

**NPC EMPLOYEES CONSOLIDATED UNION (NECU), NPC EMPLOYEES AND WORKERS UNION (NEWU)-MINDANAO REGIONAL COUNCIL, NPC EMPLOYEES AND WORKERS UNION (NEWU)-NORTHERN LUZON REGIONAL COUNCIL...**

*G.R. NO. 144158. April 24, 2007*

Ponente: SANDOVAL-GUTIERREZ, J.

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**SANDOVAL-GUTIERREZ, J.:**

Before this Court is a petition for certiorari, prohibition, and mandamus filed pursuant to Rule 65 of the 1997 Rules of Civil Procedure, as amended. In their original petition, the above-named petitioners alleged that the National Power Corporation (NPC), respondent, and the National Power Board (NPB) committed grave abuse of discretion tantamount to lack of jurisdiction in issuing the following:

- NPB Resolution No. 97-293 dated December 16, 1997 approving the Privatization and Restructuring Program of the NPC and Its Three-Phase Implementation Strategy;
- NPB Resolution No. 99-24 dated February 10, 1999 providing for the 1999 Organizational Realignment/Reorganization Program;
- NPC Circular No. 99-19 dated February 17, 1999 providing for the Implementing Guidelines on NPC's 1999 Organizational Realignment/Reorganization;
- NPC Memorandum Order No. 00-37 dated March 20, 2000 creating the Steering Committee on Corporate Reorganization; and
- NPB Resolution No. 2000-41 dated March 27, 2000 providing for the Realignment of the NPC's organization.

Petitioners claimed that as a result of the foregoing issuances, more than two thousand (2,000) NPC employees have been dismissed or dislocated. This is in violation of the security of tenure of civil service employees under Section 2 (3), Article IX-B of the Constitution<sup>[1]</sup> and pertinent civil service laws and regulations.

NPC Employees Consolidated Union (NECU), one of the petitioners, alleged that it is a legitimate labor union and the exclusive collective bargaining agent of all supervisory employees of NPC. Abner P. Eleria, Teodoro Orquiza, Restituto de Ocampo, Enrico Viray, Mesita Camama, Antonio Calaycay, Modesto Salandanan, Felix Silagon, Alfonso Alday, Cesar Fernando, Livia Mendoza, Wilfredo Remonte, Dennis Torres, Eleonore Ancis, Jose Palisbo, Leon Tapel, Ligaya Vergara, and Eugenio Ladra, individual petitioners herein, are officers and members of NECU and supervisory employees of NPC directly affected by the challenged issuances.

NPC Employees and Workers Union-Mindanao Regional Council (NEWU-MRC), another petitioner union, stated in the petition that it is the legitimate labor union of all NPC rank-and-file employees in Mindanao.

NPC Employees and Workers Union-Northern Luzon Regional Council alleged that it is the representative union

of NPC employees in Northern Luzon. The remaining individual petitioners are officers and members of NEWU-MRC and are rank-and-file employees of NPC, assigned in Mindanao.

NPC, one of the respondents herein, is a government-owned and controlled corporation. It was originally created on November 3, 1936 by virtue of Commonwealth Act No. 136.[2] On September 10, 1971, its charter was amended by Republic Act (R.A.) No. 6935.[3] Under Section 2 of its Revised Charter, NPC is tasked "to undertake the development of hydroelectric generation of power and the production of electricity from nuclear, geothermal, and other sources, as well as the transmission of electric power on a nationwide basis."

The Department of Energy (DOE), public respondent, was created pursuant to R.A. No. 7638.[4] Among its functions are the exercise of supervision and control over respondent NPC, which is one of its attached agencies. Mario V. Tiaoqui is impleaded herein in his official capacity as Secretary of the DOE and concurrent Chairman of the NPB.

Federico E. Puno, another respondent, is being sued in his capacity as President of NPC, while Comie P. Doromal, Gary S. Makasiar, Antonio C. Carag, Douglas L. Lu Ym, Jesus M. Pineda, Jr., Melito S. Salazar, Jr., and Napoleon C. Palo, have been impleaded as respondents in their respective official capacities as officers and members of the NPB.

The factual antecedents of this controversy are:

The electrification of the entire country, particularly the rural areas, has always been one of the prime concerns of the government. Under the Marcos regime, the evolution of a single integrated system of power generation was monopolized by the State, with NPC as the implementing agency. This State policy was clearly outlined in Presidential Decree (P.D.) No. 40,[5] promulgated by then President Ferdinand E. Marcos on November 7, 1972.

On July 10, 1987, when President Corazon C. Aquino took over the helm of government, she issued Executive Order (E.O.) No. 215[6] allowing private sector participation in the generation of electricity through Build-Operate-Transfer and Build-Operate-Own schemes. Private generating facilities, known as the Independent Power Producers (IPPs), became the preferred solution of the government to the power crises in the early 1990s.

Faced with power rates that were among the highest in Asia and a demand for electrical power growing at ten percent (10%) annually, the government needed additional capitalization for NPC to sustain its growth and cope with the rising demand. This could only be met through loans or by direct appropriation by Congress or both. The government, however, did not opt for these measures. Studies showed that in infusing additional capital into NPC, ten percent (10%) of the government's annual budget had to be allocated. Thus, the government opted for legislative measures to restructure the power industry. These measures included House Bill No. 8457 (An Act Ordaining Reforms in the Electric Power Industry Amending for the Purpose Certain Laws, and for Other Purposes) and Senate Bill No. 2000 (An Act to Modernize and Reform the Electric Power Industry).

On December 16, 1997, the NPB passed Resolution No. 97-293 approving NPC's Privatization and Restructuring Program. This Program was to sustain the declared policy of the State to restructure the power industry and privatize the NPC operations. The Program included three (3) phases of implementation, thus:

Phase I: Pre-Omnibus Bill Approval

- NPC involvement in legislative process
- Preparatory steps internal to NPC
- Privatization & Restructuring strategy development (Genco groupings, Transco, IPPs, financial, trading mechanism, grid code, distribution code, creditors consent, roadshows & consultations, premarketing, etc.)

- Tariff reforms, long-term contracts
- RcM, Organizational realignment, personnel, allocation, training, SDP

Phase II: Approval of the Bill into Law and Immediate Actions required

- IRR Finalization (6 months)
- Implementation of the restructuring of the industry
- Refinement of restructuring based on the law (Gencos, Transco, SPUG, etc.)
- Actual capbadging
- Implementation of unbundled NPC

Phase III: Privatization of NPC Assets

- Information Memorandum
- Marketing and management presentation; roadshows, due diligence, data room
- Evaluate Bidders; negotiate as required
- Award
- Actual sale of NPC facilities (strategic sale, IPO, ESOP)
- Separation of NPC personnel from government and transfer to private companies

On February 10, 1999, the NPB issued Resolution No. 99-24 approving NPC's 1999 Organizational Realignment/Reorganization Program. This was among the activities to be implemented in Phase I of the Privatization and Restructuring Program. The 1999 Organizational Realignment/Reorganization Program, however, provided for its implementation a "simulation basis, for testing purposes only." It sought to identify and address possible problems which could arise during the transition from NPC's existing monolithic and monopolistic structure to the "unbundled generation and transmission organizations," which the State policy of deregulation mandated.

The NPC then implemented its "simulated" organizational realignment through NPC Circular No. 99-19 dated February 17, 1999.

On March 20, 2000, the NPB approved the realigned organizational structure through NPB Resolution No. 2000-41. The Resolution likewise approved the corporate vision, conceptual corporate framework, and guiding principles which the NPC would adopt should the law restructuring both the electric power industry and the privatization of NPC assets be passed.

