

BF HOMES, INC. AND THE PHILIPPINE WATERWORKS AND CONSTRUCTION CORP., PETITIONERS, VS. MANILA ELECTRIC COMPANY, RESPONDENT.

G.R. No. 171624. December 06, 2010

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

This Petition for Review on Certiorari under Rule 45 of the Rules of Court assails the Decision[1] dated October 27, 2005 of the Court of Appeals in CA-G.R. SP No. 82826, nullifying and setting aside (1) the Order[2] dated November 21, 2003 of the Regional Trial Court (RTC), Branch 202 of Las Piñas City, in Civil Case No. 03-0151, thereby dissolving the writ of injunction against respondent Manila Electric Company (MERALCO); and (2) the Resolution[3] dated February 7, 2006 of the Court of Appeals denying the Motion for Reconsideration of petitioners BF Homes, Inc. (BF Homes) and Philippine Waterworks and Construction Corporation (PWCC).

MERALCO is a corporation duly organized and existing under Philippine laws engaged in the distribution and sale of electric power in Metro Manila. On the other hand, BF Homes and PWCC are owners and operators of waterworks systems delivering water to over 12,000 households and commercial buildings in BF Homes subdivisions in Parañaque City, Las Piñas City, Caloocan City, and Quezon City. The water distributed in the waterworks systems owned and operated by BF Homes and PWCC is drawn from deep wells using pumps run by electricity supplied by MERALCO.

On June 23, 2003, BF Homes and PWCC filed a Petition [With Prayer for the Issuance of Writ of Preliminary Injunction and for the Immediate Issuance of Restraining Order] against MERALCO before the RTC, docketed as Civil Case No. 03-0151.

In their Petition before the RTC, BF Homes and PWCC invoked their right to refund based on the ruling of this Court in *Republic v. Manila Electric Company*[4]:

7. It is of judicial notice that on November 15, 2002, in G.R. No. 141314, entitled *Republic of the Philippines vs. Manila Electric Company*, and G.R. No. 141369, entitled *Lawyers Against Monopoly and Poverty (LAMP) et al. vs. Manila Electric Company (MERALCO)*, (both cases shall hereafter be referred to as "MERALCO Refund cases," for brevity), the Supreme Court ordered MERALCO to refund its customers, which shall be credited against the customer's future consumption, the excess average amount of P0.167 per kilowatt hour starting with the customer's billing cycles beginning February 1998. The dispositive portion of the Supreme Court Decision in the MERALCO Refund cases reads:

WHEREFORE, in view of the foregoing, the instant petitions are GRANTED and the decision of the Court of Appeals in C.A. G.R. SP No. 46888 is REVERSED. Respondent MERALCO is authorized to adopt a rate adjustment in the amount of P0.017 kilowatthour, effective with respect to MERALCO's billing cycles beginning February 1994. Further, in accordance with the decision of the ERB dated February 16, 1998, the excess average amount of P0.167 per kilowatt hour starting with the applicant's billing cycles beginning February 1998 is ordered to be refunded to MERALCO's customers or correspondingly credited in their favor

for future consumption.

x x x x.

8. The Motion for Reconsideration filed by MERALCO in the MERALCO Refund cases was DENIED WITH FINALITY (the uppercase letters were used by the Supreme Court) in the Resolution of the Supreme Court dated April 9, 2003.

9. The amount that MERALCO was mandated to refund to [BF Homes and PWCC] pursuant to the MERALCO Refund cases is in the amount of P11,834,570.91.[5]

BF Homes and PWCC then alleged in their RTC Petition that:

10. On May 20, 2003, without giving any notice whatsoever, MERALCO disconnected electric supply to [BF Homes and PWCC's] sixteen (16) water pumps located in BF Homes in Parañaque, Caloocan, and Quezon City, which thus disrupted water supply in those areas.

11. On June 4, 2003, [BF Homes and PWCC] received by facsimile transmission a letter from MERALCO, x x x, in which MERALCO demanded to [BF Homes and PWCC] the payment of electric bills amounting to P4,717,768.15.

12. [MERALCO] replied in a letter dated June 11, 2003, x x x, requesting MERALCO to apply the P4,717,768.15 electric bill against the P11,834,570.91 that MERALCO was ordered to refund to [BF Homes and PWCC] pursuant to the MERALCO Refund cases. x x x

13. Displaying the arrogance that has become its distinction, MERALCO, in its letter dated June 16, 2003, x x x, denied [BF Homes and PWCC's] request alleging that it has not yet come up with the schedule for the refund of large amounts, such as those of [BF Homes and PWCC].

