

JEFFREY T. GO, Petitioner, vs. LEYTE II ELECTRIC COOPERATIVE, INC., Respondent.

G.R. No. 176909. February 18, 2008

Ponente: YNARES-SATIAGO, J.

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YNARES-SATIAGO, J.:

This petition for review on certiorari[1] assails the November 30, 2006 Decision[2] of the Court of Appeals in CA-G.R. CEB-SP No. 02010 setting aside the April 4, 2006 and May 2, 2006 Orders of Branch 6 of the Regional Trial Court of Tacloban City in Special Civil Case No. 2006-03-24, which ordered the issuance of a writ of injunction against respondent Leyte II Electric Cooperative, Inc. (LEYECO II). Also assailed is the February 27, 2007 Resolution[3] denying the motion for reconsideration.

The facts are as follows:

Petitioner Jeffrey T. Go is a resident of Block 16, Lot 14, Imelda Village, Tacloban City. He bought the property from Rosita Mancera, who is the registered consumer and member of respondent LEYECO II.

At about 10:20 a.m. of February 13, 2006, respondent's inspection team went to petitioner's residence to inspect his electric meter. They requested the occupant of the house to witness the inspection but were told that the owner was out of town. Hence, it was Barangay Chairman Jesus Alex Alusa of Barangay 36A, Imelda Village and SPO3 Glen Trinidad who witnessed the same. Upon inspection, the team discovered that the electric meter had a broken seal, and that it had been tampered with through the installation of a shunting wire at the back of the meter insulating terminal block.

On March 7, 2006, petitioner received from respondent a "Notice of Apprehension and Disconnection,"[4] notifying him of the results of the inspection and his liability for violation of the Service Contract as well as Republic Act (R.A.) No. 7832, otherwise known as "An Act Penalizing the Pilferage of Electricity and Theft of Electric Power Transmission Lines/Materials, Rationalizing System Losses by Phasing Out Pilferage Losses as a Component thereof, and for Other Purposes." [5] He was assessed P101,597.99 for pilferage differential billing and surcharges and was given ten days within which to settle the amount otherwise his electric service will be disconnected.

Petitioner immediately filed a "Petition for Injunction and Damages with Preliminary Injunction with a Prayer for the Issuance of a Temporary Restraining Order"[6] before the Regional Trial Court of Tacloban City. He claimed that the inspection was irregular and illegal, and that respondent had no legal basis to cause the disconnection of his electric service.

On March 16, 2006, Executive Judge Salvador Apurillo issued a 72-hour temporary restraining order enjoining respondent from disconnecting petitioner's electric service.[7] Thereafter, the case was raffled to Branch 6 of the Regional Trial Court of Tacloban City and was docketed as Special Civil Case No. 2006-03-24.

On March 20, 2006, the Regional Trial Court issued an order extending the 72-hour temporary restraining order to

a period of 20 days.[8] Upon hearing and petitioner's filing of a bond in an amount equivalent to the differential billing, the trial court issued an order dated April 4, 2006,[9] granting the issuance of a writ of preliminary injunction against respondent. Respondent moved for reconsideration but was denied.[10]

Respondent filed a petition for certiorari before the Court of Appeals, which reversed and set aside the orders of the Regional Trial Court in its November 30, 2006 Decision, as follows:

In a nutshell, private respondent failed to substantiate his allegation that the inspection conducted by petitioner was made with evident bad faith and/or grave abuse of authority. On the same note, We find public respondent to have gravely abused his discretion in granting private respondent's prayer for the issuance of a writ of injunction against petitioner.

WHEREFORE, in view of the foregoing, we find the instant petition to be impressed with merit. The assailed orders dated April 4, 2006 and May 2, 2006 rendered by public respondent are REVERSED and SET ASIDE.

SO ORDERED.[11]

Petitioner's motion for reconsideration was denied, hence this petition.

Petitioner claims that respondent failed to comply with R.A. No. 7832 when it conducted the inspection of his electric meter; that he was not caught in flagrante delicto of illegal use of electricity; and that the issuance of a writ of injunction against respondent was proper considering that he had filed a bond with the trial court.

On the other hand, respondent contends that the presence of a barangay chairman and a police officer during the inspection satisfied the requirements of the law; that petitioner was caught in flagrante delicto; and that under Section 9 of R.A. No. 7832, a writ of preliminary injunction or restraining order can be issued against a private electric utility or rural cooperative only when there is prima facie evidence that the disconnection was made with evident bad faith or grave abuse of authority.

The issues for resolution are as follows: 1) whether the inspection of petitioner's electric meter was in accordance with R.A. No. 7832; 2) whether petitioner was caught in flagrante delicto; and 3) whether the writ of preliminary injunction was properly issued against respondent LEYECO II.

