

MANILA ELECTRIC COMPANY (MERALCO), PETITIONER, VS. SPS. EDITO AND FELICIDAD CHUA, AND JOSEFINA PAQUEO, RESPONDENTS.

G.R. No. 160422. July 05, 2010

Ponente: BRION, J.

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BRION, J.:

Manila Electric Company (MERALCO or petitioner) assails in this petition for review on certiorari^[1] the decision of the Court of Appeals (CA or appellate court), dated October 20, 2003,^[2] in CA-G.R. SP No. 77034, affirming with modification the March 26, 2003 decision of the Regional Trial Court (RTC) of Quezon City, Branch 82, in Civil Case No. Q-97-30503.^[3]

The affirmed RTC decision ordered the petitioner to restore the electric power connection of spouses Edito and Felicidad Chua (Chuas) at their residence, and awarded P300,000.00 as moral damages. The CA affirmed the restoration of electric power connection but reduced the awarded moral damages to P100,000.00.

BACKGROUND FACTS

The facts, as found by the RTC and affirmed by the CA, are summarized below.

MERALCO is a utility company engaged in the business of sale and distribution of electricity within its franchise area. The Chuas are the beneficial users at their residence of electric service provided by MERALCO, registered under the name of respondent Josefina Paqueo with Account Number 05091-4038-14. MERALCO installed an electric meter with number Co. No. 33 SPN 46170 in front of the Chuas' home to record the Chuas' electric consumption. The meter was in a concrete post outside the Chuas' perimeter fence.^[4]

From June 11, 1996 to September 11, 1996, the Chuas consumed between 231 to 269 kilowatt hours of electricity per month, with their corresponding monthly electric bills ranging from P747.84 to P887.27. In October 1996, the Chuas were surprised to receive an electricity bill for the amount of P4,906.87 for the period of September 11 to October 11, 1996 (September 1996 bill). According to this bill, they consumed 1,297 kilowatt hours for this one month period, or approximately 553% higher than their previous monthly bill.^[5] Alarmed by the significant increase, Florence Chua (the Chuas' daughter) went to the MERALCO office to question the bill. Florence paid the bill under protest to avoid disconnection.

On October 31, 1996, MERALCO responded to the Chuas' complaint by sending a representative, Francisco Jose Albano, to their residence to inspect the electric meter. Albano filed a Meter/Socket Inspection Report stating that he replaced the old meter^[6] and installed a new one^[7] because the old meter's terminal seal was missing, the cover seal was broken, and the meter had a broken sealing wire.^[8]

The Chuas were billed based on the new meter and its readings from October 11, 1996 to January 24, 1997, with an average usage ranging from 227 to 254 kilowatt hours, with corresponding monthly electric bills ranging from

P700.00 to P800.00.[9]

On January 3, 1997, the Chuas received a letter from MERALCO, stating that:

Our Inspection Office has referred to us for appropriate action the following finding(s) of our service inspectors and meter laboratory technicians after your metering installation at the above address was inspected on OCTOBER 31, 1996:

- THE TERMINAL SEAL WAS MISSING.
- THE SEALING WIRE OF THE ERB AND MERALCO LEAD COVER SEALS WAS CUT.
- THE 1000[TH], 100[TH] AND 10[TH] DIAL POINTERS OF THE REGISTER WERE OUT OF ALIGNMENT.

Given the above condition(s) and in accordance with the rules implementing Republic Act 7832, you are billed the amount of P183,983.66 (rate charge of P179,353.26 and energy tax of P4,630.40). Furthermore, the company is now allowed to collect Surcharges as a penalty for all Violation of Contract cases apprehended effective January 17, 1995, which would be collected later.

This is a formal demand upon you to pay the above stated amount at this office within ten days from your receipt of this letter; if no settlement is made within the given grace period, your service shall be disconnected and the necessary criminal or civil action initiated against you for violation of Republic Act 7832.[10]

The Chuas refused to pay as demanded. On January 24, 1997, MERALCO returned to their residence and removed Meter No. 33RZN80082, thereby disconnecting their electric supply.

On February 5, 1997, MERALCO sent the Chuas another demand letter stating that it had re-evaluated the Chuas' case based on field findings and the documents they furnished, and reduced the amount they had to pay from P183,983.66 to P71,737.49.[11]

On March 11, 1997, the Chuas filed a complaint for mandamus and damages,[12] praying that they be granted a preliminary mandatory injunction to compel MERALCO to restore the electrical connection to their residence. The Chuas also asked the court to award them moral and exemplary damages, attorney's fees, and litigation expenses.

After trial, the RTC rendered its decision, whose dispositive portion states:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiffs and against the defendant ordering the latter as follows:

- 1) To restore to plaintiffs at their residence at #9 Hukvet St., Area I, Veterans Village, Quezon City their electric power connection and/or services;
- 2) To pay the plaintiffs the sum of P300,000.00 as and by way of moral damages;
- 3) To pay the plaintiffs the sum of P30,000.00 as and by way of attorney's fees;
- 4) To pay the cost of suit.

SO ORDERED.[13]

MERALCO appealed the trial court's decision to the CA.

The CA affirmed the RTC decision.[14] The appellate court confirmed that the meter had been tampered, but found that the tampering was mitigated by the Chuas' voluntary act of going to MERALCO to report the possible defect in their meter. The voluntary act, according to the court, constituted good faith as MERALCO would not have discovered the defects in the meter if the Chuas had not reported the matter.

The appellate court also noted that while Section 6 of Republic Act No. 7832 (RA 7832), or the "Anti-Electricity and Electric Transmission Lines/Materials Pilferage Act of 1994," allows MERALCO to immediately disconnect electric service, it may only do so when the owner of the house has either been caught in flagrante delicto in any of the acts constituting prima facie evidence of illegal use, or has been discovered a second time in any of the enumerated circumstances. In the Chuas' case, they were not caught in flagrante delicto as they in fact reported the defect in their meter. This was the first instance, too, that MERALCO had discovered any tampering in the Chuas' meter. Under these circumstances, the appellate court concluded that MERALCO had no legal right to disconnect the Chuas' electrical service.

While upholding the RTC's factual findings, the CA modified the RTC decision by reducing the awarded moral damages from P300,000.00 to P100,000.00.

THE PETITION

MERALCO filed the present petition, raising the following arguments:[15]

- The CA erred in ruling that MERALCO had no right to disconnect the electric service of the Chuas.
- MERALCO is entitled to collect the differential billing of P183,983.66.
- Even assuming that MERALCO had no right to disconnect the Chuas' electric service, they are nevertheless not entitled to moral damages in the absence of evidence of damages they sustained.

MERALCO points out that it did not immediately disconnect electric service to the Chuas. It first sent several demand letters explaining the meter tampering and demanding payment for the billed differential in the sum of P183,983.66. It was only after the Chuas refused to pay the differential billing that MERALCO disconnected their electric service.

Additionally, MERALCO contends that based on Section 9 of RA 7832, no writs of injunction shall be issued by any court against any private electric utility exercising its right and authority to disconnect electric service unless there is prima facie evidence that the disconnection was made with evident bad faith or grave abuse of authority. Since the Chuas failed to prove MERALCO's evident bad faith in disconnecting their electric service, they are not entitled to an injunctive writ.

MERALCO further posits that the deliberate manipulation of the dial pointers prevented the full and correct billing of the electric energy actually delivered to and consumed by the Chuas. The differential billing represents the monetary equivalent of the electricity used by the Chuas but not registered by the meter.

Lastly, MERALCO maintains that even if it had no right to disconnect the Chuas' electric service, the Chuas nevertheless are not entitled to moral damages. The Chuas did not sustain damages after the disconnection since they sourced their electric supply from another electric meter within the premises.

THE COURT'S RULING

We deny the petition for lack of merit.

Prima facie evidence of
illegal use of electricity

MERALCO claims that the meter tampering in this case stands undisputed in the evidence on record. Under RA 7832, the law presumes that the person benefited by the unlawful use of electricity is the perpetrator of the meter tampering. Thus, no need arose for MERALCO to prove that the Chuas actually tampered with their meter;

pursuant to Section 4 of RA 7832, Meralco had the right to immediately disconnect the Chuas' electric service.

We find MERALCO's position legally incorrect. Essential to the resolution of this issue is Section 4 of RA 7832, which reads:

SEC. 4. Prima Facie Evidence. -

(a) The presence of any of the following circumstances shall constitute prima facie evidence of illegal use of electricity, as defined in this Act, by the person benefited thereby, and shall be the basis for: (1) the immediate disconnection by the electric utility to such person after due notice, x x x

(iv) The presence of a tampered, broken, or fake seal on the meter, or mutilated, altered, or tampered meter recording chart or graph or computerized chart, graph, or log.

x x x

(viii) x x x Provided, however, That the discovery of any of the foregoing circumstances, in order to constitute prima facie evidence, must be personally witnessed and attested to by an officer of the law or a duly authorized representative of the Energy Regulatory Board (ERB).

To reiterate, the discovery of a tampered, broken, or fake seal on the meter shall only constitute prima facie evidence of illegal use of electricity by the person who benefits from the illegal use if such discovery is personally witnessed and attested to by an officer of the law or a duly authorized representative of the Energy Regulatory Board (ERB). With such prima facie evidence, MERALCO is within its rights to immediately disconnect the electric service of the consumer after due notice.

Section 1, Rule III of the Rules and Regulations Implementing RA 7832 (IRR) defines an officer of the law as one "who, by direct supervision of law or by election or by appointment by competent authority, is charged with the maintenance of public order and the protection and security of life and property, such as barangay captain, barangay chairman, barangay councilman, barangay leader, officer or member of Barangay Community Brigades, barangay policeman, PNP policeman, municipal councilor, municipal mayor and provincial fiscal."

The importance of having an authorized government representative present during an inspection was highlighted during the Senate deliberations on RA 7832 when Senator John H. Osmeña, the law's author, explained:

Mr. President, if a utility like MERALCO finds certain circumstances or situations which are listed in Section 2 of this bill to be prima facie evidence, I think they should be prudent enough to bring in competent authority, either the police or the NBI, to verify or substantiate their finding. If they were to summarily proceed to disconnect on the basis of their findings and later on there would be a court case and the customer or the user would deny the existence of what is listed in Section 2, then they could be in a lot of trouble.[16]

We emphasized the significance of this requirement in *Sps. Quisumbing v. MERALCO*,[17] when we said:

The presence of government agents who may authorize immediate disconnections go into the essence of due process. Indeed, we cannot allow respondent to act virtually as prosecutor and judge in imposing the penalty of disconnection due to alleged meter tampering. That would not sit well in a democratic country. After all, Meralco is a monopoly that derives its power from the government. Clothing it with unilateral authority to disconnect would be equivalent to giving it a license to tyrannize its hapless customers.[18]

After thoroughly examining the records of this case, we find no proof that MERALCO ever complied with the required presence of an "officer of the law." In his testimony, Albano never mentioned that he was accompanied by an authorized government representative during the inspection. As evident from the Meter/Socket Inspection Report, only Albano inspected the Chuas' electric meter; no evidence shows that he was accompanied by anyone

else. Most telling of all, MERALCO does not even allege in its submissions with this Court that an ERB representative or an officer of the law ever accompanied its representative during the inspection of the Chuas' electric meter.

We note, too, that while MERALCO claimed in its Answer that an ERB representative was present and witnessed the testing of the Chuas' electric meter at the MERALCO laboratory,[19] it never once identified this ERB representative. MERALCO did not allege in either the present petition or in the Memorandum it filed with this Court that an ERB representative witnessed the laboratory testing of the Chuas' electric meter. The Meter Verification Report,[20] the document that contains the results of the laboratory testing, was also not signed by either an ERB representative or by any officer of the law.

For lack of any evidence showing that a government representative personally witnessed and attested to the discovery of the Chuas' tampered electric meter, no supporting prima facie evidence can be invoked for the immediate disconnection of the Chuas' electric service pursuant to Section 4 of RA 7832.

Consumer not the proper witness to inspection

Rule III, Section 1 of the IRR provides: "In order to constitute prima facie evidence, the discovery of any of the circumstances enumerated in Section 1 hereof, must be personally witnessed and attested to by the consumer concerned or a duly authorized ERB representative or any officer of the law, as the case may be."

We hold the view, however, that the inclusion of the phrase "by the consumer concerned" in the IRR is invalid because it is in excess of what the law being implemented provides. As RA 7832 stands, only the presence of an authorized government agent, either an officer of the law or an authorized representative of the ERB, during the MERALCO inspection would allow any of the circumstances enumerated in Section 4 of RA 7832 to be considered prima facie evidence of illegal use of electricity by the benefited party. The law does not include the consumer or the consumer's representative in this enumeration.

In legal contemplation, the ERB's inclusion of the phrase "by the consumer concerned" in Rule III, Section 1 of the IRR expanded the clear wording of the law and violated the recognized principle that an administrative agency's rule-making power is confined to filling in the gaps and the necessary details in carrying into effect the law as enacted; rule-making cannot extend, amend, or expand statutory requirements or embrace matters not covered by the law being implemented. Administrative regulations must always be in harmony with the provisions of the law because any resulting discrepancy between the two will always be resolved in favor of the basic law.[21] In the present case, the consumer cannot in any way be considered to be in the same classification as the named government representatives so that his or her presence can be a substitute for the presence of these representatives.

For this reason, even if Florence Chua, the Chuas' daughter, acknowledged that she witnessed Albano's examination of the electric meter outside their house so that she signed the Meter/Socket Inspection Report, her presence did not characterize the discovered broken meter seal as prima facie evidence of illegal use of electricity justifying immediate disconnection.

Legal requirements for authority to disconnect electricity

Section 6 of RA 7832 provides another mandatory requirement before MERALCO can immediately disconnect a consumer's electric service. The provision reads:

SEC. 6. Disconnection of Electric Service. - The private electric utility or rural electric cooperative concerned

shall have the right and authority to disconnect immediately the electric service after serving the written notice or warning to the effect, without the need of a court or administrative order, and deny restoration of the same, when the owner of the house or establishment concerned or someone acting in his behalf shall have been caught en flagrante delicto doing any of the acts enumerated in section 4 (a) hereof, or when any of the circumstances so enumerated shall have been discovered for the second time: Provided, That in the second case, a written notice or warning shall have been issued upon the first discovery: Provided, further, That the electric service shall not be immediately disconnected or shall be immediately restored upon the deposit of the amount representing the differential billing by the person denied the service, with the private electric utility or the rural cooperative concerned or with the competent court as the case may be: Provided, furthermore, That if the court finds that illegal use of electricity has not been committed by the same person, the amount deposited shall be credited against future billings, with legal interest thereon chargeable against the private utility or rural electric cooperative, and the utility or cooperative shall be made to immediately pay such person double the value of the payment or deposit with legal interest, which amount shall likewise be creditable against immediate future billings, without prejudice to any criminal, civil or administrative action that such person may be entitled to file under existing laws, rules and regulations: Provided, finally, That if the court finds the same person guilty of such illegal use of electricity, he shall, upon final judgment, be made to pay the electric utility or the rural electric cooperative concerned double the value of the estimated electricity illegally used which is referred to in this section as differential billing.

In other words, MERALCO is authorized to immediately disconnect the electric service of its consumers without the need of a court or administrative order when: (a) the consumer, or someone acting in his behalf, is caught in flagrante delicto in any of the acts enumerated in Section 4 of RA 7832; or (b) when any of the circumstances constituting prima facie evidence of illegal use of electricity is discovered for the second time.

In flagrante delicto means "[i]n the very act of committing the crime." [22] To be caught in flagrante delicto, therefore, necessarily implies positive identification by an eyewitness or eyewitnesses to the act of tampering so that there is "direct evidence" of culpability, or "that which proves the fact in dispute without the aid of any inference or presumption." [23]

In the present case, however, MERALCO presented no proof that it ever caught the Chuas, or anyone acting in the Chuas' behalf, in the act of tampering with their electric meter. As correctly observed by the CA, the Chuas could not have been caught in flagrante delicto committing the tampering since in the first place, they were the ones who reported the defect in their meter. Moreover, the presence of a broken cover seal, broken sealing wire, and a missing terminal seal, is not enough to declare the Chuas in flagrante delicto tampering with the electric meter. As the basic complaint for mandamus alleged, without any serious refutation from the petitioner, the electric meter is in a concrete post outside of the Chuas' perimeter fence; hence, in a location accessible to the public. We note, too, that MERALCO did not present any evidence that it caught the Chuas committing any of the acts constituting prima facie evidence of illegal use of electricity for the second time.

In view of MERALCO's failure to comply with both Section 4 and Section 6 of RA 7832, MERALCO obviously had no authority to immediately disconnect the Chuas' electric service.

Writ of Mandatory Injunction

On the validity of the injunctive writ the lower court issued in the Chuas' favor, MERALCO submits that the Chuas were not entitled to an injunctive writ since it had a right, under the law, to automatically disconnect the latter's electric service. Furthermore, Section 9 of RA 7832 prohibits courts from issuing injunctions or restraining orders against electric utilities from disconnecting service unless the consumer proves that the electric utility acted with evident bad faith in disconnecting the electric service. This cited provision states:

Section 9. Restriction on the Issuance of Restraining Orders or Writs of Injunction. - No writ of injunction or

restraining order shall be issued by any court against any private electric utility or rural electric cooperative exercising the right and authority to disconnect electric service as provided in this Act, unless there is prima facie evidence that the disconnection was made with evident bad faith or grave abuse of authority.

We have fully discussed above why MERALCO was not in the position under RA 7832 to immediately disconnect the Chuas' electric service. We add that while electricity is property^[24] whose enjoyment, as a general rule, the owner may extend or deny to others,^[25] electricity is not an ordinary kind of property that a service provider may grant or withhold to consumers at will. Electricity is a basic necessity whose generation and distribution is imbued with public interest, and its provider is a public utility subject to strict regulation by the State in the exercise of police power.^[26] In view of the serious consequences resulting from immediate disconnection of electric service, the law provides strict requisites that MERALCO must follow before it can be granted authority to undertake instant disconnection of electric service due to its consumers. In view of MERALCO's dominance over its market and its customers and the latter's relatively weak bargaining position as against MERALCO, and in view too of the serious consequences and hardships a customer stands to suffer upon service disconnection, MERALCO's failure to strictly observe these legal requirements can be equated to the bad faith or abuse of right^[27] that the law speaks of.

Under the circumstances, we cannot but conclude that MERALCO abused its superior and dominant position as well as the authority granted to it by law as a service provider when it persisted in disconnecting the Chuas' electric service. Hence, the general prohibition against the issuance of a restraining order or an injunction under Section 9 of RA 7832 cannot apply. Rather, what must prevail is the exception: an injunction can issue when a disconnection has been attended by bad faith or grave abuse of authority.

As to whether the Chuas are entitled to a writ of mandatory injunction, we rule in the affirmative. An injunctive writ issues only upon a showing that: a) the applicant possesses a clear and unmistakable right; b) there is a material and substantial invasion of such right; and c) there is urgent and permanent necessity for an injunctive writ to prevent serious damage.^[28]

In the present case, the Chuas have established that they are paying MERALCO customers. In the absence of the prima facie evidence required by Section 4 and by the requirements of Section 6 of RA 7832 that the Chuas tampered with their electric meter, and in light as well of the merits of the Chuas' case as discussed below, the Chuas have an unmistakable right to be provided with continuous power supply - a right MERALCO obviously invaded when it cut off the Chuas' electric service. Electricity being what it is and has been in modern day living, an urgent and permanent need exists to prevent MERALCO from cutting off the Chuas' electric service under the circumstances that gave rise to the present dispute. Accordingly, we uphold the RTC and CA decisions ordering MERALCO to immediately restore the Chuas' electric service.

Differential billing

MERALCO further asserts that the Chuas should be made to pay the differential billing for the electricity that they actually consumed but which was not reflected on their electric bills due to the tampered electric meter. Since the prima facie presumption afforded by Section 4 of RA 7832 does not apply, it falls upon MERALCO to first prove that the Chuas actually manipulated the dial pointers on their meter before it can hold them accountable for the differential billing. The circumstances discussed below, however, cast serious doubt on the allegation and assumption that the Chuas ever tampered with their electric meter.

First, we stress once again that the Chuas themselves requested MERALCO to inspect their meter for possible defects after they received their unusually high September 1996 bill; the Chuas themselves were instrumental in discovering the tampered condition of their electric meter. Had the Chuas been guilty of tampering as MERALCO

assumed, they would not have drawn attention to themselves by reporting the problem with their meter; as the beneficial users of the electric service, they would have been MERALCO's main suspects once the tampering came to light. We thus find it highly illogical for the Chuas to be guilty of actual tampering given their actions on record on the discovery of the tampered condition of their meter.

Second, we observe that based on the Chuas' billing record, no discernable difference exists between the Chuas' electric bills before and after MERALCO had replaced their tampered meter. The Chuas consumed between 231 to 269 kilowatt hours of electricity per month from June 11, 1996 to September 11, 1996, with their corresponding monthly electric bills ranging from P747.84 to P887.27. (Their long-term usage record is further reflected in the appropriate footnoted table below.) The following usage record is undisputed after MERALCO installed a new meter to replace the tampered one.

Date

Kilowatt hours

Amount Paid (pesos)

October 1996

1,297

4,906.87

November

227

781.86

December

228

806.19

January 1997

254

898.89

January 24, 1997

96

331.04

Tampering with the electric meter is committed by the consumer to prevent the meter from registering the correct amount of electric consumed; thus, while using the same regular power supply, they are billed for less than what they actually consumed. Tampering affects only the registered usage as reflected in the electric meter, not the amount of electricity actually used,

assuming a more or less uniform monthly usage of electricity.[29] Stated otherwise, when an electric meter is tampered, the recorded consumption is less than the electricity actually used. Consequently, when a tampered electric meter is replaced, assuming the same amount of monthly rate of usage, the new electric meter will register the increased use of electricity that had previously been concealed by the tampered meter.[30]

If the Chuas had truly tampered with their electric meter, it stands to reason that after MERALCO replaced the tampered electric meter with a new one, the Chuas' electric bills would have gone up to reflect the electricity they were actually consuming. That the Chuas' monthly electric consumption remained virtually unchanged even after the defective electric meter had been replaced strongly disproves the contentions that the Chuas tampered with their electric meter and that the Chuas' electric meter registered less than the electricity they had actually "consumed." Given the surrounding circumstance, the sequence of events, and the electric meter readings, i.e., the exposed location of the Chuas' electric meter, the long-term consumption record shown below, the unusual upward spike of the meter reading in September 1996, the inspection and the replacement by a new electric meter, and the continued readings consistent with the readings prior to the September 1996 spike, it would not be surprising if the tampering of the seals came immediately before September 1996 and were made by parties other than the Chuas for their own reasons. To be sure, the Chuas would not have tampered with their own meter to increase their meter reading.

Aside from the doubtful veracity of the allegation and assumption that the Chuas tampered with their meter, we also consider that MERALCO did not provide any factual or legal basis for its differential billing. Section 6 of RA 7832 supplies the manner by which a public utility can compute the differential billing.

SEC. 6. Disconnection of Electric Service. - x x x

For purposes of this Act, "differential billing" shall refer to the amount to be charged to the person concerned for the unbilled electricity illegally consumed by him as determined through the use of methodologies which utilize, among other, as basis for determining the amount of monthly electric consumption in kilowatt-hours to be billed either: (a) the highest recorded monthly consumption within the five-year billing period preceding the time of the discovery, (b) the estimated monthly consumption as per the report of load inspection conducted during the time of the discovery, (c) the higher consumption between the average consumption before or after the highest drastic drop in consumption within the five year billing period preceding the discovery, (d) the highest recorded monthly consumption within four (4) months after the time of discovery, or (e) the result of the ERB test during the time of discovery and, as basis for determining the period to be recovered by the differential billing, either: (1) the time when the electric service of the person concerned recorded an abrupt or abnormal drop in consumption, or (2) when there was change in his service connection such as a change in his service connection such as a change of meter, change of seal or reconnection, or in the absence thereof, a maximum of sixty (60) billing months, up to the time of discovery: Provided, however, That such period shall, in no case, be less than one (1) year preceding the date of discovery of the illegal use of electricity.

According to MERALCO's witness, Enrique Katipunan, the period affected by the Chuas' tampered electric meter was from August 17, 1992 to October 11, 1996 (affected period).[31] In line with the fundamental rule that the burden of evidence lies with the person who asserts the affirmative allegation,[32] MERALCO thus carried the burden to prove that the Chuas' electric meter had been tampered with as early as August 17, 1992.

Significantly, while Katipunan stated that he "studied the Chuas' billing history to establish the affected period from August 17, 1992 to October 11, 1996,"[33] we find conspicuously absent from his testimony any statement explaining how he established this four-year period as the period affected by the tampered electric meter. Katipunan did not mention any abrupt or abnormal drop in the Chuas' electric consumption, nor did he identify anything suspicious in the Chuas' billing history that would lead him to conclude that the tampering began on August 17, 1992. All we have to rely on is Katipunan's assurance that the Chuas' electric meter existed in a tampered state for this whole four-year period. This testimony, however, is uncorroborated by evidence.

We are not unaware that MERALCO used the Chuas' September 1996 bill to compute the differential billing - the same bill that the Chuas protested with Meralco for being extraordinarily high. While Section 6 of RA 7832 does allow MERALCO to use the consumer's highest recorded monthly consumption as the basis to compute the

differential billing, still, Meralco - after examining the Chuas' records for the past four years[34] - should have noticed that the September 1996 bill was truly unusual. As seen from their billing history, while the Chuas consistently consumed no more than 300 kilowatt hours of electricity every month for the past four years, in their September bill, their usage dramatically spiked to 1,297 kilowatt hours, or a difference of more than 400%. Even more telling is that after MERALCO replaced the alleged tampered electric meter, the Chuas continued to consume the same amount of electricity they had consumed prior to the September 1996 bill.

Given the strange circumstances surrounding the September 1996 bill, MERALCO should have exercised prudence and employed another method to compute the Chuas' differential billing, such as using the estimated monthly consumption based on a load inspection report. At the very least, MERALCO should have exerted efforts to investigate the Chuas' complaint regarding the sudden increase in their electric bill, especially considering the Chuas' claim that they had not done anything new or used any additional appliances during the period covered by the September 1996 bill.[35] We find it significant that nothing in the record suggests that MERALCO even attempted to study, or even tried to explain, the sudden surge in the Chuas' September 1996 bill.

We highlight another important point to consider - that MERALCO sent the Chuas another letter dated February 5, 1997, where it reduced the Chuas' differential billing from P183,983.66 to P71,737.49.[36] While MERALCO admitted the existence of this letter in the proceedings before the lower courts, it chose to ignore the existence of this February 5, 1997 letter in its submissions with this Court; instead, in the Petition and Memorandum it filed with this Court, MERALCO reverted to its demand that the Chuas pay the original differential billing of P183,983.66. This unexplained and inconsistent MERALCO posture further strengthens our doubts on to the legitimacy and correctness of the Chuas' differential billing.

MERALCO is duty bound to explain to its customers the basis for arriving at any given billing, particularly in cases of unregistered consumptions. Otherwise, consumers will stand piteously at the public utility's mercy.[37] Courts cannot and will not in any way blindly grant a public utility's claim for differential billing if there is no sufficient evidence to prove entitlement.[38] As MERALCO has failed to substantiate its claim for the differential billing, we rule that the Chuas cannot be held to account for the billed amount.

MERALCO guilty of inexcusable negligence

Apart from lacking factual or legal basis, another reason for us not to hold the Chuas accountable for MERALCO's differential billing is our previous ruling in *Ridjo Tape & Chemical Corp. v. CA*,[39] where we said:

It has been held that notice of a defect need not be direct and express; it is enough that the same had existed for such a length of time that it is reasonable to presume that it had been detected, and the presence of a conspicuous defect which has existed for a considerable length of time will create a presumption of constructive notice thereof. Hence, MERALCO's failure to discover the defect, if any, considering the length of time, amounts to inexcusable negligence. Furthermore, we need not belabor the point that as a public utility, MERALCO has the obligation to discharge its functions with utmost care and diligence.

Accordingly, we are left with no recourse but to conclude that this is a case of negligence on the part of MERALCO for which it must bear the consequences. Its failure to make the necessary repairs and replacement of the defective electric meter installed within the premises of petitioners was obviously the proximate cause of the instant dispute between the parties.

Indeed, if an unusual electric consumption was not reflected in the statements of account of petitioners, MERALCO, considering its technical knowledge and vast experience in providing electric service, could have easily verified any possible error in the meter reading. In the absence of such a mistake, the electric meters themselves should be inspected for possible defects or breakdowns and forthwith repaired and, if necessary,

replaced. x x x

The rationale behind this ruling is that public utilities should be put on notice, as a deterrent, that if they completely disregard their duty of keeping their electric meters in serviceable condition, they run the risk of forfeiting, by reason of their negligence, amounts originally due from their customers. Certainly, we cannot sanction a situation wherein the defects in the electric meter are allowed to continue indefinitely until suddenly the public utilities concerned demand payment for the unrecorded electricity utilized when, in the first place, they should have remedied the situation immediately. If we turn a blind eye on MERALCO's omission, it may encourage negligence on the part of public utilities, to the detriment of the consuming public.[40]

While Ridjo involved a defective meter, we have, on occasion, applied this same doctrine to cases that involved allegations of meter tampering. In both *Manila Electric Company v. Macro Textile Mills, Corp.*[41] and *Davao Light & Power Co., Inc. v. Opena*,[42] we faulted the electric companies involved for not immediately inspecting the electric meters after they noted a sudden drop in the consumer's registered electric consumption. Since, in both cases, the public utility companies allowed several years to lapse before deciding to conduct an inspection of the electric meters, we ruled that they were both negligent and consequently barred them from collecting their claims of differential billing against the consumers.

With these rulings in mind, we held in *MERALCO v. Wilcon Builders Supply, Inc.*[43] that the use of the words "defect" and "defective" in Ridjo does not restrict the inexcusable negligence doctrine to cases of "mechanical defects" in installed electric meters. We said:

The Ridjo doctrine simply states that the public utility has the imperative duty to make a reasonable and proper inspection of its apparatus and equipment to ensure that they do not malfunction. Its failure to discover the defect, if any, considering the length of time, amounts to inexcusable negligence; its failure to make the necessary repairs and replace the defective electric meter installed within the consumer's premises limits the latter's liability. The use of the words "defect" and "defective" in the above-cited case does not restrict the application of the doctrine to cases of "mechanical defects" in the installed electric meters. A more plausible interpretation is to apply the rule on negligence whether the defect is inherent, intentional or unintentional, which therefore covers tampering, mechanical defects and mistakes in the computation of the consumers' billing.[44]

The production and distribution of electricity is a highly technical business undertaking. In conducting its operation, it is only logical for a public utility, such as MERALCO, to employ mechanical devices and equipment for the orderly pursuit of its business.[45] MERALCO has the imperative duty to make a reasonable and proper inspection of its apparatus and equipment to ensure that they do not malfunction, and the due diligence to discover and repair defects therein. Failure to perform such duties constitutes negligence.[46]

True, consumers who tamper with their electric meter do so surreptitiously to avoid being detected by the public utility providing the service; hence, at first glance, it may seem unreasonable for us to chastise MERALCO for not detecting the alleged tampering sooner. However, what stands out in this case is the sheer length of time that the Chuas' electric meter allegedly existed in a tampered state without being discovered by MERALCO if indeed the electric meter had been defective since 1992. If we presume MERALCO's findings to be correct, MERALCO discovered the broken seals in the Chuas' meter after more than four years (from August 1992 to October 1996), and only because the Chuas reported a possible defect with their electric meter to the public utility company.

Aside from the long period of time involved, we also underscore the fact that the alleged tampering in this case did not require special training or knowledge to be detected. Certainly, the missing terminal seal, the broken cover seal, and the broken sealing wire of the meter[47] are visible to the naked eye and would have caught the attention of MERALCO's personnel in the course of their meter readings.

As in *Ridjo*, we take judicial notice that during this long period of time, MERALCO's personnel had the opportunity to inspect and examine the Chuas' electric meter for the purpose of determining the monthly dues payable. Even if MERALCO did not conduct these regular monthly inspections, we find it reasonable to expect that within this four-year period, MERALCO would, at the very least, annually examine the electric meter to verify its condition and to determine the accuracy of its readings if ordinary examination shows defects as in the case of the Chuas' meter. That it failed to do so constitutes negligence on its part, and bars it from collecting its claim for differential billing.

On the issue of moral damages

Article 32 of the Civil Code provides that moral damages are proper when the rights of individuals, including the right against deprivation of property without due process of law, are violated. Jurisprudence has established the following requisites for the award of moral damages: (1) there is an injury - whether physical, mental, or psychological - clearly sustained by the claimant; (2) there is a culpable act or omission factually established; (3) the wrongful act or omission of the defendant is the proximate cause of the injury sustained by the claimant; and (4) the award of damages is predicated on any of the cases stated in Article 2219 of the Civil Code.[48]

Considering the manner MERALCO disconnected the Chuas' electric service, we find the award of moral damages proper. Apart from the havoc wreaked on the Chuas' daily lives when MERALCO abruptly and without legal basis cut off their electricity, the removal of the electric meter also caused the Chuas extreme social humiliation and embarrassment as they were subjected to speculations in their neighborhood of being "power thieves." As Mrs. Felicidad Chua testified, she suffered sleepless nights and felt serious anxiety after the removal of their electric meter came to the attention of the barangay. In fact, she even had to consult a doctor for this anxiety.[49] Thus, even if the Chuas did subsequently obtain their electricity from another source,[50] the damage to the Chuas' reputation and social standing had already been done.

However, moral damages, which are left largely to the sound discretion of the courts, should be granted in reasonable amounts, considering the attendant facts and circumstances.[51] Moral damages, though incapable of pecuniary estimation, are designed to compensate the claimant for actual injury suffered and not to impose a penalty.[52] As prevailing jurisprudence[53] deems the award of moral damages in the amount of P100,000.00 appropriate in cases where MERALCO wrongfully disconnected electric service, we uphold the CA ruling, reducing the moral damages awarded from P300,000.00 to P100,000.00.

WHEREFORE, the petition is hereby DENIED. The assailed decision of the Court of Appeals dated October 20, 2003 in CA-G.R. SP No. 77034 is AFFIRMED in toto.

SO ORDERED.

Carpio Morales, (Chairperson), Bersamin, Abad,[*] and Villarama, Jr., JJ., concur.

[*] Designated additional Member of the Third Division effective May 17, 2010, per Special Order No. 843 dated May 17, 2010.

[1] Under Rule 45 of the Rules of Court. Rollo, pp. 9-26.

[2] Penned by Associate Justice B.A. Adefuin-de la Cruz, with the concurrence of Associate Justices Buenaventura Guerrero and Eliezer de los Santos. *Id.* at 28-37.

[3] *Id.* at 66-77.

[4] Id. at 45.

[5] Id.

[6] Meter No. 33SPN46170.

[7] Meter No. 33RZN80082.

[8] Dated October 31, 1996; rollo, p. 53.

[9] Id. at 54.

[10] Id. at 55.

[11] The letter said:

Dear Atty. Chua:

This refers to our Company's claim for the value of unregistered consumption amounting to P183,983.66.

Please be informed that we have re-evaluated your case base on our field findings and the documents you have furnished. Thus, reducing the aforementioned amount to P71,737.49 (Rate Charge - P71,203.19 and Energy Tax - P184.30). In the interest of speedy disposition of the case, we are instructed to collect the recomputed amount and act accordingly, Moreso, we shall also require you to register the service under your name and pay the deposit amounting to P5,410.00, representing the meter and service deposit. This amount can be refunded upon termination of your service.

In view thereof, please consider this letter as our FINAL DEMAND and settle the aforesaid amount; otherwise, much to our regret, we shall refer the matter to our legal for legal sanction.

RTC Records, p. 14.

[12] Rollo, pp. 44-51.

[13] Dated March 26, 2003; id. at 76-77.

[14] Dated October 20, 2003; supra note 2.

[15] Supra note 1.

[16] Record of the Senate, Vol. IV, No. 61, March 9, 1994, p. 357.

[17] 429 Phil. 727 (2002).

[18] Id. at 744-745.

[19] Rollo, p. 62.

[20] RTC Records, pp. 58-59.

[21] Landbank of the Philippines v. Court of Appeals, 327 Phil. 1047, 1052 (1996).

[22] People v. Fronda, 384 Phil. 732 (2000), citing Black's Law Dictionary, 575 (5th ed., 1979).

[23] Go v. Leyte II Electric Cooperative, Inc., 546 Phil. 187, 195 (2008).

[24] United States v. Carlos, 21 Phil. 553, 560 (1911).

[25] Article 429 of the Civil Code provides:

The owner or lawful possessor of a thing has the right to exclude any person from the enjoyment and disposal thereof. For this purpose, he may use such force as may be reasonable to repel or prevent an actual or threatened unlawful physical invasion or usurpation of his property.

[26] Republic v. Manila Electric Company, 440 Phil. 389 (2002).

[27] Samar II Electric Cooperative, Inc. v. Quijano, G.R. No. 144474, April 27, 2007, 522 SCRA 364, 376, citing Manila Electric Company v. Hon. Lorna Navarro-Domingo, G.R. No. 161893, June 27, 2006, 493 SCRA 363.

[28] Manila Electric Company v. Jose, G.R. No. 152769, February 14, 2007, 515 SCRA 669, 675, citing Bank of the Philippine Islands v. Court of Appeals, G.R. No. 142731, June 8, 2006, 490 SCRA 168, 175.

[29] MERALCO v. Wilcon Builders Supply, Inc., G.R. No. 171534, June 30, 2008, 556 SCRA 742, 753-754, citing MERALCO v. T.E.A.M. Electronics Corporation, G.R. No. 131723, December 13, 2007, 540 SCRA 62.

[30] Id. at 754.

[31] TSN, November 15, 2001, pp. 8-9.

[32] Aklan Electric Cooperative, Inc. v. National Labor Relations Commission, 380 Phil. 225, 245 (2000); Philippine Fruit & Vegetable Industries, Inc. v. National Labor Relations Commission, 369 Phil. 929, 938 (1999).

[33] Supra note 31, p. 8.

[34] According to MERALCO's Computation Worksheet, the Chuas had the following billing record for the affected period:

Date

Kilowatt hours

Amount Paid (Pesos)

September 1992

189

473.96

October

215

547.50

November

232

605.90

December

188

477.74

January 1993

183

464.60

February

196

509.31

March

183

470.03

April

197

511.62

May

200

557.11

June

233

664.51

July

229

651.98

August

174

482.52

September

181

507.44

October

241

703.54

November

255

751.52

December

187

527.55

January 1994

249

728.65

February

223

684.42

March

187

559.47

April

218

666.16

May

224

686.80

June

240

750.68

July

213

656.41

August

231

717.46

September

256

806.03

October

240

742.22

November

244

750.58

December

251

768.61

January 1995

277

855.29

February

210

629.26

March

220

669.39

April

244

769.68

May

248

767.34

June

284

887.43

July

240

733.21

August

259

812.15

September

298

922.09

October

261

789.76

November

278

855.17

December

266

812.92

January 1996

296

931.59

February

293

908.65

March

157

462.62

April

236

769.58

May

286

956.09

June

281

925.72

July

231

747.84

August

269

887.27

September

250

820.59

October

1,297

4,812.47

RTC Records, pp. 61-63.

[35] Rollo, pp. 45-46.

[36] Supra note 11.

[37] MERALCO v. Macro Textile Mills Corporation, 424 Phil. 811, 828 (2002).

[38] MERALCO v. Wilcon Builders Supply, Inc., supra note 29, pp. 756-757.

[39] 350 Phil. 184 (1998).

[40] Id. at 194-195.

[41] 424 Phil. 811 (2002).

[42] G.R. No. 129807, December 9, 2005, 477 SCRA 58.

[43] Supra note 29.

[44] Id. at 750-751.

[45] Ridjo Tape and Chemical Corp. v. CA, supra note 39, p. 193.

[46] Id. at 194.

[47] Supra note 8.

[48] Citytrust Banking Corporation v. Villanueva, 413 Phil. 776 (2001); Expertravel & Tours, Inc. v. CA, 368 Phil. 444 (1999).

[49] TSN, December 1, 1998, p. 7.

[50] From their relative, Teresita Paqueo's electric meter. Rollo, p. 70.

[51] *Prudenciado v. Alliance Transport System, Inc.*, G.R. No. L-33836, March 16, 1987, 148 SCRA 440.

[52] *San Andres v. CA*, 201 Phil. 552, 557 (1982).

[53] See *Manila Electric Company v. Jose*, supra note 28; *Manila Electric Company v. Vda. de Santiago*, G.R. No. 170482, September 4, 2009, 598 SCRA 315.

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