14. Even while MERALCO was serving its reply-letter to [BF Homes and PWCC], MERALCO, again, without giving any notice, cut off power supply to [BF Homes and PWCC's] five (5) water pumps located in BF Homes Parañaque and BF Resort Village, in Pamplona, Las Piñas City.

15. In its letter dated June 4, 2003 (Annex A), MERALCO threatened to cut off electric power connections to all of [BF Homes and PWCC's] water pumps if [BF Homes and PWCC] failed to pay their bills demanded by MERALCO by June 20, 2003.[6]

BF Homes and PWCC thus cited the following causes of action for their RTC Petition:

16. In refusing to apply [MERALCO's] electric bills against the amounts that it was ordered to refund to [BF Homes and PWCC] pursuant to the MERALCO Refund cases and in making the implementation of the refund ordered by the Supreme Court dependent upon its own will and caprice, MERALCO acted with utmost bad faith.

17. [BF Homes and PWCC] are clearly entitled to the remedies under the law to compel MERALCO to consider [BF Homes and PWCC's] electric bills fully paid by the amounts which MERALCO was ordered to refund to [BF Homes and PWCC] pursuant to the MERALCO Refund cases, to enjoin MERALCO to reconnect electric power to all of [BF Homes and PWCC's] water pumps, and to order MERALCO to desist from further cutting off power connection to [BF Homes and PWCC's] water pumps.

18. MERALCO's unjust and oppressive acts have cast dishonor upon [BF Homes and PWCC's] good name and besmirched their reputation for which [BF Homes and PWCC] should be indemnified by way of moral damages in the amount of not less than P1,000,000.00.

19. As an example for the public good, to dissuade others from emulating MERALCO's unjust, oppressive and mercenary conduct, MERALCO should be directed to pay [BF Homes and PWCC] exemplary damages of at

least P1,000,000.00.

20. MERALCO's oppressive and inequitable conduct forced [BF Homes and PWCC] to engage the services of counsel to defend their rights and thereby incur litigation expenses in the amount of at least P500,000.00 for which [BF Homes and PWCC] should be indemnified.[7]

BF Homes and PWCC additionally prayed that the RTC issue a writ of preliminary injunction and restraining order considering that:

21. As indicated in its letter dated June 4, 2003 (Annex A), unless seasonably restrained, MERALCO will cut off electric power connections to all of [BF Homes and PWCC's] water pumps on June 20, 2003.

22. Part of the reliefs herein prayed for is to restrain MERALCO from cutting off electric power connections to [BF Homes and PWCC's] water pumps.

23. Unless MERALCO'S announced intention to cut off electric power connections to [BF Homes and PWCC's] water pumps is restrained, [BF Homes and PWCC] will suffer great and irreparable injury because they would not [be] able to supply water to their customers.

24. [BF Homes and PWCC] therefore pray that a writ for preliminary injunction be issued upon posting of a bond in an amount as will be determined by this Honorable Court.

25. [BF Homes and PWCC] further pray that, in the meantime and immediately upon the filing of the above captioned Petition, a restraining order be issued before the matter of preliminary injunction can be heard.[8]

On August 15, 2003, MERALCO filed before the RTC its Answer with Counterclaims and Opposition to the Application for Writ of Preliminary Injunction[9] of BF Homes and PWCC.

According to MERALCO:

2.2. Both petitioners BF Homes, Incorporated and Philippine Waterworks Corporation are admittedly the registered customers of [MERALCO] by virtue of the service contracts executed between them under which the latter undertook to supply electric energy to the former for a fee. The following twenty-three (23) Service Identification Nos. (SINs) are registered under the name of BF Homes, Incorporated: x x x. While the following twenty-one (21) Service Identification Nos. (SINs) are registered under the name of Philippine Waterworks Construction Corporation: x x x

x x x x

2.4. The service contracts as well as the terms and conditions of [MERALCO's] service as approved by BOE [Board of Energy], now ERC [Energy Regulatory Commission], provide in relevant parts, that [BF Homes and PWCC] agree as follows:

DISCONTINUANCE OF SERVICE:

The Company reserves the right to discontinue service in case the customer is in arrears in the payment of bills or for failure to pay the adjusted bills in those cases where the meter stopped or failed to register the correct amount of energy consumed, or for failure to comply with any of these terms and conditions, or in case of or to prevent fraud upon the Company. Before disconnection is made in the case of, or to prevent fraud, the Company may adjust the bill of said customer accordingly and if the adjusted bill is not paid, the Company may disconnect the same." (Emphasis supplied)

2.5. This contractual right of [MERALCO] to discontinue electric service for default in the payment of its regular bills is sanctioned and approved by the rules and regulations of ERB (now the ERC). This right is necessary and reasonable means to properly protect and enable [MERALCO] to perform and discharge its legal and contractual

obligation under its legislative franchise and the law. Cutting off service for non-payment by the customers of the regular monthly electric bills is the only practical way a public utility, such as [MERALCO], can ensure and maintain efficient service in accordance with the terms and conditions of its legislative franchise and the law.

x x x x

2.14. Instead of paying their unpaid electric bills and before [MERALCO] could effect its legal and contractual right to disconnect [BF Homes and PWCC's] electric services, [BF Homes and PWCC] filed the instant petition to avoid payment of [MERALCO's] valid and legal claim for regular monthly electric bills.