We find merit in the petition.

The inspection was conducted in accordance with Section 4 of R.A. No. 7832, which states:

SECTION 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 benefitted thereby, and shall be the basis for: (1) the immediate disconnection by the electric utility to such person after due notice, x x x

x 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;

(v) The presence in any part of the building or its premises which is subject to the control of the consumer or on the electric meter, of a current reversing transformer, jumper, shorting and/or shunting wire, and/or loop connection or any other similar device;

x 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). (Emphasis supplied)

While it is not disputed that petitioner's electric meter had a broken seal and shunting wire, petitioner claims that the foregoing circumstances cannot be considered prima facie evidence of illegal use of electricity because the inspection was not conducted in the presence of an "officer of the law" as contemplated under R.A. No. 7832. He argues that only a barangay chairman witnessed the inspection, and that his presence failed to satisfy the requirements of the law which specifies the police or the National Bureau of Investigation (NBI) as competent authority to verify the findings of a private electric utility or rural electric cooperative.

However, under Section 1[12] of the Implementing Rules and Regulations of R.A. No. 7832, an officer of the law is defined as one "who by direct provision of the law or by election or by appointment of competent authority, is charged with the maintenance of public order and the protection and security of life and property." Contrary to petitioner's claim, the definition is not limited to members of the police force or the NBI. The rules specifically state that a barangay chairman is considered an officer of the law. Thus, his presence during the inspection satisfies the requirements of the law.

In any event, the records show that SPO3 Glen Trinidad likewise witnessed the inspection. Respondent submitted a photograph[13] as evidence, and the police officer signed the Notice of Apprehension and Disconnection.[14] It is clear therefore that the inspection was made in accordance with Section 4 of R.A. No. 7832.

We now come to the issue whether petitioner was caught in flagrante delicto.

In flagrante delicto means "[i]n the very act of committing the crime." To be caught in flagrante delicto, therefore, necessarily implies positive identification by the eyewitness or eyewitnesses. Such is a "direct evidence" of culpability, or "that which proves the fact in dispute without the aid of any inference or presumption." [15]

Respondent cites Section 6 of R.A. No. 7832 which provides that a private electric utility or rural electric cooperative can immediately disconnect electric service after prior notice when the consumer or his representative is caught in flagrante delicto. It 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 a written notice or warning to that 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, x x x." (Emphasis and underscoring supplied)

In the instant case, it was impossible for petitioner to have been caught in the act of committing an offense considering that he was not present during the inspection. Nor were any of his representatives at hand. The presence of a broken seal and a shunting wire in petitioner's electric meter will not suffice to support a finding that petitioner was in flagrante delicto. Such circumstances merely operate as prima facie evidence of illegal use of electricity under Section 4 of R.A. No. 7832.

Absent a finding of in flagrante delicto, there is no basis for the immediate disconnection of petitioner's electric service under Section 6 of R.A. No. 7832. Respondent's reliance on the said provision is clearly misplaced.

As to whether the writ of preliminary injunction was properly issued against respondent LEYECO II, we rule in the affirmative.

Section 9 of R.A. No. 7832 provides that unless there is prima facie evidence that the disconnection of electric

service was made with evident bad faith or grave abuse of authority, a writ of injunction or restraining order may not issue against any private electric utility or rural electric cooperative exercising the right and authority to disconnect such service. However, the second paragraph of the same provision provides for another instance when a writ of injunction or restraining order may be issued. Thus:

SEC. 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.

If, notwithstanding the provisions of this section, a court issues an injunction or restraining order, such injunction or restraining order shall be effective only upon the filing of a bond with the court which shall be in the form of cash or a cashier's check equivalent to the "differential billing," penalties and other charge, or to the total value of the subject matter of the action: Provided, however, That such injunction or restraining order shall automatically be refused or, if granted, shall be dissolved upon filing by the public utility of a counterbond similar in form and amount as that above required: Provided, finally, That whenever such injunction is granted, the court issuing it shall, within ten (10) days from its issuance, submit a report to the Supreme Court setting forth in detail the grounds or reasons for its order. (Emphasis supplied)

Consistent with the foregoing provision, Rule VIII of the Implementing Rules and Regulations of R.A. No. 7832 specifically states:

Rule VIII

ISSUANCE OF RESTRAINING ORDERS OR WRITS OF INJUNCTION

Section 1. Issuance of the Writ of Injunction. – Unless there is prima facie evidence that the disconnection was made with evident bad faith or grave abuse of authority, no writ of injunction or restraining order shall be issued by any court against any utility or cooperative exercising the right and authority to disconnect electric service as provided in this Rules.

