible error in dismissing CA-G.R. SP No. 47880 on the ground of non-exhaustion of administrative remedies before filing a special civil action for certiorari under Rule 65?

(3) Did the Court of Appeals err in refusing to rule on the correctness of the ERB's findings?

On the first issue, petitioner asserts that it has substantially complied with the requirements of Section 1, Rule 65 of the Rules of Civil Procedure, hence, in the interests of justice and equity, the Court of Appeals should have given due course to its special civil action for certiorari.

Antithetically, private respondent counterblasts that the mandatory requirement in Section 1, Rule 65 of the 1997 Rules of Civil Procedure dictates that the petition shall be accompanied by a certified true copy of the judgment or order subject thereof, together with copies of all pleadings and documents relevant and pertinent thereto. Non-compliance thereto warrants outright dismissal of the petition, private respondent sharply retorts.

The precursor of the Revised Rules of Civil Procedure, Supreme Court Administrative Circular No. 3-96, which took effect on 01 June 1996, instructs us on what a "certified true copy" is:

- ...The "certified true copy" thereof shall be such other copy furnished to a party at his instance or in his behalf, duly authenticated by the authorized officers or representatives of the issuing entity as hereinbefore specified.

...

- The certified true copy must further comply with all the regulations therefor of the issuing entity and it is the authenticated original of such certified true copy, and not a mere xerox copy thereof, which shall be utilized as an annex to the petition or other initiatory pleading.... (Emphasis supplied.)[25]

From this guidepost, the disputed document, although stamped as "Certified True Copy," was neither a "duplicate original copy" nor an authenticated original of such "certified true copy" thereof, in contravention of paragraph 3 of the above-quoted guidelines. Neither was the authority of the person who signed the same indicated in the face of the document. Hence, no error may be ascribed to the Court of Appeals in dismissing the petition for certiorari outright pursuant to paragraph 5 of Supreme Court Administrative Circular No. 3-96, which provides:

- It shall be the duty and responsibility of the party using the documents required by Paragraph (3) of Circular No. 1-88 to verify and ensure compliance with all the requirements therefor as detailed in the preceding paragraphs. Failure to do so shall result in the rejection of such annexes and the dismissal of the case. Subsequent compliance shall not warrant any reconsideration unless the court is fully satisfied that the non-compliance was not in any way attributable to the party, despite due diligence on his part, and that there are highly justifiable and compelling reasons for the court to make such other disposition as it may deem just and equitable.

The Court does not close its eyes to special cases when for compelling reasons, we have disregarded similar procedural defects in order to correct a patent injustice made. However, petitioner failed to demonstrate any gripping reason for a liberal application of the rules. The right to file a special civil action of certiorari is neither a natural right nor a part of due process. We call to mind *NYK International Knitwear Corp. Phils. v. NLRC*, [26] where this Court articulated that a writ of certiorari is a prerogative writ, never demandable as a matter of right, never issued except in the exercise of judicial discretion. Hence, he who seeks a writ of certiorari must apply for it only in the manner and strictly in accordance with the provisions of the law and the Rules.[27]

No reversible error may, thus, be ascribed to the appellate court in CA-G.R. SP No. 47880 when it refused to give due course to the petition for failure to observe this technical requirement.

Anent the second issue, the drift of petitioner that the instant case falls under the recognized exceptions to the rule on exhaustion of administrative remedies cannot pass judicial muster.

The doctrine of exhaustion of administrative remedies calls for resort first to the appropriate administrative authorities to accord them the prior opportunity to decide controversies within their competence before the same may be elevated to the courts of justice for review. It is presumed that an administrative agency, if afforded an opportunity to pass upon a matter, will decide the same correctly, or correct any previous error committed in its forum. Furthermore, reasons of law, comity and convenience prevent the courts from entertaining cases proper for determination by administrative agencies. Hence, premature resort to the courts necessarily becomes fatal to the cause of action of the petitioner.[28]

The doctrine of exhaustion of administrative remedies is not absolute, however, there being instances when it may be dispensed with and judicial action may be validly resorted to immediately, among which are: 1) when the question raised is purely legal; 2) when the administrative body is in estoppel; 3) when the act complained of is patently illegal; 4) when there is urgent need for judicial intervention; 5) when the claim involved is small; 6) when irreparable damage will be suffered;[29] 7) when there is no other plain, speedy and adequate remedy; 8) when strong public interest is involved; and 9) in quo warranto proceedings.[30]