2.15. [BF Homes and PWCC's] unpaid regular bills totaled P6,551,969.55 covering the May and June 2003 electric bills. x x x

x x x x

2.17. [BF Homes and PWCC] knew that [MERALCO] is already in the process of implementing the decision of the Supreme Court as to the refund case. But this refund has to be implemented in accordance with the guidelines and schedule to be approved by the ERC. Thus [BF Homes and PWCC's] filing of the instant petition is merely to evade payment of their unpaid electric bills to [MERALCO].[10]

Hence, MERALCO sought the dismissal of the RTC Petition of BF Homes and PWCC on the following grounds:

3.1 The Honorable Court has no jurisdiction to award the relief prayed for by [BF Homes and PWCC] because:

a) The petition is in effect preempting or defeating the power of the ERC to implement the decision of the Supreme Court.

b) [MERALCO] is a utility company whose business activity is wholly regulated by the ERC. The latter, being the regulatory agency of the government having the authority over the respondent, is the one tasked to approve the guidelines, schedules and details of the refund.

c) The decision of the Supreme Court, dated November 15, 2002, clearly states that respondent is directed to make the refund to its customers in accordance with the decision of the ERC (formerly ERB) dated February 16, 1998. Hence, [MERALCO] has to wait for the schedule and details of the refund to be approved by the ERC before it can comply with the Supreme Court decision.

3.2. [MERALCO] has the right to disconnect the electric service to [BF Homes and PWCC] in that:

a) The service contracts between [MERALCO] and [BF Homes and PWCC] expressly authorize the former to discontinue and disconnect electric services of the latter for their failure to pay the regular electric bills rendered.

b) It is [MERALCO's] legal duty as a public utility to furnish its service to the general public without arbitrary discrimination and, consequently, [MERALCO] is obligated to discontinue and disconnect electric services to [BF Homes and PWCC] for their refusal or failure to pay the electric energy actually used by them.[11]

For its compulsory counterclaims, MERALCO prayed that the RTC orders BF Homes and PWCC to pay MERALCO P6,551,969.55 as actual damages (representing the unpaid electric bills of BF Homes and PWCC for May and June 2003), P1,500,000.00 as exemplary damages, P1,500,000.00 as moral damages, and P1,000,000.00 as attorney's fees.

Lastly, MERALCO opposed the application for writ of preliminary injunction of BF Homes and PWCC because:

I

[MERALCO] HAS THE LEGAL AND CONTRACTUAL RIGHT TO DEMAND PAYMENT OF THE ELECTRIC BILLS AND, IN CASE OF NON-PAYMENT, TO DISCONTINUE THE ELECTRIC SERVICES OF [BF HOMES and PWCC]

II

[BF HOMES and PWCC] HAVE NO CLEAR RIGHT WHICH WARRANTS PROTECTION BY INJUNCTIVE PROCESS

After hearing,[12] the RTC issued an Order on November 21, 2003 granting the application of BF Homes and PWCC for the issuance of a writ of preliminary injunction. The RTC found that the records showed that all requisites for the issuance of said writ were sufficiently satisfied by BF Homes and PWCC. The RTC stated in its Order:

Albeit, this Court respects the right of a public utility company like MERALCO, being a grantee of a legislative franchise under Republic Act No. 9029, to collect overdue payments from its subscribers or customers for their respective consumption of electric energy, such right must, however, succumb to the paramount substantial and constitutional rights of the public to the usage and enjoyment of waters in their community. Thus, there is an urgent need for the issuance of a writ of preliminary injunction in order to prevent social unrest in the community for having been deprived of the use and enjoyment of waters flowing through [BF Homes and PWCC's] water pumps.[13]

The RTC decreed in the end:

WHEREFORE, in the light of the foregoing, [BF Homes and PWCC's] prayer for the issuance of a writ of preliminary injunction is hereby GRANTED. Respondent Manila Electric Company is permanently restrained from proceeding with its announced intention to cut-off electric power connection to [BF Homes and PWCC's] water pumps unless otherwise ordered by this Court. Further, [BF Homes and PWCC] are hereby ordered to post a bond in the amount of P500,000 to answer for whatever injury or damage that may be caused by reason of the preliminary injunction.[14]

The Motion for Reconsideration of MERALCO of the aforementioned Order was denied by the RTC in another Order issued on January 9, 2004.[15] The RTC reiterated its earlier finding that all the requisites for the proper issuance of an injunction had been fully complied with by BF Homes and PWCC, thus:

Records indubitably show that all the requisites for the proper issuance of an injunction have been fully complied with in the instant case.

