ROMEO P. GEROCHI, KATULONG NG BAYAN (KB) AND ENVIRONMENTALIST CONSUMERS NETWORK, INC. (ECN), PETITIONERS, VS. DEPARTMENT OF ENERGY (DOE), ENERGY REGULATORY COMMISSION (ERC), NAT...

G.R. NO. 159796. July 17, 2007

Ponente: NACHURA, J.

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NACHURA, J.:

Petitioners Romeo P. Gerochi, Katulong Ng Bayan (KB), and Environmentalist Consumers Network, Inc. (ECN) (petitioners), come before this Court in this original action praying that Section 34 of Republic Act (RA) 9136, otherwise known as the "Electric Power Industry Reform Act of 2001" (EPIRA), imposing the Universal Charge,[1] and Rule 18 of the Rules and Regulations (IRR)[2] which seeks to implement the said imposition, be declared unconstitutional. Petitioners also pray that the Universal Charge imposed upon the consumers be refunded and that a preliminary injunction and/or temporary restraining order (TRO) be issued directing the respondents to refrain from implementing, charging, and collecting the said charge.[3] The assailed provision of law reads:

> SECTION 34. Universal Charge. – Within one (1) year from the effectivity of this Act, a universal charge to be determined, fixed and approved by the ERC, shall be imposed on all electricity end-users for the following purposes:
>
> (a) Payment for the stranded debts[4] in excess of the amount assumed by the National Government and stranded contract costs of NPC[5] and as well as qualified stranded contract costs of distribution utilities resulting from the restructuring of the industry;
>
> (b) Missionary electrification;[6]
>
> (c) The equalization of the taxes and royalties applied to indigenous or renewable sources of energy vis-à-vis imported energy fuels;
>
> (d) An environmental charge equivalent to one-fourth of one centavo per kilowatt-hour (P0.0025/kWh), which shall accrue to an environmental fund to be used solely for watershed rehabilitation and management. Said fund shall be managed by NPC under existing arrangements; and
>
> (e) A charge to account for all forms of cross-subsidies for a period not exceeding three (3) years.
>
> The universal charge shall be a non-bypassable charge which shall be passed on and collected from all end-users on a monthly basis by the distribution utilities. Collections by the distribution utilities and the TRANSCO in any given month shall be remitted to the PSALM Corp. on or before the fifteenth (15th) of the succeeding month, net of any amount due to the distribution utility. Any end-user or self-generating entity not connected to a distribution utility shall remit its corresponding universal charge directly to the TRANSCO. The PSALM Corp., as administrator of the fund, shall create a Special Trust Fund which shall be disbursed only for the purposes specified herein in an open and transparent manner. All amount collected for the universal charge

> shall be distributed to the respective beneficiaries within a reasonable period to be provided by the ERC.

The Facts

Congress enacted the EPIRA on June 8, 2001; on June 26, 2001, it took effect.[7]

On April 5, 2002, respondent National Power Corporation-Strategic Power Utilities Group[8] (NPC-SPUG) filed with respondent Energy Regulatory Commission (ERC) a petition for the availment from the Universal Charge of its share for Missionary Electrification, docketed as ERC Case No. 2002-165.[9]

On May 7, 2002, NPC filed another petition with ERC, docketed as ERC Case No. 2002-194, praying that the proposed share from the Universal Charge for the Environmental charge of P0.0025 per kilowatt-hour (/kWh), or a total of P119,488,847.59, be approved for withdrawal from the Special Trust Fund (STF) managed by respondent Power Sector Assets and

Liabilities Management Group (PSALM)[10] for the rehabilitation and management of watershed areas.[11]

On December 20, 2002, the ERC issued an Order[12] in ERC Case No. 2002-165 provisionally approving the computed amount of P0.0168/kWh as the share of the NPC-SPUG from the Universal Charge for Missionary Electrification and authorizing the National Transmission Corporation (TRANSCO) and Distribution Utilities to collect the same from its end-users on a monthly basis.

On June 26, 2003, the ERC rendered its Decision[13] (for ERC Case No. 2002-165) modifying its Order of December 20, 2002, thus:

> WHEREFORE, the foregoing premises considered, the provisional authority granted to petitioner National Power Corporation-Strategic Power Utilities Group (NPC-SPUG) in the Order dated December 20, 2002 is hereby modified to the effect that an additional amount of P0.0205 per kilowatt-hour should be added to the P0.0168 per kilowatt-hour provisionally authorized by the Commission in the said Order. Accordingly, a total amount of P0.0373 per kilowatt-hour is hereby APPROVED for withdrawal from the Special Trust Fund managed by PSALM as its share from the Universal Charge for Missionary Electrification (UC-ME) effective on the following billing cycles:
>
> (a) June 26-July 25, 2003 for National Transmission Corporation (TRANSCO); and
>
> (b) July 2003 for Distribution Utilities (Dus).
>
> Relative thereto, TRANSCO and Dus are directed to collect the UC-ME in the amount of P0.0373 per kilowatt-hour and remit the same to PSALM on or before the 15th day of the succeeding month.
>
> In the meantime, NPC-SPUG is directed to submit, not later than April 30, 2004, a detailed report to include Audited Financial Statements and physical status (percentage of completion) of the projects using the prescribed format.
>
> Let copies of this Order be furnished petitioner NPC-SPUG and all distribution utilities (Dus).
>
> SO ORDERED.