In the present case, there is nothing in the records to show that petitioner availed of administrative relief before filing a petition for certiorari with the Court of Appeals. It did not appeal the Bureau's resolution dated 16 March 1998 to the Secretary of Energy, which under Section 8 in relation to Section 12 of Rep. Act No. 7638 [31] has the power over the bureaus under the Department. It has not, as well, suggested any plausible reason for direct recourse to the Court of Appeals against the Resolution in question. Neither has petitioner shown that the instant case falls among the recognized exceptions to the rule on exhaustion of administrative remedies.

Moreover, in light of the doctrine of exhaustion of administrative remedies, a motion for reconsideration must first be filed before the special civil action for certiorari may be availed of.[32] As found by the appellate court, petitioner has, likewise, failed to establish that it had filed a motion for reconsideration before its direct recourse to judicial review nor has it amply argued why it should be excused from the observance of such requirement.

Equally specious is petitioner's train of thought that the requisite of filing a motion for reconsideration of the challenged resolution of the Bureau prior to filing a petition for certiorari with the Court of Appeals is dispensable in this case inasmuch as such petition is anchored on a purely question of law.[33] It is a settled rule, it is true, that on purely legal question the aggrieved party need not exhaust administrative remedies.[34] This is because nothing of an administrative nature is to be done or can be done in the administrative forum.[35] But the pivotal issue in this case of whether petitioner, not the NPC, should supply the power needs of PSC requires a probe into the technical and financial capability of petitioner to meet the requirements of bulk power supply of PSC - a question of fact, the determination of which is within the expertise of the Bureau. The contention of petitioner that the issue is on pure question of law is, therefore, hollow. Petitioner cannot in the guise of raising pure question of law, seek judicial intervention without exhausting the available administrative remedies.[36]

On the merits of the case, the apple of discord between the parties is the propriety of allowing respondent PSC to directly avail of a power connection with the NPC. Petitioner strongly asserts that the NPC is disqualified from distributing directly electric power to respondent PSC in Rosario, Batangas, because it is located within the franchised area of petitioner BATELEC II. Petitioner adds that respondent NPC is mandated by law to generate and transmit electric power but not distribute it directly to the consumers like respondent PSC.[37] Petitioner banks on this Court's pronouncement in *National Power Corporation v. Cañares*[38] where we stated that the national policy is that if the power franchise holder can adequately supply the power requirement of

industries-consumers at rates that the latter can obtain from NPC, direct connection with NPC is not favored.

Petitioner's interpretation of Cañares is skewed.

We note that respondent PSC is an enterprise registered with the Bureau of Investments (BOI), as found by the Bureau.[39] In Cañares, we held that there is nothing in the provisions of Presidential Decree (P.D.) No. 395, amending P.D. No. 380 and further amending Rep. Act No. 6395, entitled "An Act Revising the Charter of the National Power Corporation," which expressly or impliedly allowed or sanctioned the sale in bulk by the NPC of energy direct to BOI-registered enterprises, such as respondent PSC, even if it would be violative of the rights of existing franchise holders.[40] We stressed:

Presidential Decree No. 380, as amended, PDC Resolution No. 77-01-02 and NPC's own operational guidelines for the implementation of the BOI-NPC Memorandum of Understanding on direct connection establish the state policy that NPC is statutorily empowered to directly service all the requirement of a BOI-registered enterprise provided that, first, any affected private franchise holder is afforded an opportunity to be heard on the application therefore, and second, from such hearing, it is established that said private franchise holder is incapable or unwilling to match the reliability and rates NPC for directly serving the latter...[41] (Emphasis in the original).

In other words, the Court, in Cañares, disposed that the policy of preference to the franchise holder is premised on the condition that such franchise holder must in the first place be capable of supplying adequately the power requirements of the BOI-registered customer and that such capability must first be ascertained through a hearing in due course. In the same vein, this Court, in *National Power Corporation v. Hon. Court of Appeals and Cagayan Electric Power and Light Co., Inc.* [42] resonated that if after a hearing (or an opportunity for such hearing) it is established that the affected franchise holder is incapable or unwilling to match the reliability and rates of NPC, then a direct connection with NPC may be granted. This is the prevailing situation in the case at bar.