It should be noted that a disconnection of power supply would obviously cause irreparable injury because the pumps that supply water to the BF community will be without electricity, thereby rendering said community without water. Water is a basic and endemic necessity of life. This is why its enjoyment and use has been constitutionally safeguarded and protected. Likewise, a community without water might create social unrest, which situation this Court has the mandate to prevent. There is an urgent and paramount necessity for the issuance of the injunctive writ to prevent serious damage to the guaranteed rights of [BF Homes and PWCC] and the residents of the community to use and enjoy water.[16]

The RTC resolved the issue on jurisdiction raised by MERALCO, as follows:

As to the jurisdictional issue raised by respondent MERALCO, it can be gleaned from a re-evaluation and re-assessment of the records that this Court has jurisdiction to delve into the case. This Court gave both parties the opportunity to be heard as they introduced evidence on the propriety of the issuance of the injunctive writ. It is well-settled that no grave abuse of discretion could be attributed to its issuance where a party was not deprived of its day in court as it was heard and had exhaustively presented all its arguments and defenses. (National Mines and Allied Workers Union vs. Valero, 132 SCRA 578, 1984.)[17]

Aggrieved, MERALCO filed with the Court of Appeals a Petition for Certiorari under Rule 65 of the Rules of Court, docketed as CA-G.R. SP No. 82826. MERALCO sought the reversal of the RTC Orders dated November 21, 2003 and January 9, 2004 granting a writ of preliminary injunction in favor of BF Homes and PWCC. MERALCO asserted that the RTC had no jurisdiction over the application of BF Homes and PWCC for issuance of such a writ.

In its Decision dated October 27, 2005, the Court of Appeals agreed with MERALCO that the RTC had no jurisdiction to issue a writ of preliminary injunction in Civil Case No. 03-0151, as said trial court had no jurisdiction over the subject matter of the case to begin with. It ratiocinated in this wise:

For one, it cannot be gainsaid that the ERC has original and exclusive jurisdiction over the case. Explicitly, Section 43(u) of Republic Act No. 9136, otherwise known as the "Electric Power Industry Reform Act," (RA 9136), states that the ERC shall have the original and exclusive jurisdiction over all cases contesting rates, fees, fines and penalties imposed by the ERC in the exercise of its powers, functions and responsibilities and over all cases involving disputes between and among participants or players in the energy sector. Section 4(o) of Rule 3 of the Implementing Rules and Regulations of RA 9136 likewise provides that the ERC shall also be empowered to issue such other rules that are essential in the discharge of its functions as an independent quasi-judicial body.

For another, the respondent judge, instead of presiding over the case, should have dismissed the same and yielded jurisdiction to the ERC pursuant to the doctrine of primary jurisdiction. It is plain error on the part of the respondent judge to determine, preliminary or otherwise, a controversy involving a question which is within the jurisdiction of an administrative tribunal, especially so where the question demands the exercise of sound administrative discretion.

Needless to state, the doctrine of primary jurisdiction applies where the administrative agency, as in the case of ERC, exercises its quasi-judicial and adjudicatory function. Thus, in cases involving specialized disputes, the practice has been to refer the same to an administrative agency of special competence pursuant to the doctrine of primary jurisdiction. The courts will not determine a controversy involving a question which is within the jurisdiction of the administrative tribunal prior to the resolution of that question by the administrative tribunal, where the question demands the exercise of sound administrative discretion requiring the special knowledge, experience and services of the administrative tribunal to determine technical and intricate matters of fact, and a uniformity of ruling is essential to comply with the premises of the regulatory statute administered.

Verily, the cause of action of [BF Homes and PWCC] against [MERALCO] originates from the Meralco Refund Decision as it involves the perceived right of the former to compel the latter to set-off or apply their refund to their present electric bill. The issue delves into the right of the private respondents to collect their refund without submitting to the approved schedule of the ERC, and in effect give unto themselves preferential right over other equally situated consumers of [MERALCO]. Perforce, the ERC, as can be gleaned from the afore-stated legal provisions, has primary, original and exclusive jurisdiction over the said controversy.

Indeed, the respondent judge glaringly erred in enjoining the right of [MERALCO] to disconnect its services to [BF Homes and PWCC] on the premise that the court has jurisdiction to apply the provisions on compensation or set-off in this case. Although [MERALCO] recognizes the right of [BF Homes and PWCC] to the refund as provided in the Meralco Refund Decision, it is the ERC which has the authority to implement the same according to its approved schedule, it being a dispute arising from the exercise of its jurisdiction.

Moreover, it bears to stress that the Meralco Refund Decision was brought into fore by the Decision dated 16 February 1998 of the ERC (then Energy Regulatory Board) granting refund to [MERALCO's] consumers. Being the agency of origin, the ERC has the jurisdiction to execute the same. Besides, as stated, it is empowered to promulgate rules that are essential in the discharge of its functions as an independent quasi-judicial body.[18]

The dispositive portion of the judgment of the appellate court reads:

WHEREFORE, the foregoing considered, the instant petition is hereby GRANTED and the assailed Orders REVERSED and SET ASIDE. Accordingly, the writ of injunction against [MERALCO] is hereby DISSOLVED. No costs.[19]

In a Resolution dated February 7, 2006, the Court of Appeals denied the Motion for Reconsideration of BF Homes and PWCC for failing to raise new and persuasive and meritorious arguments.

Now, BF Homes and PWCC come before this Court via the instant Petition, raising the following assignment of errors:

- The Court of Appeals ERRED in saying that the respondent judge committed grave abuse of discretion by issuing the disputed writ of injunction pending the merits of the case including the issue of subject matter jurisdiction.
- The Court of Appeals ERRED in saying that the ERC under the doctrine of primary jurisdiction has the original and EXCLUSIVE jurisdiction to take cognizance of a petition for injunction to prevent electrical disconnection to a customer entitled to a refund.
- The Court of Appeals ERRED in NOT SAYING that the ERC as a quasi-judicial body under RA 9136 has no power to issue any injunctive relief or remedy to prevent disconnection.
- The Court of Appeals ERRED in not resolving the issue as to the violation of MERALCO of a standing injunction order while the case remains undecided.[20]

At the core of the Petition is the issue of whether jurisdiction over the subject matter of Civil Case No. 03-0151 lies with the RTC or the Energy Regulatory Commission (ERC). If it is with the RTC, then the said trial court also has jurisdiction to issue the writ of preliminary injunction against MERALCO. If it is with the ERC, then the RTC also has no jurisdiction to act on any incidents in Civil Case No. 03-0151, including the application for issuance of a writ of preliminary injunction of BF Homes and PWCC therein.

BF Homes and PWCC argued that due to the threat of MERALCO to disconnect electric services, BF Homes and PWCC had no other recourse but to seek an injunctive remedy from the RTC under its general jurisdiction. The merits of Civil Case No. 03-0151 was not yet in issue, only the propriety of issuing a writ of preliminary injunction to prevent an irreparable injury. Even granting that the RTC has no jurisdiction over the subject matter of Civil Case No. 03-0151, the ERC by enabling law has no injunctive power to prevent the disconnection by MERALCO of electric services to BF Homes and PWCC.

The Petition has no merit.

Settled is the rule that jurisdiction is conferred only by the Constitution or the law.[21] Republic v. Court of Appeals[22] also enunciated that only a statute can confer jurisdiction on courts and administrative agencies.

Related to the foregoing and equally well-settled is the rule that the nature of an action and the subject matter thereof, as well as which court or agency of the government has jurisdiction over the same, are determined by the material allegations of the complaint in relation to the law involved and the character of the reliefs prayed for, whether or not the complainant/plaintiff is entitled to any or all of such reliefs. A prayer or demand for relief is not part of the petition of the cause of action; nor does it enlarge the cause of action stated or change the legal effect of what is alleged. In determining which body has jurisdiction over a case, the better policy is to consider not only the status or relationship of the parties but also the nature of the action that is the subject of their controversy.[23]

In *Manila Electric Company v. Energy Regulatory Board*,^[24] the Court traced the legislative history of the regulatory agencies which preceded the ERC, presenting a summary of these agencies, the statutes or issuances that created them, and the extent of the jurisdiction conferred upon them, viz:

1. The first regulatory body, the Board of Rate Regulation (BRR), was created by virtue of Act No. 1779. Its regulatory mandate under Section 5 of the law was limited to fixing or regulating rates of every public service corporation.

2. In 1913, Act No. 2307 created the Board of Public Utility Commissioners (BPUC) to take over the functions of the BRR. By express provision of Act No. 2307, the BPUC was vested with jurisdiction, supervision and control over all public utilities and their properties and franchises.

3. On November 7, 1936, Commonwealth Act (C.A.) No. 146, or the Public Service Act (PSA), was passed creating the Public Service Commission (PSC) to replace the BPUC. Like the BPUC, the PSC was expressly granted jurisdiction, supervision and control over public services, with the concomitant authority of calling on the public force to exercise its power, to wit:

"SEC. 13. Except as otherwise provided herein, the Commission shall have general supervision and regulation of, jurisdiction and control over, all public utilities, and also over their property, property rights, equipment, facilities and franchises so far as may be necessary for the purpose of carrying out the provisions of this Act, and in the exercise of its authority it shall have the necessary powers and the aid of the public force x x x."

Section 14 of C.A. No. 146 defines the term "public service" or "public utility" as including "every individual, copartnership, association, corporation or joint-stock company, . . . that now or hereafter may own, operate, manage or control within the Philippines, for hire or compensation, any common carrier, x x x, electric light, heat, power, x x x, when owned, operated and managed for public use or service within the Philippines x x x." Under the succeeding Section 17(a), the PSC has the power even without prior hearing -

(a) To investigate, upon its own initiative, or upon complaint in writing, any matter concerning any public service as regards matters under its jurisdiction; to require any public service to furnish safe, adequate and proper service as the public interest may require and warrant, to enforce compliance with any standard, rule, regulation, order or other requirement of this Act or of the Commission, x x x.

4. Then came Presidential Decree (P.D.) No. 1, reorganizing the national government and implementing the Integrated Reorganization Plan. Under the reorganization plan, jurisdiction, supervision and control over public services related to electric light, and power heretofore vested in the PSC were transferred to the Board of Power and Waterworks (BOPW).

Later, P.D. No. 1206 abolished the BOPW. Its powers and function relative to power utilities, including its authority to grant provisional relief, were transferred to the newly-created Board of Energy (BOE).

5. On May 8, 1987, then President Corazon C. Aquino issued E.O. No. 172 reconstituting the BOE into the ERB, transferring the former's functions and powers under P.D. No. 1206 to the latter and consolidating in and entrusting on the ERB "all the regulatory and adjudicatory functions covering the energy sector." Section 14 of E.O. No. 172 states that "(T)he applicable provisions of [C.A.] No. 146, as amended, otherwise known as the 'Public Service Act'; x x x and [P.D.] No. 1206, as amended, creating the Department of Energy, shall continue to have full force and effect, except insofar as inconsistent with this Order."^[25]

Thereafter, on June 8, 2001, Republic Act No. 9136, known as the Electric Power Industry Reform Act of 2001 (EPIRA), was enacted, providing a framework for restructuring the electric power industry. One of the avowed purposes of the EPIRA is to establish a strong and purely independent regulatory body. The Energy Regulatory Board (ERB) was abolished and its powers and functions not inconsistent with the provision of the EPIRA were

expressly transferred to the ERC.[26]

The powers and functions of the ERB not inconsistent with the EPIRA were transferred to the ERC by virtue of Sections 44 and 80 of the EPIRA, which read:

Sec. 44. Transfer of Powers and Functions. - The powers and functions of the Energy Regulatory Board not inconsistent with the provisions of this Act are hereby transferred to the ERC. The foregoing transfer of powers and functions shall include all applicable funds and appropriations, records, equipment, property and personnel as may be necessary.

Sec. 80. Applicability and Repealing Clause. - The applicability provisions of Commonwealth Act No. 146, as amended, otherwise known as the "Public Service Act." Republic Act 6395, as amended, revising the charter of NPC; Presidential Decree 269, as amended, referred to as the National Electrification Decree; Republic Act 7638, otherwise known as the "Department of Energy Act of 1992"; Executive Order 172, as amended, creating the ERB; Republic Act 7832 otherwise known as the "Anti-Electricity and Electric Transmission Lines/Materials Pilferage Act of 1994"; shall continue to have full force and effect except insofar as they are inconsistent with this Act.

The provisions with respect to electric power of Section 11(c) of Republic Act 7916, as amended, and Section 5(f) of Republic Act 7227, are hereby repealed or modified accordingly.

Presidential Decree No. 40 and all laws, decrees, rules and regulations, or portions thereof, inconsistent with this Act are hereby repealed or modified accordingly.

In addition to the foregoing, the EPIRA also conferred new powers upon the ERC under Section 43, among which are:

SEC. 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

(f) In the public interest, establish and enforce a methodology for setting transmission and distribution wheeling rates and retail rates for the captive market of a distribution utility, taking into account all relevant considerations, including the efficiency or inefficiency of the regulated entities. The rates must be such as to allow the recovery of just and reasonable costs and a reasonable return on rate base (RORB) to enable the entity to operate viably. The ERC may adopt alternative forms of internationally-accepted rate-setting methodology as it may deem appropriate. The rate-setting methodology so adopted and applied must ensure a reasonable price of electricity. The rates prescribed shall be non-discriminatory. To achieve this objective and to ensure the complete removal of cross subsidies, the cap on the recoverable rate of system losses prescribed in Section 10 of Republic Act No. 7832, is hereby amended and shall be replaced by caps which shall be determined by the ERC based on load density, sales mix, cost of service, delivery voltage and other technical considerations it may promulgate. The ERC shall determine such form of rate-setting methodology, which shall promote efficiency. x x x.

x x x x

(u) The ERC shall have the original and exclusive jurisdiction over all cases contesting rates, fees, fines and penalties imposed by the ERC in the exercise of the abovementioned powers, functions and responsibilities and over all cases involving disputes between and among participants or players in the energy sector.

All notices of hearings to be conducted by the ERC for the purpose of fixing rates or fees shall be published at

least twice for two successive weeks in two (2) newspapers of nationwide circulation.

A careful review of the material allegations of BF Homes and PWCC in their Petition before the RTC reveals that the very subject matter thereof is the off-setting of the amount of refund they are supposed to receive from MERALCO against the electric bills they are to pay to the same company. This is squarely within the primary jurisdiction of the ERC.

The right of BF Homes and PWCC to refund, on which their claim for off-setting depends, originated from the MERALCO Refund cases. In said cases, the Court (1) authorized MERALCO to adopt a rate adjustment in the amount of P0.017 per kilowatthour, effective with respect to its billing cycles beginning February 1994; and (2) ordered MERALCO to refund to its customers or credit in said customers' favor for future consumption P0.167 per kilowatthour, starting with the customers' billing cycles that begin February 1998, in accordance with the ERB Decision dated February 16, 1998.

It bears to stress that in the MERALCO Refund cases, this Court only affirmed the February 16, 1998 Decision of the ERB (predecessor of the ERC) fixing the just and reasonable rate for the electric services of MERALCO and granting refund to MERALCO consumers of the amount they overpaid. Said Decision was rendered by the ERB in the exercise of its jurisdiction to determine and fix the just and reasonable rate of power utilities such as MERALCO.

Presently, the ERC has original and exclusive jurisdiction under Rule 43(u) of the EPIRA over all cases contesting rates, fees, fines, and penalties imposed by the ERC in the exercise of its powers, functions and responsibilities, and over all cases involving disputes between and among participants or players in the energy sector. Section 4(o) of the EPIRA Implementing Rules and Regulation provides that the ERC "shall also be empowered to issue such other rules that are essential in the discharge of its functions as in independent quasi-judicial body."

Indubitably, the ERC is the regulatory agency of the government having the authority and supervision over MERALCO. Thus, the task to approve the guidelines, schedules, and details of the refund by MERALCO to its consumers, to implement the judgment of this Court in the MERALCO Refund cases, also falls upon the ERC. By filing their Petition before the RTC, BF Homes and PWCC intend to collect their refund without submitting to the approved schedule of the ERC, and in effect, enjoy preferential right over the other equally situated MERALCO consumers.

Administrative agencies, like the ERC, are tribunals of limited jurisdiction and, as such, could wield only such as are specifically granted to them by the enabling statutes. In relation thereto is the doctrine of primary jurisdiction involving matters that demand the special competence of administrative agencies even if the question involved is also judicial in nature. Courts cannot and will not resolve a controversy involving a question within the jurisdiction of an administrative tribunal, especially when the question demands the sound exercise of administrative discretion requiring special knowledge, experience and services of the administrative tribunal to determine technical and intricate matters of fact. The court cannot arrogate into itself the authority to resolve a controversy, the jurisdiction of which is initially lodged with the administrative body of special competence.[27]

Since the RTC had no jurisdiction over the Petition of BF Homes and PWCC in Civil Case No. 03-0151, then it was also devoid of any authority to act on the application of BF Homes and PWCC for the issuance of a writ of preliminary injunction contained in the same Petition. The ancillary and provisional remedy of preliminary injunction cannot exist except only as an incident of an independent action or proceeding.[28]

Incidentally, BF Homes and PWCC seemed to have lost sight of Section 8 of Executive Order No. 172 which

explicitly vested on the ERB, as an incident of its principal function, the authority to grant provisional relief, thus:

Section 8. Authority to Grant Provisional Relief. -- The Board may, upon the filing of an application, petition or complaint or at any stage thereafter and without prior hearing, on the basis of supporting papers duly verified or authenticated, grant provisional relief on motion of a party in the case or on its own initiative, without prejudice to a final decision after hearing, should the Board find that the pleadings, together with such affidavits, documents and other evidence which may be submitted in support of the motion, substantially support the provisional order: Provided, That the Board shall immediately schedule and conduct a hearing thereon within thirty (30) days thereafter, upon publication and notice to all affected parties.