The petitioners, believing that the foregoing actions were an actual reorganization which would result in the illegal dismissal of thousands of NPC employees, filed the instant petition anchored on the following grounds:

- THE RESTRUCTURING OF THE NPC IS PATENTLY WITHOUT LEGISLATIVE AUTHORITY AND THEREFORE NULL AND VOID. RESPONDENTS NPC THROUGH ITS BOARD AND PRESIDENT FEDERICO E. PUNO HAVE ACTED WITHOUT OR IN EXCESS OF JURISDICTION IN ISSUING THE CHALLENGED ISSUANCES.
- THE RESTRUCTURING OF THE NPC VIOLATES THE SECURITY OF TENURE RIGHTS OF NPC EMPLOYEES UNDER SEC. 2(3), ART. IX-B OF THE CONSTITUTION.
- THE REORGANIZATION OF THE NPC IS DONE IN BAD FAITH AND THEREFORE INVALID.

Meanwhile, on June 8, 2001, during the pendency of this case before this Court, President Gloria Macapagal-Arroyo signed R.A. No. 9136[7] into law expressly authorizing the privatization of the assets of the NPC and its restructuring.

On July 17, 2001, petitioners filed with this Court a Supplemental Petition challenging the constitutionality of R.A. No. 9163, alleging that:

- THE GENERATION OF HYDROPOWER AS WELL AS GEOTHERMAL POWER IN PHILIPPINE TERRITORY, BEING IN THE NATURE OF "DEVELOPMENT OR UTILIZATION OF NATURAL RESOURCES," CANNOT BE UNDERTAKEN BY INDIVIDUALS OR CORPORATIONS EXCEPT THROUGH CO-PRODUCTION, JOIN VENTURE OR PRODUCTION-SHARING AGREEMENT WITH THE STATE IN ACCORDANCE WITH ART. XII, SEC. 2 OF THE CONSTITUTION. THE ELECTRIC POWER INDUSTRY REFORM ACT, INsofar AS IT ALLOWS PRIVATE ENTITIES INCLUDING FOREIGN CORPORATIONS TO DIRECTLY ENGAGE IN HYDRO AND GEOTHERMAL POWER GENERATION, VIOLATES THE CONSTITUTION.
- BY NATURE, POWER GENERATION AND SUPPLY ARE PUBLIC UTILITIES. SECS. 6 AND 29 OF THE ELECTRIC POWER INDUSTRY REFORM ACT, INsofar AS THEY EXEMPT THESE PUBLIC UTILITIES FROM THE FRANCHISE REQUIREMENT, DIRECTLY CONTRAVENE ART. XII, SEC. 11 OF THE CONSTITUTION.
- SECS. 6 AND 29 OF THE ELECTRIC POWER INDUSTRY REFORM ACT, INsofar AS THEY EXEMPT ENERGY GENERATION AND SUPPLY OPERATIONS FROM THE FRANCHISE REQUIREMENT AND FROM RATE-FIXING REGULATION, VIOLATE THE CONSTITUTIONAL PRINCIPLES OF EQUAL PROTECTION OF THE LAWS AS WELL AS DUE PROCESS OF LAW.
- SECS. 28 AND 45 OF THE ELECTRIC POWER INDUSTRY REFORM ACT, INsofar AS THEY TEND TO PERPETUATE MONOPOLY CONTROL OF THE ENERGY INDUSTRY VIOLATE THE EQUAL PROTECTION CLAUSE AND ART. XII, SEC. 19 (ANTI-MONOPOLY PROVISION) OF THE CONSTITUTION.
- THE PRIVATIZATION OF NPC GENERATION ASSETS, THE LIBERALIZATION AND DEREGULATION OF THE GENERATION AND SUPPLY SECTORS OF THE ENERGY INDUSTRY, AND THE CONTEMPLATED PRIVATIZATION OF THE STATE'S TRANSMISSION FACILITIES PURSUANT TO THE ASSAILED LAW CONTRAVENE THE NORMS PROVIDED IN ART. II, SEC. 13 OF THE CONSTITUTION