Here, after due hearing and after careful consideration of the pleadings submitted by petitioner franchise holder and respondent PSC, the Bureau made the distinct finding that petitioner is not technically and financially capable of satisfying the power requirements of PSC. This determination by the Bureau, an administrative government agency which is tasked to implement a statute, is accorded great respect and ordinarily controls the construction of the courts. In scores of cases, it is an elementary rule, sanctified by long and consistent usage, 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.[43]

Finally, we draw attention to the fact that petitioner had the first bite to service the power needs of respondent PSC, but BATELEC II blew its chance by reneging on its commitment with PSC. PSC's multi-million investment was at a stand-still as a result of petitioner's failure to render its services in good time. With no time to spare, PSC naturally sought alternative sources of power by applying for direct power supply with the NPC. Threatened to lose a lucrative deal, only then did BATELEC II exert its last-ditch effort to lure PSC back by giving the false information that it is now geared up to supply the power requirement of PSC. With its efforts to make PSC change its mind in vain, petitioner now waxes lyrical on the national policy of giving priority to power franchise-holders. The Court will not countenance petitioner's pretenses nor shall we be a party to an erroneous construal of the law.

To hold, as petitioner would have us believe, that industries such as respondent PSC, are absolute captive markets of the area, power franchise-holders (regardless of their capability to meet the demands of the market) is to stifle mercantile endeavors in particular and the nation's economy in general, as industrial enterprises will be at the mercy of unscrupulous franchise-holders which can be lackadaisical in delivering the power requirements to its customers without fear of losing its contracts to the NPC. Not only is this proposition unsound as it would be a

turn-off to investors, it is likewise contrary to the spirit of the law aimed towards national electrification, most beneficial to the greater number of the populace.

Exclusivity of any public franchise has not been favored by this Court such that in most, if not all, grants by the government to private corporations, the interpretation of rights, privileges or franchises is taken against the grantee. Thus in *Napocor v. Court of Appeals and Cagayan Electric Power and Light Co., Inc.*,^[44] the Court was most emphatic:

...Exclusivity is given by law with the understanding that the company enjoying it is self-sufficient and capable of supplying the needed service or product at moderate or reasonable prices. It would be against public interest where the firm granted a monopoly is merely an unnecessary conduit of electric power, jacking up prices as a superfluous middleman or an inefficient producer which cannot supply cheap electricity to power intensive industries...

The delay caused by petitioner in delivering power supply to PSC translates to higher costs on its part., i.e., cost of borrowing and lost sales, which ultimately leads to higher prices of its products to the purchasing public.

Mindful that it is in the public interest when industries dependent on heavy use of electricity are given reliable and direct power at the lower costs, thus, enabling the sale of nationally marketed products at prices within the reach of the masses,^[45] the Court in the case at bar, finds no compelling cause to pronounce any merit in this petition.

WHEREFORE, the instant petition is DENIED. The decision dated 25 June 1998 and resolution dated 13 October 1998 of the Court of Appeals in CA-G.R. SP No. 47880 dismissing the special civil action for certiorari filed by petitioner are AFFIRMED. Costs against the petitioner.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, and Tinga, JJ., concur.
Callejo Sr., J., on leave.

[1] *National Power Corporation v. Court of Appeals*, G.R. No. 112702, 26 September 1997, 279 SCRA 506, 531, citing *Alger Electric, Inc. v. Court of Appeals*, G.R. No. L-34298, 28 February 1985, 135 SCRA 37, 46.

[2] *Rollo*, pp. 66-69; penned by Associate Justice Ramon A. Barcelona, Jr., with Associate Justices Minerva P. Gonzaga-Reyes and Demetrio G. Demetria, concurring.

[3] *Id.* at 99.

[4] *Id.* at 4.

[5] *Id.* at 62.

[6] *Ibid.*

[7] *Ibid.*

[8] *Id.* at 63.

[9] *Id.* at 62.

[10] *Ibid.*

[11] Effective 23 August 2002, the Energy Industry Administration Bureau has been redefined according to industry per Administrative Order No. 38, PROVIDING FOR THE INSTITUTIONAL STRENGTHENING OF

THE DEPARTMENT OF ENERGY BY REDEFINING THE FUNCTIONS AND SERVICES OF ITS BUREAUS, SERVICE UNITS AND OFFICES, to wit:

d. The Electric Power Industry Administration Bureau and the Oil Industry Administration Bureau. — To identify and particularize areas of responsibility in industry administration, the Energy Industry Administration Bureau is hereby re-defined according to industry, as follows: (i) the Electric Power Industry Administration Bureau (EPIAB) and (ii) the Oil Industry Administration Bureau (OIAB). (Emphasis supplied.)

[12] Rollo, p. 63.

[13] Ibid.

[14] Ibid.

[15] Ibid.

[16] Ibid.

[17] Id. at 64.

[18] CA Rollo, pp. 70-71.

[19] Id. at 71.

[20] Rollo, pp. 90-97.

[21] Id. at 9.

[22] Id. at 69.

[23] Id. at 99.

[24] Id. at 10-11.

[25] NYK International Knitwear Corp. Phils. v. NLRC, G.R. No. 146267, 17 February 2003, 397 SCRA 607, 614.

[26] Ibid.

[27] Ibid.

[28] Celestial v. Cachopero, G.R. No. 142595, 15 October 2003, 413 SCRA 469.

[29] Vivo v. Cloribel, G.R. No. L-23239, 23 November 1966, 18 SCRA 713; De Lara, Jr. v. Cloribel, G.R. No. L-21653, 31 May 1965, 14 SCRA 269.

[30] Sunville Timber Products, Inc. v. Hon. Alfonso G. Abad, et. al., G.R. No. 85502, 24 February 1992, 206 SCRA 482.

[31] Rep. Act 7638, An Act Creating the Department of Energy, Rationalizing The Organization and Functions of Government Agencies Related To Energy, And for Other Purposes.

SEC. 8. The Secretary. – ... The Secretary shall have the following functions:

...

(b) Exercise direct supervision and control over all functions and activities of the Department, as well as all its officers and personnel;

...

SEC. 12. Bureaus and Services. – Subject to the power of the Secretary, with the approval of the President, to reorganize, restructure and redefine the functions of the bureaus and services for the effective discharge of the powers and functions of the Department under this Act, the Department shall have the following bureaus and services: Energy Resource Development Bureau; Energy Utilization Management Bureau; Energy Industry Administration Bureau; Energy Planning and Monitoring Bureau; and Administrative Support Services. ... (Emphases supplied)

[32] *Sunshine Transportation, Inc. v. NLRC*, G.R. No. 116025, 22 February 1996, 254 SCRA 51.

[33] *Rollo*, p. 5.

[34] *Malabanan v. Ramento*, G.R. No. L-62270, 21 May 1984, 129 SCRA 359 [1984]; *Limoico v. Board of Administrators (PVA)*, G.R. No. L-40244, 31 October 1984, 133 SCRA 43; *National Housing Authority v. Court of Appeals*, G.R. No. L-50877, 28 April 1983, 121 SCRA 777.

[35] *Prudential Bank v. Leopoldo Serrano*, G.R. No. 49293, 19 January 1990.

[36] *Systems Plus Computer College of Caloocan City v. Local Government of Caloocan City*, G.R. No. 146382, 07 August 2003, 408 SCRA 494; *The Iloilo City Zoning Board of Adjustment and Appeals v. Gegato-Abecia Funeral Homes, Inc.*, G.R. No. 157118, 08 December 2003, 417 SCRA 337.

[37] *Rollo*, p. 12.

[38] G.R. No. L-61637 and No. L-61639, 03 December 1985, 140 SCRA 329.

[39] *Id.* at 62.

[40] *Supra*, note at 38.

[41] *Id.* at 336, citing *National Power Corporation v. Jacinto*, G.R. No. 67143, 31 January 1985, 134 SCRA 431. See also *Cagayan Electric Power and Light Company, Inc. v. National Power Corporation*, G.R. No. 72085, 28 December 1989, 180 SCRA 628, 632.

[42] G.R. No. L-78605, 05 May 1988, 161 SCRA 100.

[43] *Energy Regulatory Board v. Court of Appeals*, G.R. No. 113079, 20 April 2001, 357 SCRA 30.

[44] *Supra*, note 1.

[45] *Ibid.*

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