MANILA ELECTRIC COMPANY, PETITIONER, VS. HSING NAN TANNERY PHILS., INC., RESPONDENT.

G.R. No. 178913. February 12, 2009

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

On October 8, 1999, employees of the Manila Electric Co. (MERALCO) conducted an inspection of the electric meters bearing serial numbers 91SA12293 and 91GDQ1476 installed in the office premises of Hsing Nan Tannery Phils., Inc. (respondent). The inspection was witnessed by respondent's representative. The MERALCO employees found that the active and reactive meters bore fake cover seals showing tampering, hence, the employees removed and replaced the meters with new ones and brought the replaced meters to the laboratory for testing. MERALCO thereafter issued a differential billing to respondent by demand letter dated November 17, 1999 and invited respondent to a conference which did not push through, however. MERALCO thus issued another demand letter dated February 15, 2000 to respondent.

On February 16, 2000, respondent filed with the Regional Trial Court (RTC) of Malolos, Bulacan a Complaint[1] for damages with application for the issuance of a temporary restraining order and/or writ of preliminary injunction against MERALCO.

In its Complaint, respondent alleged that, inter alia, the assessment of electric consumption reflected in the differential billing "is not only unlawful and baseless, but arbitrary and despotic, because the same was based on mere assumption and conjecture"; and unless the notice of disconnection based on the unlawful differential billing is restrained, it would suffer irreparable damages and injury. Accordingly, respondent prayed for the award to it of P1,000,000 for actual damages and P200,000 for attorney's fees, plus costs of the suit.

Branch 83 of the Malolos RTC issued the temporary restraining order prayed for by respondent.

Justifying the inspection of respondent's premises which was witnessed by respondent's representative, MERALCO counterclaimed for the payment of P7,421,397.70 as differential billing, P200,000 for attorney's fees, and P200,000 for exemplary damages.

For failure of respondent to move for the setting of the case for pre-trial, Branch 83 of the Malolos RTC dismissed its complaint without prejudice, by Order[2] dated December 18, 2000 reconsideration by respondent of which was denied.

MERALCO thus presented evidence on its counterclaims.

By Decision[3] of November 7, 2003, the trial court held respondent liable for manipulating the electric meters and ordered it to pay the differential billing in the above-stated amount, and attorney's fees and exemplary damages in the amounts of P50,000 and P100,000, respectively, observing that as respondent benefited from consuming the electricity, it could not be allowed to unjustly enrich itself at MERALCO's expense.

Respondent appealed to the Court of Appeals, maintaining that it was denied due process when MERALCO disconnected its electrical supply and removed its meters.

By Decision[4] of March 8, 2007, the appellate court reversed the trial court's Decision, finding that MERALCO failed to satisfactorily prove that it is entitled to its counterclaims.

In reversing the trial court's decision, the appellate court noted that only sample meters, and not the allegedly tampered meters, were presented during the trial to demonstrate the alleged manipulation of the meters.

The appellate court also noted that the inspection by MERALCO left much to be desired "in terms of transparency and fairness," as it was conducted in the absence of any officer of the law or a duly authorized representative of the Energy Regulatory Board (ERB), which is now Energy Regulatory Commission, whose presence and participation are required, to constitute prima facie presumption of illegal use of electricity under Sec. 4 of Republic Act No. 7832 or the "Anti-Pilferage of Electricity and Theft of Electric Transmission Lines/Materials Act of 1994."

Because of MERALCO's failure to observe the requirement of the law, the appellate court found the testimony of MERALCO's Polyphase Inspector, Emmanuel Bautista, on the alleged meter tampering, self-serving; and while the laboratory testing was alleged to have been made in the presence of one Engineer Albano as ERB representative, he was not presented in court to attest to the veracity thereof.

The appellate court added that while the inspection was consented to and witnessed by respondent's representative, Chito Bañez, MERALCO's findings were not necessarily accurate.

Its motion for reconsideration of the appellate court's Decision having been denied, MERALCO filed the present recourse.

MERALCO maintains that the inspection was proper and lawful and in accordance with the "Terms and Conditions of Service,"[5] as approved by the Board of Energy in BOE Case No. 85-121, which governs its relationship with customers; and that under the said contract, its employees or representatives are permitted by its customers to enter the latter's premises in order to inspect, install, read, remove, test and replace its apparatus for any cause - acts which could be done without the presence of a police officer or ERB representative.