On July 17, 2001, the following groups and individuals, namely: Bagong Alyansang Makabayan, BAYAN MUNA Party List, Cordillera People's Alliance, Fernando Mangali as Secretary of the Interbarangay Alliance Council, Virgilio Aniceto, member of the Interbarangay Alliance Council, MERALCO Employees and Workers Union, Samahan ng Makabayang Kababaihang Nagkakaisa, GABRIELA National Alliance of Women's Organizations, and Kilusang Mayo Uno filed a motion to be admitted as additional petitioners, adopting in toto, the arguments raised in the Supplemental Petition as their own.

On July 25, 2001, the Court issued a Resolution simply noting the Supplemental Petition.

In a Resolution dated December 2, 2002, this Court denied the motion to admit additional petitioners, holding that the movants have no interest in the subject matter, hence, they cannot be deemed to be real parties in interest.

Considering that this Court merely noted the Supplemental Petition assailing the constitutionality of R.A. No. 9136, we shall resolve only the issues raised in the original petition.

The core issue before us is the validity of the privatization of the NPC.

This issue has become moot and academic in view of the enactment of R.A. No. 9136 which took effect on June 26, 2001. We have ruled that a case is moot and academic when there is no more actual controversy between the parties or no useful purpose can be served in passing upon the merits.[8] Courts of justice are constituted to pass upon substantial rights. Hence, they will not consider questions which are moot, as the resolution of the case will have no practical use or value.[9]

R.A. No. 9136 has mandated not only the restructuring of the entire electric power industry, but also the privatization of the NPC. This is clear from the following provisions of the law:

SEC. 2. Declaration of Policy. — It is hereby declared the policy of the State:

x x x

(f) To provide for an orderly and transparent privatization of the assets and liabilities of the National Power Corporation (NPC).

x x x

SEC. 3. Scope. — This Act shall provide a framework for the restructuring of the electric power industry, including the privatization of the assets of NPC, the transition to the desired competitive structure, and the definition of the responsibilities of the various government agencies and private entities.

SEC. 47. NPC Privatization. — Except for the assets of the SPUG, the generation assets, real estate, and other disposable assets as well as IPP contracts of NPC shall be privatized in accordance with this Act.

x x x

Whether the State's policy of privatizing the electric power industry is wise, just, or expedient is not for this Court to decide. The formulation of State policy is a legislative concern. Hence, the primary judge of the necessity, adequacy, wisdom, reasonableness and expediency of any law is primarily the function of the legislature.[10]

WHEREFORE, for being moot, the petition is DENIED. Costs against petitioners.

SO ORDERED.

Puno, C.J., (Chairperson), Corona, Azcuna, and Garcia, JJ., concur.

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[1] Which reads: "No officer or employee of the civil service may be removed or suspended except for cause provided by law."

[2] Entitled "An Act Creating the National Power Corporation, Prescribing its Powers and Activities, Appropriating the Necessary Funds Therefor, and Reserving the Unappropriated Public Waters For its Use."

[3] Entitled "An Act Revising the Charter of the National Power Corporation."

[4] Also known as "The Department of Energy Act of 1992."

[5] The Decree is entitled "Establishing Basic Policies For The Electric Power Industry."

[6] "Amending Presidential Decree No. 40 And Allowing The Private Sector To Generate Electricity."

[7] "An Act Ordaining Reforms in the Electric Power Industry, Amending for the Purpose Certain Laws and For Other Purposes."

[8] *Enrile v. Senate Electoral Tribunal*, G.R. No. 132985, May 19, 2004, 428 SCRA 472, 477, citing *Philippine National Bank v. Court of Appeals*, 291 SCRA 271 (1998).

[9] *Albaña v. Commission on Elections*, G.R. No. 163302, July 23, 2004, 435 SCRA 98.

[10] *Inchong v. Hernandez*, 101 Phil. 1155, 1166 (1957).

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