The aforequoted provision is still applicable to the ERC as it succeeded the ERB, by virtue of Section 80 of the EPIRA. A writ of preliminary injunction is one such provisional relief which a party in a case before the ERC may move for.

Lastly, the Court herein already declared that the RTC not only lacked the jurisdiction to issue the writ of preliminary injunction against MERALCO, but that the RTC actually had no jurisdiction at all over the subject matter of the Petition of BF Homes and PWCC in Civil Case No. 03-0151. Therefore, in addition to the dissolution of the writ of preliminary injunction issued by the RTC, the Court also deems it appropriate to already order the dismissal of the Petition of BF Homes and PWCC in Civil Case No. 03-0151 for lack of jurisdiction of the RTC over the subject matter of the same. Although only the matter of the writ of preliminary injunction was brought before this Court in the instant Petition, the Court is already taking cognizance of the issue on the jurisdiction of the RTC over the subject matter of the Petition. The Court may *motu proprio* consider the issue of jurisdiction. The Court has discretion to determine whether the RTC validly acquired jurisdiction over Civil Case No. 03-0151 since, to reiterate, jurisdiction over the subject matter is conferred only by law. Jurisdiction over the subject matter cannot be acquired through, or waived by, any act or omission of the parties. Neither would the active participation of the parties nor estoppel operate to confer jurisdiction on the RTC where the latter has none over a cause of action.[29] Indeed, when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action.[30]

WHEREFORE, the instant Petition for Review is DENIED. The Decision dated October 27, 2005 of the Court of Appeals in CA-G.R. SP No. 82826 is AFFIRMED with the MODIFICATION that the Regional Trial Court, Branch 202 of Las Piñas City, is ORDERED to dismiss the Petition [With Prayer for the Issuance of Writ of Preliminary Injunction and for the Immediate Issuance of Restraining Order] of BF Homes, Inc. and Philippine Waterworks and Construction Corporation in Civil Case No. 03-0151. Costs against BF Homes, Inc. and Philippine Waterworks and Construction Corporation.

SO ORDERED.

Corona, C.J., (Chairperson), Del Castillo, Abad,[*] and Perez, JJ., concur.

[*] Per Special Order No. 917 dated November 24, 2010.

[1] Rollo, pp. 30-37; penned by Associate Justice Josefina Guevara-Salonga with Associate Justices Delilah Vidallon Magtolis and Fernanda Lampas Peralta, concurring.

[2] Id. at 59-62.

[3] Id. at 46-47.

[4] 440 Phil. 389 (2002).

- [5] Rollo, pp. 54-55.
- [6] Id. at 55.
- [7] Id. at 56.
- [8] Id. at 56-57.
- [9] CA rollo, pp. 72-85.
- [10] Id. at 74-78.
- [11] Id. at 78-79.
- [12] Held on June 23, 2003; June 25, 2003; and July 3, 2003.
- [13] Rollo, pp. 60 and 62.
- [14] Id. at 62.
- [15] Id. at 78-82.
- [16] Id. at 81.
- [17] Id.
- [18] Id. at 34-36.
- [19] Id. at 37.
- [20] Id. at 17.
- [21] Civil Service Commission v. Albao, G.R. No. 155784, October 13, 2005, 472 SCRA 548, 555.
- [22] 331 Phil. 1070, 1076 (1996).
- [23] Villamaria, Jr. v. Court of Appeals, G.R. No. 165881, April 19, 2006, 487 SCRA 571, 589.
- [24] G.R. No. 145399, March 17, 2006, 485 SCRA 19.
- [25] Id at 28-30.
- [26] Freedom from Debt Coalition v. Energy Regulatory Commission, 476 Phil. 134, 188 (2004).
- [27] Longino v. General, 491 Phil. 600, 618-619 (2005).
- [28] Urbanes, Jr. v. Court of Appeals, 407 Phil. 856, 870 (2001).
- [29] Suarez v. Saul, G.R. No. 166664, October 20, 2005, 473 SCRA 628, 637-638.
- [30] Katon v. Palanca, Jr., G.R. No. 151149, September 7, 2004, 437 SCRA 565, 575.

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