MERALCO adds that even if Sec. 4 of Republic Act No. 7832 is made applicable to the questioned inspection, the absence of a police officer or ERB representative does not ipso facto render the inspection illegal, for the provision only requires the presence of said officers for the purpose of creating a prima facie evidence of tampering in the determination of probable cause to indict a respondent; and that the allegation of tampering had been sufficiently proven even if the questioned meters were not submitted in evidence, given the documentary and testimonial evidence adduced during the trial.

The petition is bereft of merit.

Section 4 of Republic Act No. 7832 reads:

> 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 benefited thereby, and shall be the basis for: (1) the immediate disconnection by the electric utility to such person after due notice, (2) the holding of a preliminary investigation by the prosecutor and the subsequent filing in court of the pertinent information, and (3) the lifting of any temporary restraining order or injunction which may have been issued against a private electric utility or rural electric cooperative: (i) The presence of a bored hole on the glass cover of the electric meter, or at the back or any other part of said meter; (ii) The presence inside the electric meter of salt, sugar and other elements that could result in the inaccurate registration of the meter's internal parts to

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> prevent its accurate registration of consumption of electricity; (iii) The existence of any wiring connection which affects the normal operation or registration of the electric meter; (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; (vi) The mutilation, alteration, reconnection, disconnection, bypassing or tampering of instruments, transformers, and accessories; (vii) The destruction of, or attempt to destroy, any integral accessory of the metering device box which encases an electric meter, or its metering accessories; and (viii) The acceptance of money and/or other valuable consideration by any officer of employee of the electric utility concerned or the making of such an offer to any such officer or employee for not reporting the presence of any of the circumstances enumerated in subparagraphs (i), (ii), (iii), (iv), (v), (vi), or (vii) hereof: 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). (b) The possession or custody of electric power transmission line/material by any person, natural or juridical, not engaged in the transformation, transmission or distribution of electric power, or in the manufacture of such electric power transmission line/material shall be prima facie evidence that such line/material is the fruit of the offense defined in Section 3 hereof and therefore such line/material may be confiscated from the person in possession, control or custody thereof. (Emphasis, italics and underscoring supplied)

It is thus clear that for an allegation of tampering to be the basis for the disconnection of a customer's electric supply, the discovery of such must be personally witnessed and attested to by an officer of the law or an ERB representative. This requirement can not be dispensed with. Quisumbing v. Manila Electric Company[6] so instructs:

> The law says that before immediate disconnection may be allowed, the discovery of the illegal use of electricity must have been personally witnessed and attested to by an officer of the law or by an authorized ERB representative. In this case, the disconnection was effected immediately after the discovery of the alleged meter tampering, which was witnessed only by Meralco's employees. That the ERB representative was allegedly present when the meter was examined in the Meralco laboratory will not cure the defect.
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> 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. (Emphasis supplied)

In the present case, it is admitted that no police officer or ERB representative was present during the inspection, removal and subsequent replacement of the electric meters alleged to have been tampered with, hence, the requirement of the law was not complied with - a lapse fatal to MERALCO's cause.

MERALCO's argument that Section 4 of Republic Act No. 7832 applies only to criminal proceedings does not lie. Under said provision, which was earlier quoted, the investigation by the prosecutor, as well as the subsequent filing of the appropriate information if warranted, is only one of the courses of action to be taken once any of the therein enumerated circumstances establishing a prima facie case for illegal use of electricity is discovered.

Compounding MERALCO's faux pas was its failure to present the allegedly tampered meters. By such failure, the allegations of meter tampering are unsubstantiated.[7]

To grant MERALCO's claims, insufficient proof thereof notwithstanding, is anathema to equity and justice.

> x x x To be sure, in enacting Republic Act No. 7832 and Republic Act No. 9136, the legislature did not intend to relax the rules in deciding cases of tampered electric meters. In no way can this Court grant a favorable judgment to the petitioner solely because of the benefit that the public will gain. To do so would result in unjust enrichment at the expense of the consumer accused of committing acts of tampering. 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 such entitlement.[8] (Emphasis and underscoring supplied)

WHEREFORE, the petition is DISMISSED.

SO ORDERED.

Quisumbing, (Chairperson), Tinga, Velasco, Jr., and Brion, JJ., concur.

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[1] Annex "C" of Petition, rollo, pp. 38-42.

[2] Annex "E" of the Petition, rollo, pp. 56-57. