

**NATIONAL POWER CORPORATION, PABLO V. MALIXI AND MEMBERS OF THE BOARD OF INQUIRY AND DISCIPLINE, PETITIONERS, VS. COURT OF APPEALS, RAMON AREL, LEE LICUP AND ROMY L. FUENTES, RES...**

*G.R. No. 137034. February 23, 2004*

Ponente: CARPIO, J.

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**CARPIO, J.:**

This is a petition for review on certiorari<sup>[1]</sup> to annul the Resolution<sup>[2]</sup> dated 23 September 1998 of the Court of Appeals in CA-G.R. SP No. 48171, as well as its Resolution dated 6 January 1999 denying the motion for reconsideration. The Court of Appeals dismissed the appeal of the National Power Corporation (“NPC”), NPC’s President Pablo Malixi (“Malixi”), and the members of the Board of Inquiry and Discipline (“BID”) for non-observance of Section 10, Rule 44 of the 1997 Rules of Civil Procedure.

**Antecedent Facts**

In August 1990, Oscar R. Verdeflor of Nymex Industrial Corporation (“Nymex”) executed a sworn statement reporting alleged anomalous practices in the bidding for the Fiberglass Reinforced Plastic (“FRP”) Ejector Headers of the Tiwi Geothermal Power Plant Units 1 and 4. The sworn statement identified Atty. Romy L. Fuentes (“Fuentes”) and Ramon Arel (“Arel”) as participants in the anomaly.<sup>[3]</sup> NPC’s Internal Audit Department (“IAD”) investigated the complaint and subsequently recommended the filing of a formal administrative charge against Fuentes, Arel, Lee Licup (“Licup”) and other members of the Bidding Committee.

NPC then proceeded to conduct a formal administrative investigation. The IAD submitted its report on 4 July 1991. NPC issued an order on 8 August 1991 administratively charging and preventively suspending Fuentes, Arel, Licup (“private respondents”), and other members of the Bidding Committee from the service. The next day, 9 August 1991, NPC issued an order banning private respondents from the NPC office premises.<sup>[4]</sup>

Instead of immediately filing an answer within seventy-two hours (three days),<sup>[5]</sup> private respondents requested for several motions for extension. Private respondents received their charge sheets on 8 August 1991, thus the seventy-two hour period should have expired on 11 August 1991. The first motion for extension filed on 9 August 1991 was for one hundred and twenty hours (five days) from the expiration of the original seventy-two hour period. NPC partially granted this by extending the period for ninety-six hours (four days), or until 15 August 1991.

On 14 August 1991, private respondents filed a second motion for extension for thirty days from 15 August 1991. NPC partially granted this by extending the period for five days, or until 20 August 1991, with a warning that the same is the final extension. Private respondents filed yet another motion for extension of thirty days. NPC denied this request and considered the case submitted for resolution.<sup>[6]</sup> Private respondents were effectively in default for failing to file their answer despite having been given an extension period of nine days.

On 4 September 1991, private respondents filed a petition against NPC before the Civil Service Commission (“CSC”), docketed as Merit Systems Protection Board (“MSPB”) Case No. 91-1247. Private respondents prayed that the CSC take cognizance of the administrative case filed against them due to NPC’s partiality in conducting the investigation. On 21 October 1991, the MSPB-CSC dismissed the petition for lack of merit.[7]

Meanwhile, NPC’s BID proceeded with its formal hearing and investigation against private respondents. On 23 September 1991, the BID ruled that:

In accordance with the above-stated findings, the respondents have been found guilty as follows:

PENALTY

- 1) Ramon Arel Gross Neglect of Duty Forced Resignation
- 2) Romy L. Fuentes Grave Misconduct Dismissal
- 3) Lee N. Licup Gross Neglect of Duty Forced Resignation[8]

Malixi approved the recommendation.

Sometime in September 1991, after having been in default before the NPC proceedings, private respondents filed a Petition for Certiorari, Prohibition and Mandamus with a prayer for a temporary restraining order against NPC, Malixi, and members of the BID (“petitioners”) before the Regional Trial Court of Quezon City, Branch 101 (“trial court”), docketed as Sp. Civil Case No. Q-91-10192. Private respondents prayed that: (1) a writ of prohibition be issued commanding petitioners to desist from proceeding with the administrative cases; (2) judgment be rendered annulling the proceedings and the questioned orders; (3) a writ of mandamus be issued commanding petitioners to reinstate private respondents immediately, and to pay their backwages and other benefits retroactive as of 8 August 1991, and allowing availment of the early retirement package as granted by NPC management; and (4) petitioners solidarily pay each of private respondents not less than P1,000,000 as moral damages, P150,000 as attorney’s fees, P150,000 as litigation expenses and costs of suit.[9]

On 2 October 1991, NPC implemented the BID recommendation. The trial court subsequently issued an order granting private respondents’ Motion for Issuance of a Writ of Preliminary Injunction on 17 October 1991. The order was premised on the supposed denial of due process of law and alleged persecution behind the filing of the administrative charges against private respondents.[10]

On 14 November 1991, the Office of the Solicitor General (“OSG”), filed on NPC’s behalf, an Answer to the petition pending before the trial court. NPC claimed that private respondents: (1) failed to exhaust all available administrative remedies; (2) do not have a valid and enforceable cause of action against NPC; and that (3) heads of government agencies have exclusive original jurisdiction to investigate and decide matters involving officers and employees under their employ.[11]

On 10 February 1992, the BID recommended the exoneration of three of Licup’s companions[12] in the Bidding Committee. Malixi exonerated Aquino, Legados and Maranca soon thereafter.[13]

It also appears in the records that Malixi filed a complaint against private respondents with the Office of the Ombudsman (“Ombudsman”), docketed as OMB Case No. 92-0753.[14] On 26 June 1996, the Ombudsman dismissed the complaint against the private respondents for lack of merit. The Ombudsman stated:

Since the NPC Board of Inquiry and Discipline has found that the members of the Bidding Committee has [sic] acted properly in declaring the bidding in question a failure, then there is no basis for the charges against

herein respondents Lee Licup who is also a member of the said Committee, and Romy L. Fuentes, who merely acted on the basis of said valid declaration of the second bidding. With more reason with respect to respondent Ramon V. Arel who had no participation in the declaration of failure of bidding.[15]

On 19 March 1992, the trial court issued another order setting aside NPC's implementation of the BID recommendation. The trial court stated that NPC's act of placing private respondents "immediately under preventive suspension" was issued without jurisdiction and with abuse of authority. The trial court ordered NPC to reinstate private respondents.[16]

Petitioners later filed a Petition for Certiorari before the Court of Appeals, docketed as CA-G.R. SP No. 27702. Petitioners sought to annul the 19 March 1992 trial court order and to prohibit Judge Pedro T. Santiago from proceeding with the case. On 18 May 1994, the Court of Appeals issued a resolution dismissing petitioners' petition for lack of merit. The Court of Appeals found that the trial court did not gravely abuse its discretion in issuing the 19 March 1992 order. Petitioners did not appeal the Court of Appeals' 18 May 1994 resolution dismissing CA-G.R. SP No. 27702.[17]

In accordance with the 18 May 1994 Court of Appeals resolution, NPC issued Office Order No. 94-1320 on 13 June 1994, reinstating private respondents to their former positions and ordering payment of their corresponding backwages.[18]

On 28 November 1997, the trial court finally handed down its decision in Civil Case No. Q-91-10192.[19] The dispositive portion of the trial court's decision reads:

WHEREFORE, judgment is hereby rendered:

1. Declaring as permanent the writ of preliminary injunction, thereby barring and enjoining the respondents National Power Corporation and NPC Board of Inquiry and Discipline from further initiating, conducting, and proceeding with any administrative case against the petitioners involving their acts in the public biddings for the fabrication and installation of second stage FRP ejector headers for Units 3 and 4, Tiwi Geothermal Power Plant;

2. Ordering the immediate reinstatement and return to [sic] of petitioner Atty. Romy L. Fuentes to the position of Division Manager A, National Power Corporation, with station at the SLRC offices at Biñan, Laguna, without loss of seniority, and with the privilege of early retirement under the latest terms granted by respondent NPC when said petitioner shall opt for early retirement;

3. Ordering respondent National Power Corporation to recall the temporary assignment/detail of petitioner Lee N. Licup at the office of the NPC President or at whatever temporary assignment he now has, and assign said petitioner to a specific department, with specific duties and responsibilities, as befits his new position of Department Manager A, the position equivalent to his old position of Assistant to the VP-SLRC, without loss of seniority rights, and with the right to early retirement privileges [sic] under the latest NPC retirement plan, whenever said petitioner opts to go on early retirement;

4. Directing the respondents, jointly and severally, to pay the petitioners as follows:

- a. To petitioner [Ramon] Arel:

Representation and Transportation Allowance (RATA) of P312,000.00 for the period from August 8, 1991 to June 14, 1994