On August 13, 2003, NPC-SPUG filed a Motion for Reconsideration asking the ERC, among others,[14] to set aside the above-mentioned Decision, which the ERC granted in its Order dated October 7, 2003, disposing:

> WHEREFORE, the foregoing premises considered, the "Motion for Reconsideration" filed by petitioner National Power Corporation-Small Power Utilities Group (NPC-SPUG) is hereby GRANTED. Accordingly, the Decision dated June 26, 2003 is hereby modified accordingly.

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Relative thereto, NPC-SPUG is directed to submit a quarterly report on the following:

- Projects for CY 2002 undertaken;

- Location

- Actual amount utilized to complete the project;

- Period of completion;

- Start of Operation; and

- Explanation of the reallocation of UC-ME funds, if any.

SO ORDERED.[15]

Meanwhile, on April 2, 2003, ERC decided ERC Case No. 2002-194, authorizing the NPC to draw up to P70,000,000.00 from PSALM for its 2003 Watershed Rehabilitation Budget subject to the availability of funds for the Environmental Fund component of the Universal Charge.[16]

On the basis of the said ERC decisions, respondent Panay Electric Company, Inc. (PECO) charged petitioner Romeo P. Gerochi and all other

end-users with the Universal Charge as reflected in their respective electric bills starting from the month of July 2003.[17]

Hence, this original action.

Petitioners submit that the assailed provision of law and its IRR which sought to implement the same are unconstitutional on the following grounds:

1) The universal charge provided for under Sec. 34 of the EPIRA and sought to be implemented under Sec. 2, Rule 18 of the IRR of the said law is a tax which is to be collected from all electric end-users and self-generating entities. The power to tax is strictly a legislative function and as such, the delegation of said power to any executive or administrative agency like the ERC is unconstitutional, giving the same unlimited authority. The assailed provision clearly provides that the Universal Charge is to be determined, fixed and approved by the ERC, hence leaving to the latter complete discretionary legislative authority.

2) The ERC is also empowered to approve and determine where the funds collected should be used.

3) The imposition of the Universal Charge on all end-users is oppressive and confiscatory and amounts to taxation without representation as the consumers were not given a chance to be heard and represented.[18]

Petitioners contend that the Universal Charge has the characteristics of a tax and is collected to fund the operations of the NPC. They argue that the cases[19] invoked by the respondents clearly show the regulatory purpose of the charges imposed therein, which is not so in the case at bench. In said cases, the respective funds[20] were created in order to balance and stabilize the prices of oil and sugar, and to act as buffer to counteract the changes and adjustments in prices, peso devaluation, and other variables which cannot be adequately and timely monitored by the legislature. Thus, there was a need to delegate powers to administrative bodies.[21] Petitioners posit that the Universal Charge is imposed not for a similar purpose.

On the other hand, respondent PSALM through the Office of the Government Corporate Counsel (OGCC) contends that unlike a tax which is imposed to provide income for public purposes, such as support of the government, administration of the law, or payment of public expenses, the assailed Universal Charge is levied for a specific regulatory purpose, which is to ensure the viability of the country's electric power industry. Thus, it is

exacted by the State in the exercise of its inherent police power. On this premise, PSALM submits that there is no undue delegation of legislative power to the ERC since the latter merely exercises a limited authority or discretion as to the execution and implementation of the provisions of the EPIRA.[22]

Respondents Department of Energy (DOE), ERC, and NPC, through the Office of the Solicitor General (OSG), share the same view that the Universal Charge is not a tax because it is levied for a specific regulatory purpose, which is to ensure the viability of the country's electric power industry, and is, therefore, an exaction in the exercise of the State's police power. Respondents further contend that said Universal Charge does not possess the essential characteristics of a tax, that its imposition would redound to the benefit of the electric power industry and not to the public, and that its rate is uniformly levied on electricity end-users, unlike a tax which is imposed based on the individual taxpayer's ability to pay. Moreover, respondents deny that there is undue delegation of legislative power to the ERC since the EPIRA sets forth sufficient determinable standards which would guide the ERC in the exercise of the powers granted to it. Lastly, respondents argue that the imposition of the Universal Charge is not oppressive and confiscatory since it is an exercise of the police power of the State and it complies with the requirements of due process.[23]

On its part, respondent PECO argues that it is duty-bound to collect and remit the amount pertaining to the Missionary Electrification and Environmental Fund components of the Universal Charge, pursuant to Sec. 34 of the EPIRA and the Decisions in ERC Case Nos. 2002-194 and 2002-165. Otherwise, PECO could be held liable under Sec. 46[24] of the EPIRA, which imposes fines and penalties for any violation of its provisions or its IRR.[25]

The Issues

The ultimate issues in the case at bar are:

1) Whether or not, the Universal Charge imposed under Sec. 34 of the EPIRA is a tax; and

2) Whether or not there is undue delegation of legislative power to tax on the part of the ERC.[26]

Before we discuss the issues, the Court shall first deal with an obvious procedural lapse.

Petitioners filed before us an original action particularly denominated as a Complaint assailing the constitutionality of Sec. 34 of the EPIRA imposing the Universal Charge and Rule 18 of the EPIRA's IRR. No doubt, petitioners have locus standi. They impugn the constitutionality of Sec. 34 of the EPIRA because they sustained a direct injury as a result of the imposition of the Universal Charge as reflected in their electric bills.

However, petitioners violated the doctrine of hierarchy of courts when they filed this "Complaint" directly with us. Furthermore, the Complaint is bereft of any allegation of grave abuse of discretion on the part of the ERC or any of the public respondents, in order for the Court to consider it as a petition for certiorari or prohibition.

Article VIII, Section 5(1) and (2) of the 1987 Constitution[27] categorically provides that:

SECTION 5. The Supreme Court shall have the following powers:

- Exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for certiorari, prohibition, mandamus, quo warranto, and habeas corpus.

- Review, revise, reverse, modify, or affirm on appeal or certiorari, as the law or the rules of court may provide, final judgments and orders of lower courts in:

(a) All cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.

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But this Court's jurisdiction to issue writs of certiorari, prohibition, mandamus, quo warranto, and habeas corpus, while concurrent with that of the regional trial courts and the Court of Appeals, does not give litigants unrestrained freedom of choice of forum from which to seek such relief.[28] It has long been established that this Court will not entertain direct resort to it unless the redress desired cannot be obtained in the appropriate courts, or where exceptional and compelling circumstances justify availment of a remedy within and call for the exercise of our primary jurisdiction.[29] This circumstance alone warrants the outright dismissal of the present action.

This procedural infirmity notwithstanding, we opt to resolve the constitutional issue raised herein. We are aware that if the constitutionality of Sec. 34 of the EPIRA is not resolved now, the issue will certainly resurface in the near future, resulting in a repeat of this litigation, and probably involving the same parties. In the public interest and to avoid unnecessary delay, this Court renders its ruling now.

The instant complaint is bereft of merit.

The First Issue

To resolve the first issue, it is necessary to distinguish the State's power of taxation from the police power.

The power to tax is an incident of sovereignty and is unlimited in its range, acknowledging in its very nature no limits, so that security against its abuse is to be found only in the responsibility of the legislature which imposes the tax on the constituency that is to pay it.[30] It is based on the principle that taxes are the lifeblood of the government, and their prompt and certain availability is an imperious need.[31] Thus, the theory behind the exercise of the power to tax emanates from necessity; without taxes, government cannot fulfill its mandate of promoting the general welfare and well-being of the people.[32]

On the other hand, police power is the power of the state to promote public welfare by restraining and regulating the use of liberty and property.[33] It is the most pervasive, the least limitable, and the most demanding of the three fundamental powers of the State. The justification is found in the Latin maxims salus populi est suprema lex (the welfare of the people is the supreme law) and sic utere tuo ut alienum non laedas (so use your property as not to injure the property of others). As an inherent attribute of sovereignty which virtually extends to all public needs, police power grants a wide panoply of instruments through which the State, as parens patriae, gives effect to a host of its regulatory powers.[34] We have held that the power to "regulate" means the power to protect, foster, promote, preserve, and control, with due regard for the interests, first and foremost, of the public, then of the utility and of its patrons.[35]

The conservative and pivotal distinction between these two powers rests in the purpose for which the charge is made. If generation of revenue is the primary purpose and regulation is merely incidental, the imposition is a tax; but if regulation is the primary purpose, the fact that revenue is incidentally raised does not make the imposition a tax.[36]

In exacting the assailed Universal Charge through Sec. 34 of the EPIRA, the State's police power, particularly its regulatory dimension, is invoked. Such can be deduced from Sec. 34 which enumerates the purposes for which the Universal Charge is imposed[37] and which can be amply discerned as regulatory in character. The EPIRA resonates such regulatory purposes, thus:

> SECTION 2. Declaration of Policy. – It is hereby declared the policy of the State:
>
> (a) To ensure and accelerate the total electrification of the country;
> (b) To ensure the quality, reliability, security and affordability of the supply of electric power;
> (c) To ensure transparent and reasonable prices of electricity in a regime of free and fair competition and full public accountability to achieve greater operational and economic efficiency and enhance the competitiveness

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> of Philippine products in the global market;
> (d) To enhance the inflow of private capital and broaden the ownership base of the power generation, transmission and distribution sectors;
> (e) To ensure fair and non-discriminatory treatment of public and private sector entities in the process of restructuring the electric power industry;
> (f) To protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power;
> (g) To assure socially and environmentally compatible energy sources and infrastructure;
> (h) To promote the utilization of indigenous and new and renewable energy resources in power generation in order to reduce dependence on imported energy;
> (i) To provide for an orderly and transparent privatization of the assets and liabilities of the National Power Corporation (NPC);
> (j) To establish a strong and purely independent regulatory body and system to ensure consumer protection and enhance the competitive operation of the electricity market; and
> (k) To encourage the efficient use of energy and other modalities of demand side management.