Section 2. Filing of Bond/Counterbond. – A writ of injunction or restraining order issued by a court in the absence of evident bad faith or grave abuse of authority on the part of the utility or cooperative concerned shall be effective only when the affected person/customer files a bond with the court in the form of cash or cashier's check equivalent to the differential billing, penalties and other charges in cases of illegal use of electricity. Such writ of injunction or restraining order shall automatically be refused or, if already granted, shall be dissolved upon the filing by the utility or cooperative concerned of a counterbond similar in form and amount as that above required. (Emphasis supplied)

The Court of Appeals erred in holding that the only instance where the court can issue a restraining order or injunction is when there is prima facie evidence of bad faith or grave abuse of authority.[16] As the law stands, there are two exceptions to the restriction on the issuance of restraining orders or writs of injunction, to wit: 1) when there is prima facie evidence that the disconnection was made with evident bad faith or grave abuse of authority; and 2) when, even in the absence of bad faith or grave abuse of authority, the electric consumer deposits a bond with the court in the form of cash or a cashier's check equivalent to the differential billing.

In the instant case, petitioner filed a bond in the form of a cashier's check in the amount of One Hundred One Thousand Five Hundred Ninety Seven and 99/100 (P101,597.99), the equivalent of the differential billing charged against him by respondent in compliance with Section 9 of R.A. No. 7832 and Rule VIII of the Implementing Rules and Regulations of R.A. No. 7832.

While the law was crafted primarily to deter the pilferage of electricity through the creation of prima facie presumptions in certain circumstances, it was not intended to completely deprive consumers of their right to protect themselves. It must be emphasized that the issuance of an injunction or restraining order, even in the absence of bad faith and grave abuse of authority, provides ample protection to both the consumer and the electric company. It does not render the law toothless because the required bond, in the form of cash or cashier's check and in the amount of the differential billing and other charges, protects the interest of the private electric utility or rural electric cooperative concerned.

Moreover, we note that respondent is not left without a remedy against the issuance of a writ of injunction. As pointed out by petitioner, respondent can file a counterbond in order to dissolve such injunction. In *Manila Electric Company v. Navarro-Domingo*,^[17] we held that the electric company may avail of the remedy which is also provided in Section 9 of R.A. No. 7832. Thus:

At all events, petitioner was not without remedy against the issuance by public respondent of the writ. For Section 9 of still the same aforecited statute provides:

Section 9.

x x x x

If, notwithstanding the provisions of this section, a court issues an injunction or restraining order, such injunction or restraining order shall be effective only upon the filing of a bond with the court which shall be in the form of cash or cashier's check equivalent to the "differential billing," penalties and other charges, or to the total value of the subject matter of the action: Provided, however, That such injunction or restraining order shall automatically be refused or, if granted, shall be dissolved upon filing by the public utility of a counterbond similar in form and amount as that above required: Provided, finally, That whenever such injunction is granted, the court issuing it shall, within ten (10) days from its issuance, submit a report to the Supreme Court setting forth in detail the grounds or reason for its order.^[18] (Emphasis and underscoring supplied)

WHEREFORE, the petition is GRANTED. The November 30, 2006 Decision and February 27, 2007 Resolution of the Court of Appeals are REVERSED and SET ASIDE. The April 4, 2006 and May 2, 2006 Orders of Branch 6 of the Regional Trial Court of Tacloban City in Special Civil Case No. 2006-03-24 which ordered the issuance of a writ of injunction against respondent and denied the motion for reconsideration are hereby REINSTATED.

SO ORDERED.

Austria-Martinez, Chico-Nazario, Nachura, and Reyes, JJ., concur.

[1] Rollo, pp. 3-18.

[2] Id. at 20-30. Penned by Associate Justice Romeo F. Barza and concurred in by Associate Justices Isaias P. Dicdican and Priscilla Baltazar-Padilla.

[3] Id. at 50-55.

[4] Id. at 56.

[5] Promulgated on December 8, 1994.

[6] CA rollo, pp. 26-34.

[7] Id. at 39-40.

[8] Id. at 41.

[9] Rollo, pp. 57-58.

[10] Id. at 59.

[11] Id. at 29.

[12] Rule III. Section 1. Prima facie evidence of illegal use of electricity. – x x x

x x x x

An officer of the law is any person who by direct provision of the law or by election or by appointment of 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 municipal fiscal.

[13] Rollo, p. 96

[14] Supra note 4.

[15] People v. Fronda, 384 Phil. 732, 744 (2000).

[16] Rollo, p. 25.

[17] G.R. No. 161893, June 27, 2006, 493 SCRA 363.

[18] Id. at 374-375.

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