Moral damages of P2,000,000.00

Exemplary damages of P1,000,000.00

Attorney's fees of P100,000.00

Litigation expenses of P50,000.00

- b. To petitioner [Lee] Licup:

Actual damages of P997,073.20

Representation and Transportation Allowance (RATA) of P287,710.00 for the period from August 8, 1991 to June 14, 1994

Moral damages of P2,000,000.00

Exemplary damages of P1,000,000.00

Attorney's fees of P100,000.00

Litigation expenses of P50,000.00

c. To petitioner Romy L. Fuentes:

Actual damages of P307,721.30

Representation and Transportation Allowance (RATA) of P236,240.00 for the period from August 8, 1991 to June 14, 1994

Moral damages of P2,000,000.00

Exemplary damages of P1,000,000.00

Attorney's fees of P100,000.00

Litigation expenses of P50,000.00

### **SO ORDERED.[20]**

Petitioners appealed the trial court's decision to the Court of Appeals on 16 December 1997, docketed as CA-G.R. SP No. 48171.[21] Petitioners received private respondents' motion for execution pending appeal also on 16 December 1997.[22] Petitioners filed their opposition to private respondents' motion for execution pending appeal on 29 December 1997.[23]

On 13 January 1998, the trial court issued an order directing petitioners to pay additional docket fees. The trial court issued another order on 26 January 1998 granting private respondents' motion for execution pending appeal. The next day, the Philippine National Bank, NPC branch, notified NPC that the sheriff had garnished NPC's deposit worth P11,000,000.[24]

On 30 January 1998, petitioners sought recourse in the Court of Appeals for the third time by way of a Petition for Certiorari, Prohibition, and Preliminary Injunction with a prayer for a temporary restraining order, docketed as CA-G.R. SP No. 46674. Petitioners assailed the trial court's grant of the writ of execution pending appeal. The Court of Appeals resolved this petition on 7 April 1998, disposing as follows:

WHEREFORE, the petition for certiorari is GIVEN DUE COURSE, and judgment is hereby rendered SETTING ASIDE the Order of respondent court dated January 26, 1998 granting execution pending appeal, insofar as the award for moral and exemplary damages, attorney's fees and litigation expenses is concerned, but AFFIRMING the same insofar as the award for actual damages, in the total amount of P2,140,744.50 is concerned.

The supersedeas bond of P11 Million posted by private respondents may accordingly be reduced to P2,140,744.50.

SO ORDERED.

Petitioners did not appeal this decision.[25]

On 6 July 1998, the Court of Appeals sent a notice to petitioners regarding its petition in CA-G.R. SP No. 48171. Portions of the notice read:

In pursuance with the Resolution No. 231 of this Court En Banc and Supreme Court Circular No. 22-92, which took effect on June 1, 1992, you are hereby required to file in lieu of briefs, your respective memoranda within a

non-extendible period of THIRTY (30) DAYS from receipt hereof.

Failure of the PETITIONER(S)/RESPONDENT(S) APPELLANT(S) to comply with this rule may be a ground for dismissal of the appeal. However, the case shall be deemed submitted for decision with or without memorandum from the petitioner(s)/respondent(s) appellee(s) after the lapse of the thirty day period. (Emphasis supplied)

Petitioners received the notice on 21 July 1998.[26]

Petitioners filed on 24 August 1998 an Urgent Motion for Extension of Time to File Memorandum. The motion prayed for an additional period of 15 days within which to file their memorandum.[27] On 25 August 1998, private respondents filed their memorandum with the Court of Appeals.[28] Private respondents filed their opposition to the motion for extension on 27 August 1998. Private respondents prayed to expunge the motion for extension from the records and to dismiss NPC's appeal because no factual and legal issues were timely raised before the Court and the trial court's decision was supported by a preponderance of evidence.[29] Petitioners finally filed their memorandum on 7 September 1998.[30]

#### Resolution of the Court of Appeals

The Court of Appeals issued on 23 September 1998 a resolution in CA-G.R. SP No. 48171 denying the motion for extension of time to file a memorandum and dismissing the case, [31] as follows:

WHEREFORE, the motion for the extension of time to file memorandum by the respondents-appellants is hereby DENIED, and, pursuant to Rule 44, section 10 of the 1997 Rules of Civil Procedure, the appeal of the respondents-appellants is hereby DISMISSED.

SO ORDERED.