From the aforementioned purposes, it can be gleaned that the assailed Universal Charge is not a tax, but an exaction in the exercise of the State's police power. Public welfare is surely promoted.

Moreover, it is a well-established doctrine that the taxing power may be used as an implement of police power.[38] In Valmonte v. Energy Regulatory Board, et al.[39] and in Gaston v. Republic Planters Bank,[40] this Court held that the Oil Price Stabilization Fund (OPSF) and the Sugar Stabilization Fund (SSF) were exactions made in the exercise of the police power. The doctrine was reiterated in Osmeña v. Orbos[41] with respect to the OPSF. Thus, we disagree with petitioners that the instant case is different from the aforementioned cases. With the Universal Charge, a Special Trust Fund (STF) is also created under the administration of PSALM.[42] The STF has some notable characteristics similar to the OPSF and the SSF, viz.:

> 1) In the implementation of stranded cost recovery, the ERC shall conduct a review to determine whether there is under-recovery or over recovery and adjust (true-up) the level of the stranded cost recovery charge. In case of an over-recovery, the ERC shall ensure that any excess amount shall be remitted to the STF. A separate account shall be created for these amounts which shall be held in trust for any future claims of distribution utilities for stranded cost recovery. At the end of the stranded cost recovery period, any remaining amount in this account shall be used to reduce the electricity rates to the end-users.[43]
>
> 2) With respect to the assailed Universal Charge, if the total amount collected for the same is greater than the actual availments against it, the PSALM shall retain the balance within the STF to pay for periods where a shortfall occurs.[44]
>
> 3) Upon expiration of the term of PSALM, the administration of the STF shall be transferred to the DOF or any of the DOF attached agencies as designated by the DOF Secretary.[45]

The OSG is in point when it asseverates:

> Evidently, the establishment and maintenance of the Special Trust Fund, under the last paragraph of Section 34, R.A. No. 9136, is well within the pervasive and non-waivable power and responsibility of the government to secure the physical and economic survival and well-being of the community, that comprehensive sovereign authority we designate as the police power of the State.[46]

This feature of the Universal Charge further boosts the position that the same is an exaction imposed primarily in pursuit of the State's police objectives. The STF reasonably serves and assures the attainment and perpetuity of the purposes for which the Universal Charge is imposed, i.e., to ensure the viability of the country's electric power industry.

The Second Issue

The principle of separation of powers ordains that each of the three branches of government has exclusive cognizance of and is supreme in matters falling within its own constitutionally allocated sphere. A logical corollary to the doctrine of separation of powers is the principle of non-delegation of powers, as expressed in the Latin maxim potestas delegata non delegari potest (what has been delegated cannot be delegated). This is based on the ethical principle that such delegated power constitutes not only a right but a duty to be performed by the delegate through the instrumentality of his own judgment and not through the intervening mind of another. [47]

In the face of the increasing complexity of modern life, delegation of legislative power to various specialized administrative agencies is allowed as an exception to this principle.[48] Given the volume and variety of interactions in today's society, it is doubtful if the legislature can promulgate laws that will deal adequately with and respond promptly to the minutiae of everyday life. Hence, the need to delegate to administrative bodies - the principal agencies tasked to execute laws in their specialized fields - the authority to promulgate rules and regulations to implement a given statute and effectuate its policies. All that is required for the valid exercise of this power of subordinate legislation is that the regulation be germane to the objects and purposes of the law and that the regulation be not in contradiction to, but in conformity with, the standards prescribed by the law. These requirements are denominated as the completeness test and the sufficient standard test.

Under the first test, the law must be complete in all its terms and conditions when it leaves the legislature such that when it reaches the delegate, the only thing he will have to do is to enforce it. The second test mandates adequate guidelines or limitations in the law to determine the boundaries of the delegate's authority and prevent the delegation from running riot.[49]

The Court finds that the EPIRA, read and appreciated in its entirety, in relation to Sec. 34 thereof, is complete in all its essential terms and conditions, and that it contains sufficient standards.

Although Sec. 34 of the EPIRA merely provides that "within one (1) year from the effectivity thereof, a Universal Charge to be determined, fixed and approved by the ERC, shall be imposed on all electricity end-users," and therefore, does not state the specific amount to be paid as Universal Charge, the amount nevertheless is made certain by the legislative parameters provided in the law itself. For one, Sec. 43(b)(ii) of the EPIRA provides:

> SECTION 43. Functions of the ERC. – The ERC shall promote competition, encourage market development, ensure customer choice and penalize abuse of market power in the restructured electricity industry. In appropriate cases, the ERC is authorized to issue cease and desist order after due notice and hearing. Towards this end, it shall be responsible for the following key functions in the restructured industry:
>
> x x x x
>
> (b) Within six (6) months from the effectivity of this Act, promulgate and enforce, in accordance with law, a National Grid Code and a Distribution Code which shall include, but not limited to the following:
>
> x x x x
>
> (ii) Financial capability standards for the generating companies, the TRANSCO, distribution utilities and suppliers: Provided, That in the formulation of the financial capability standards, the nature and function of the entity shall be considered: Provided, further, That such standards are set to ensure that the electric power industry participants meet the minimum financial standards to protect the public interest. Determine, fix, and approve, after due notice and public hearings the universal charge, to be imposed on all electricity end-users pursuant to Section 34 hereof;

Moreover, contrary to the petitioners' contention, the ERC does not enjoy a wide latitude of discretion in the

determination of the Universal Charge. Sec. 51(d) and (e) of the EPIRA[50] clearly provides:

> SECTION 51. Powers. – The PSALM Corp. shall, in the performance of its functions and for the attainment of its objective, have the following powers:
>
> x x x x
>
> (d) To calculate the amount of the stranded debts and stranded contract costs of NPC which shall form the basis for ERC in the determination of the universal charge;
>
> (e) To liquidate the NPC stranded contract costs, utilizing the proceeds from sales and other property contributed to it, including the proceeds from the universal charge.

Thus, the law is complete and passes the first test for valid delegation of legislative power.

As to the second test, this Court had, in the past, accepted as sufficient standards the following: "interest of law and order;"[51] "adequate and efficient instruction;"[52] "public interest;"[53] "justice and equity;"[54] "public convenience and welfare;"[55] "simplicity, economy and efficiency;"[56] "standardization and regulation of medical education;"[57] and "fair and equitable employment practices."[58] Provisions of the EPIRA such as, among others, "to ensure the total electrification of the country and the quality, reliability, security and affordability of the supply of electric power"[59] and "watershed rehabilitation and management"[60] meet the requirements for valid delegation, as they provide the limitations on the ERC's power to formulate the IRR. These are sufficient standards.

It may be noted that this is not the first time that the ERC's conferred powers were challenged. In Freedom from Debt Coalition v. Energy Regulatory Commission,[61] the Court had occasion to say:

> In determining the extent of powers possessed by the ERC, the provisions of the EPIRA must not be read in separate parts. Rather, the law must be read in its entirety, because a statute is passed as a whole, and is animated by one general purpose and intent. Its meaning cannot to be extracted from any single part thereof but from a general consideration of the statute as a whole. Considering the intent of Congress in enacting the EPIRA and reading the statute in its entirety, it is plain to see that the law has expanded the jurisdiction of the regulatory body, the ERC in this case, to enable the latter to implement the reforms sought to be accomplished by the EPIRA. When the legislators decided to broaden the jurisdiction of the ERC, they did not intend to abolish or reduce the powers already conferred upon ERC's predecessors. To sustain the view that the ERC possesses only the powers and functions listed under Section 43 of the EPIRA is to frustrate the objectives of the law.

In his Concurring and Dissenting Opinion[62] in the same case, then Associate Justice, now Chief Justice, Reynato S. Puno described the immensity of police power in relation to the delegation of powers to the ERC and its regulatory functions over electric power as a vital public utility, to wit:

> Over the years, however, the range of police power was no longer limited to the preservation of public health, safety and morals, which used to be the primary social interests in earlier times. Police power now requires the State to "assume an affirmative duty to eliminate the excesses and injustices that are the concomitants of an unrestrained industrial economy." Police power is now exerted "to further the public welfare " a concept as vast as the good of society itself." Hence, "police power is but another name for the governmental authority to further the welfare of society that is the basic end of all government." When police power is delegated to administrative bodies with regulatory functions, its exercise should be given a wide latitude. Police power takes on an even broader dimension in developing countries such as ours, where the State must take a more active role in balancing the many conflicting interests in society. The Questioned Order was issued by the ERC, acting as an agent of the State in the exercise of police power. We should have exceptionally good grounds to curtail its exercise. This approach is more compelling in the field of rate-regulation of electric

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> power rates. Electric power generation and distribution is a traditional instrument of economic growth that affects not only a few but the entire nation. It is an important factor in encouraging investment and promoting business. The engines of progress may come to a screeching halt if the delivery of electric power is impaired. Billions of pesos would be lost as a result of power outages or unreliable electric power services. The State thru the ERC should be able to exercise its police power with great flexibility, when the need arises.

This was reiterated in National Association of Electricity Consumers for Reforms v. Energy Regulatory Commission[63] where the Court held that the ERC, as regulator, should have sufficient power to respond in real time to changes wrought by multifarious factors affecting public utilities.

From the foregoing disquisitions, we therefore hold that there is no undue delegation of legislative power to the ERC.

Petitioners failed to pursue in their Memorandum the contention in the Complaint that the imposition of the Universal Charge on all end-users is oppressive and confiscatory, and amounts to taxation without representation. Hence, such contention is deemed waived or abandoned per Resolution[64] of August 3, 2004.[65] Moreover, the determination of whether or not a tax is excessive, oppressive or confiscatory is an issue which essentially involves questions of fact, and thus, this Court is precluded from reviewing the same.[66]

As a penultimate statement, it may be well to recall what this Court said of EPIRA:

> One of the landmark pieces of legislation enacted by Congress in recent years is the EPIRA. It established a new policy, legal structure and regulatory framework for the electric power industry. The new thrust is to tap private capital for the expansion and improvement of the industry as the large government debt and the highly capital-intensive character of the industry itself have long been acknowledged as the critical constraints to the program. To attract private investment, largely foreign, the jaded structure of the industry had to be addressed. While the generation and transmission sectors were centralized and monopolistic, the distribution side was fragmented with over 130 utilities, mostly small and uneconomic. The pervasive flaws have caused a low utilization of existing generation capacity; extremely high and uncompetitive power rates; poor quality of service to consumers; dismal to forgettable performance of the government power sector; high system losses; and an inability to develop a clear strategy for overcoming these shortcomings
>
> Thus, the EPIRA provides a framework for the restructuring of the industry, including the privatization of the assets of the National Power Corporation (NPC), the transition to a competitive structure, and the delineation of the roles of various government agencies and the private entities. The law ordains the division of the industry into four (4) distinct sectors, namely: generation, transmission, distribution and supply. Corollarily, the NPC generating plants have to privatized and its transmission business spun off and privatized thereafter.[67]

Finally, every law has in its favor the presumption of constitutionality, and to justify its nullification, there must be a clear and unequivocal breach of the Constitution and not one that is doubtful, speculative, or argumentative.[68] Indubitably, petitioners failed to overcome this presumption in favor of the EPIRA. We find no clear violation of the Constitution which would warrant a pronouncement that Sec. 34 of the EPIRA and Rule 18 of its IRR are unconstitutional and void.

WHEREFORE, the instant case is hereby DISMISSED for lack of merit.

SO ORDERED.

Puno, C.J., Quisumbing,Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Azcuna, Tinga, Chico-Nazario, Garcia, and Velasco, Jr., JJ., concur.

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[1] Sec. 4 (ddd) of the EPIRA provides that the Universal Charge refers to the charge, if any, imposed for the recovery of the stranded cost and other purposes pursuant to Section 34 hereof.

[2]Velasco, Jr.,Rules and Regulations to Implement Republic Act No. 9136, entitled "Electric Power Industry Reform Act of 2001, (IRR) approved on February 27, 2002, particularly Rule 4 (rrrr) provides that the "Universal Charge" refers to the charge, if any, imposed for the recovery of the Stranded Debts, Stranded Contract Costs of NPC, and Stranded Contract Costs of Eligible Contracts of Distribution Utilities and other purposes pursuant to Section 34 of the EPIRA.

[3] Particularly denominated as Complaint dated September 15, 2003; rollo, pp. 3-15.

[4] Sec. 4 [vv] of the EPIRA provides that Stranded Debts of NPC refer to any unpaid financial obligations of NPC which have not been liquidated by the proceeds from the sales and privatization of NPC assets.

[5] Sec. 4 [uu] of the EPIRA also provides that Stranded contract costs of NPC or distribution utility refer to the excess of the contracted cost of electricity under eligible contracts over the actual selling price of the contracted energy output of such contracts in the market. Such contracts shall have been approved by the ERB as of December 31, 2000.

[6] Rule 4 (ddd) of the IRR provides that Missionary Electrification refers to the provision of basic electricity service in Unviable Areas with the ultimate aim of bringing the operations in these areas to viability levels.

[7] Manila Electric Company, Inc. v. Lualhati, G.R. Nos. 166769 and 166818, December 6, 2006.

[8] IRR, Rule 4 (bbbb) states that Small Power Utilities Group or SPUG refers to the functional unit of NPC created to pursue Missionary Electrification function.

[9] ERC Record for ERC Case No. 2002-165, pp. 1-7.

[10] PSALM is a government-owned and controlled corporation created under Sec. 49 of the EPIRA, which shall take ownership of all existing NPC generation assets, liabilities, IPP contracts, real estate and all other disposable assets. All outstanding obligations of the NPC arising from loans, issuances of bonds, securities and other instruments of indebtedness shall be transferred to and assumed by the PSALM.

[11] ERC Record for ERC Case No. 2002-194, pp. 1-5.

[12] Supra note 9, at 110-122.

[13] Id. at 215-224.

[14] NPC-SPUG's Motion for Reconsideration dated August 13, 2003 also prayed that it be allowed (1) to have flexibility in the utilization of UC-ME considering its mandate to implement the MEDP responsive to the needs and constraints of missionary electrification; (2) to authorize it to re-prioritize its CAPEX and its OPEX to the extent possible, for CY 2003; and (3) to give it the flexibility to reallocate available UC-ME funds among the revised priority activities/projects for CY 2003, Id. at 225-236.

[15] Id. at 237-239.

[16] Supra note 11, at 110-122.

[17] Rollo, p. 8.

[18] Supra note 3.

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[19] Osmeña v. Orbos, G.R. No. 99886, March 31, 1993, 220 SCRA 703; Valmonte v. Energy Regulatory Board, G.R. Nos. L-79601-03, June 23, 1988, 162 SCRA 521; and Gaston v. Republic Planters Bank, No. L-77194, March 15, 1988, 158 SCRA 626.

[20] These funds are the Oil Price Stabilization Fund (OPSF) and Sugar Stabilization Fund (SSF).

[21] Petitioners' Memorandum dated October 6, 2004; rollo, pp. 123-138.

[22] PSALM's Memorandum dated December 8, 2004; id. at 154-167.

[23] OSG's Memorandum dated January 4, 2005; id. at 168-187.

[24] SECTION 46. Fines and Penalties. – The fines and penalties that shall be imposed by the ERC for any violation of or non-compliance with this Act or the IRR shall range from a minimum of Fifty thousand pesos (P50,000.00) to a maximum of Fifty million pesos (P50,000,000.00).

Any person who is found guilty of any of the prohibited acts pursuant to Section 45 hereof shall suffer the penalty of prision mayor and a fine ranging from Ten thousand pesos (P10,000.00) to Ten million pesos (P10,000.000.00), or both, at the discretion of the court.

The members of the Board of Directors of the juridical companies participating in or covered in the generation companies, the distribution utilities, the TRANSCO or its concessionaire or supplier who violate the provisions of this Act may be fined by an amount not exceeding double the amount of damages caused by the offender or by imprisonment of one (1) year or two (2) years or both at the discretion of the court. This rule shall apply to the members of the Board who knowingly or by neglect allows the commission or omission under the law.

If the offender is a government official or employee, he shall, in addition, be dismissed from the government service with prejudice to reinstatement and with perpetual or temporary disqualification from holding any elective or appointive office.

If the offender is an alien, he may, in addition to the penalties prescribed, be deported without further proceedings after service of sentence.

Any case which involves question of fact shall be appealable to the Court of Appeals and those which involve question of law shall be directly appealable to the Supreme Court.

The administrative sanction that may be imposed by the ERC shall be without prejudice to the filing of a criminal action, if warranted.

To ensure compliance with this Act, the penalty of prision correccional or a fine ranging from Five thousand pesos (P5,000.00) to Five million pesos (P5,000,000.00), or both, at the discretion of the court, shall be imposed on any person, including but not limited to the president, member of the Board, Chief Executive Officer or Chief Operating Officer of the corporation, partnership, or any other entity involved, found guilty of violating or refusing to comply with any provision of this Act or its IRR, other than those provided herein.

Any party to an administrative proceeding may, at any time, make an offer to the ERC, conditionally or otherwise, for a consented decree, voluntary compliance or desistance and other settlement of the case. The offer and any or all of the ultimate facts upon which the offer is based shall be considered for settlement purposes only and shall not be used as evidence against any party for any other purpose and shall not constitute an admission by the party making the offer of any violation of the laws, rules, regulations, orders and resolutions of the ERC, nor as a waiver to file any warranted criminal actions.

In addition, Congress may, upon recommendation of the DOE and/or ERC, revoke such franchise or privilege

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granted to the party who violated the provisions of this Act.

[25] PECO's Memorandum dated April 18, 2005; rollo, pp. 205-210.

[26] Supra note 21, at 125.

[27] Emphasis supplied.

[28] Francisco, Jr. v. Fernando, G.R. No. 166501, November 16, 2006, citing People v. Cuaresma, 172 SCRA 415, 423-424 (1989).

[29] Lacson Hermanas, Inc. v. Heirs of Cenon Ignacio, G.R. No. 165973, June 29, 2005, 462 SCRA 290, 294 and Santiago v. Vasquez, G.R. Nos. 99289-90, January 27, 1993, 217 SCRA 633, 652.

[30] Mactan Cebu International Airport Authority v. Marcos, 330 Phil. 392, 404 (1996).

[31] Proton Pilipinas Corporation v. Republic of the Philippines, G.R. No. 165027, October 16, 2006, citing Province of Tarlac v. Alcantara, 216 SCRA 790, 798 (1992).

[32] National Power Corporation v. City of Cabanatuan, 449 Phil. 233, 248 (2003).

[33] Didipio Earth-Savers' Multi-Purpose Association, Inc. (DESAMA) v. Gozun, G.R. No. 157882, March 30, 2006, 485 SCRA 586, 604, citing U.S. v. Torribio, 15 Phil. 85, 93 (1910) and Rubi v. The Provincial Board of Mindoro, 39 Phil. 660, 708 (1919).

[34] JMM Promotion and Management, Inc. v. Court of Appeals, G.R. No. 120095, August 5, 1996, 260 SCRA 319, 324.

[35] Philippine Association of Service Exporters, Inc. v. Hon. Ruben D. Torres, G.R. No. 101279, August 6, 1992, 212 SCRA 298, 304, citing Philippine Communications Satellite Corporation v. Alcuaz, 180 SCRA 218 (1989).

[36] Progressive Development Corporation vs. Quezon City, G.R. No. 36081, April 24, 1989, 172 SCRA 629, 635, citing Manila Electric Company v. El Auditor General y La Comision de Servicios Publicos, 73 Phil. 133 (1941); Republic v. Philippine Rabbit Lines, 143 Phil. 158, 163 (1970).

[37] The purposes are:

(a) Payment for the stranded debts in excess of the amount assumed by the National Government and stranded contract costs of NPC and as well as qualified stranded contract costs of distribution utilities resulting from the restructuring of the industry;
(b) Missionary electrification;
(c) The equalization of the taxes and royalties applied to indigenous or renewable sources of energy vis-à-vis imported energy fuels;
(d) An environmental charge equivalent to one-fourth of one centavo per kilowatt-hour (P0.0025/kWh), which shall accrue to an environmental fund to be used solely for watershed rehabilitation and management. Said fund shall be managed by NPC under existing arrangements; and
(e) A charge to account for all forms of cross-subsidies for a period not exceeding three (3) years.