Petitioners moved to reconsider the dismissal of their petition in CA-G.R. SP No. 48171 on 15 October 1998.[32] On 6 January 1999, the Court of Appeals issued its resolution denying petitioners' motion for reconsideration.[33] The resolution reads:

After due consideration of the motion for reconsideration of the respondents-appellants, the opposition thereto by the petitioners-appellees, the reply of the respondents-appellants, and the manifestation and comment on reply of petitioners-appellees, the Court finds no cogent reason for modifying its Resolution dated September 23, 1998.

WHEREFORE, the aforesaid motion for the extension of time is hereby DENIED.

SO ORDERED.

Petitioners filed with this Court on 26 February 1999 a Petition for Review on Certiorari under Rule 45. Petitioners questioned the dismissal of their appeal by the Court of Appeals pursuant to Section 10, Rule 44 of the 1997 Rules of Court.[34]

#### Issue

Petitioners' lone assignment of error reads:

THE COURT OF APPEALS ERRED IN DISMISSING NPC'S APPEAL PURSUANT TO SECTION 10, RULE 44 OF THE 1997 RULES OF CIVIL PROCEDURE.[35]

#### The Court's Ruling

The petition is meritorious.

Dismissal of petitioners' appeal pursuant to  
Section 10, Rule 44 of the 1997 Rules of Civil Procedure

Petitioners urge us to rule that the Court of Appeals erred in applying Section 10, Rule 44 of the 1997 Rules of Civil Procedure in dismissing their appeal. Section 10 of Rule 44 gives the Court of Appeals the discretion to dismiss petitioners' appeal for failure to file their memorandum within the prescribed period. Section 10 of Rule 44 reads:

SECTION 10. Time of filing memoranda in special cases. — In certiorari, prohibition, mandamu, quo warrantos and habeas corpus cases, the parties shall file, in lieu of briefs, their respective memoranda within a non-extendible period of thirty (30) days from receipt of the notice issued by the clerk that all the evidence, oral and documentary, is already attached to the record.

The failure of the appellant to file his memorandum within the period therefor may be a ground for dismissal of the appeal.

However, realizing the heavy workload of the OSG, the Court under A.M. No. 99-2-03-SC grants the OSG an extension of 60 to 90 days to file its comment or brief. [36] We agree with the OSG that the non-extendible 30-day period granted by the appellate court is not enough for the preparation of the memorandum.

Even if an appellant failed to file a motion for extension of time to file his brief before the expiration of the reglementary period, the Court of Appeals does not necessarily lose jurisdiction to decide the appealed case. The Court of Appeals has discretion to dismiss or not to dismiss appellant's appeal, which discretion must be soundly exercised in accordance with the tenets of justice and fair play having in mind the circumstances obtaining in each case.[37]

The trial court enjoined NPC from proceeding with the administrative investigation, thus ignoring the twin principles of primary administrative jurisdiction and exhaustion of administrative remedies. The settled rule is before a party may seek the intervention of the courts, he should first avail of all the means afforded by administrative processes. Hence, if a remedy within the administrative machinery is still available, with a procedure prescribed pursuant to law for an administrative officer to decide the controversy, a party should first exhaust such remedy before resorting to the courts.[38]

In this case, the trial court became overzealous since it not only ordered the reinstatement of private respondents during the pendency of the administrative case, it also took over the administrative case by rendering a decision on the merits. The trial court should have allowed the administrative process, from the administrative investigation by NPC to the appeal to the Civil Service Commission,[39] to continue after ordering the reinstatement of private respondents. In assuming the functions of administrative agencies involving administrative investigation of government personnel, the trial court transgressed the boundaries of administrative jurisdiction in its exercise of judicial power. We remand the case to the Court of Appeals for a thorough examination of the evidence and a judicious disposal of the case.

WHEREFORE, the petition is GRANTED. The Resolution of the Court of Appeals in CA-G.R. SP No. 48171 dated 23 September 1998 and its Resolution dated 6 January 1999 denying the motion for reconsideration are SET ASIDE. Petitioners' appeal is REINSTATED and the instant case REMANDED to the Court of Appeals for further proceedings.

**SO ORDERED.**

Davide, Jr., C.J., (Chairman), Panganiban, Ynares-Santiago, and Azcuna, JJ., concur.

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[1] Under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Hector L. Hofilex;a, with Associate Justices Omar U. Amin and Mariano M. Umali, concurring.

[3] Rollo, pp. 11, 60-66.

[4] Ibid., pp. 6, 14, 162, 164.

[5] Pursuant to Administrative Code of 1987, Executive Order No. 292, Book V, Title 1, Subtitle A, Chapter 7, Section 48(2).

[6] Rollo, pp. 38-41, 104.

[7] Ibid., pp. 12, 15.

[8] Ibid., pp. 12-13.

[9] Ibid., p. 67.

[10] Ibid., pp. 13, 163.

[11] Ibid., pp. 13-14, 37-58.

[12] Stated in the records as Eduardo A. Aquino, Chairman; and Luz L. Legados and Rodrigo V. Maranca, members.

[13] Rollo, pp. 12-13, 15, 75, 164-168.

[14] Ibid., p. 168.

[15] Ibid., p. 169.

[16] Ibid., p. 167.

[17] Ibid., pp. 15, 167-168.

[18] Ibid., p. 15.

[19] Ibid., pp. 16, 67-82, 170.

[20] Ibid., pp. 81-82.

[21] Ibid., pp. 18, 83-85, 170.

[22] Ibid., pp. 18, 86-89, 170.

[23] Ibid., p. 18.

[24] Ibid., pp. 18-19, 170.

[25] Ibid., pp. 19-20.

[26] Ibid., pp. 20, 90, 171.

[27] Ibid., pp. 21, 91-95, 171.

[28] Ibid., pp. 171, 196-226.

[29] Ibid., pp. 21, 96-100.

[30] Ibid., pp. 21, 101-121.

[31] Ibid., pp. 21-22, 32-34.

[32] Ibid., pp. 23, 122-133.

[33] Ibid., pp. 24, 36.

[34] Ibid., pp. 9-30.

[35] Ibid., p. 24.

[36] See also A.M. No. 99-2-03-SC, IN RE: EXTENSION OF TIME TO FILE COMMENT ON APPELLEE'S BRIEF BY THE OFFICE OF THE SOLICITOR GENERAL

The Court notes that in cases involving the State, the Office of the Solicitor General too often asks for several extensions of time to file Comment or Appellee's Brief. While the Court appreciates the heavy workload of the Office of the Solicitor General, nonetheless, the practice of praying for too many extensions of time to plead does not promote the objective of speedy justice.

Accordingly, on its first motion for extension of time to file Comment or Appellee's Brief, the Office of the Solicitor General shall forthwith be given an extension of sixty (60) days and ninety (90) days, respectively, with a warning that no further extension shall be granted, unless compelling reasons warrant a further extension, which shall in no case exceed twenty (20) days. In cases of extreme urgency, however, the period to plead that may be granted to the OSG can be shortened.

This resolution shall take effect on 15 March 1999 and shall be published in two (2) newspapers of general circulation in the Philippines.

Let copies of this resolution be furnished the Office of the Solicitor General and the Integrated Bar of the Philippines.

(Sgd.) HILARIO G. DAVIDE, JR.  
Chief Justice

[37] *Obut v. Court of Appeals, et al.*, 162 Phil. 731 (1976).

[38] *Bangus Fry Fisherfolk, et al. v. Hon. Enrico Lanzas, et al.*, G.R. No. 131442, 10 July 2003.

[39] Administrative Code of 1987, Executive Order No. 292, Book V, Title 1, Subtitle A, Chapter 6, Section 47 provides as follows:

SECTION 47. Disciplinary Jurisdiction. — (1) The Commission shall decide upon appeal all administrative disciplinary cases involving the imposition of a penalty of suspension for more than thirty days, or fine in an amount exceeding thirty days' salary, demotion in rank or salary or transfer, removal or dismissal from office. A complaint may be filed directly with the Commission by a private citizen against a government official or employee in which case it may hear and decide the case or it may depute any department or agency or official or group of officials to conduct the investigation. The results of the investigation shall be submitted to the Commission with recommendation as to the penalty to be imposed or other action to be taken.

(2) The Secretaries and heads of agencies and instrumentalities, provinces, cities and municipalities shall have

jurisdiction to investigate and decide matters involving disciplinary action against officers and employees under their jurisdiction. Their decisions shall be final in case the penalty imposed is suspension for not more than thirty days or fine in an amount not exceeding thirty days' salary. In case the decision rendered by a bureau or office head is appealable to the Commission, the same may be initially appealed to the department and finally to the Commission and pending appeal, the same shall be executory except when the penalty is removal, in which case the same shall be executory only after confirmation by the Secretary concerned.

(3) An investigation may be entrusted to regional director or similar officials who shall make the necessary report and recommendation to the chief of bureau or office or department within the period specified in Paragraph (4) of the following Section.

(4) An appeal shall not stop the decision from being executory, and in case the penalty is suspension or removal, the respondent shall be considered as having been under preventive suspension during the pendency of the appeal in the event he wins an appeal.

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