[38] Osmeña v. Orbos, supra note 19, at 710, Gaston v. Republic Planters Bank, supra note 19, at 632, Tio v. Videogram Regulatory Board, No. L-75697, June 18, 1987, 151 SCRA 208, 216, and Lutz v. Araneta, 98 Phil. 148 (1955).

[39] Supra note 19, at 539; Decided jointly with Citizen's Alliance for Consumer Protection v. Energy Regulatory

Board., G.R. Nos. L-78888-90, and Kilusang Mayo Uno Labor Center v. Energy Regulatory, Board., G.R. Nos. L-79690-92.

[40] Supra note 19, at 632-633.

[41] Id. at 710-711.

[42] Last paragraph, Sec. 34, EPIRA provides: The PSALM Corp., as administrator of the fund, shall create a Special Trust Fund which shall be disbursed only for the purposes specified herein in an open and transparent manner. All amount collected for the universal charge shall be distributed to the respective beneficiaries within a reasonable period to be provided by the ERC.

IRR of the EPIRA, Rule 18, SECTION 6, also provides:

(a) Pursuant to the last paragraph of Section 34 of the Act, PSALM shall act as the administrator of the funds generated from the Universal Charge. For this purpose, the PSALM shall create a STF to be established in the Bureau of Treasury (BTr) or in a Government Financing Institution (GFI) that is acceptable to the DOF. Separate STFs shall be established for each of the intended purposes of the Universal Charge. Funds shall be disbursed in an open and transparent manner and shall only be used for the intended purposes specified in Section 3 of this Rule.

[43] EPIRA, Sec. 33, last paragraph and IRR, Sec. 5 (f), Rule 17.

[44] IRR, Sec. 6 (f), Rule 18.

[45] IRR, Sec. 4, Rule 21.

[46] Supra note 23, at 177-178, citing Osmeña v. Orbos, supra note 19.

[47] Abakada Guro Party List v. Ermita, G.R. Nos. 168056, 168207, 168461, 168463 and 168730, September 1, 2005, 469 SCRA 10, 115-116.

[48] The recognized exceptions to the general principle are as follows:

(1) Delegation of tariff powers to the President under Section 28(2) of Article VI of the Constitution;
(2) Delegation of emergency powers to the President under Section 23(2) of Article VI of the Constitution;
(3) Delegation to the people at large;
(4) Delegation to local governments; and
(5) Delegation to administrative bodies. Abakada Guro Party List v. Ermita, supra note 47, at 117 and Santiago v. Comelec, 336 Phil. 848, 897-898 (1997), citing People v. Vera, 65 Phil. 56 (1937).

[49] Equi-Asia Placement, Inc. v. DFA, G.R. No. 152214, September 19, 2006, citing Beltran v. Secretary of Health, 476 SCRA 168, 191 (2005); The Conference of Maritime Manning Agencies v. Philippine Overseas Employment Agency, 313 Phil. 592, 606 (1995); and Eastern Shipping Lines, Inc. v. Philippine Overseas Employment Agency, G.R. No. L-76633, October 18, 1998, 166 SCRA 533, 543.

[50] Emphasis supplied.

[51] Rubi v. Provincial Board of Mindoro, supra note 33, at 706.

[52] Philippine Association of Colleges and University v. Secretary of Education, 97 Phil. 806, 814 (1955).

[53] People v. Rosenthal, 68 Phil. 328, 342 (1939).

[54] Antamok Gold Fields v. CIR, 70 Phil. 340 (1940).

[55] Calalang v. Williams, 70 Phil. 726, 733 (1940).

[56] Cervantes v. Auditor General, 91 Phil 359, 364 (1952).

[57] Tablarin v. Gutierrez, No. L-78164, July 31, 1987, 152 SCRA 731.

[58] The Conference of Maritime Manning Agencies, Inc. v. Philippine Overseas Employment Administration, supra note 49.

[59] Sec. 2(a) and (b), Declaration of Policies of the EPIRA.

[60] Supra note 37.

[61] G.R. No. 161113, June 15, 2004, 432 SCRA 157, 182.

[62] Id. at 219-220 (Emphasis supplied).

[63] G.R. No. 163935, February 2, 2006, 481 SCRA 480, 515-516, citing Freedom from Debt Coalition v. Energy Regulatory Commission, supra note 61.

[64] Rollo, pp. 108-109

[65] Republic v. Kalaw, G.R. No. 155138, June 8, 2004, 431 SCRA 401, 406.

[66] Lopez v. City of Manila, G.R. No. 127139, February 19, 1999, 303 SCRA 448, 460, citing Ty v. Trampe, 250 SCRA 500 (1995).

[67] Freedom from Debt Coalition v. Energy Regulatory Commission, supra note 61, at 171-172.

[68] Arceta v. Mangrobang, G.R. Nos. 152895 & 153151, June 15, 2004, 432 SCRA 136, 142, citing Lacson v. The Executive Secretary, 361 Phil. 251, 263 (1999).

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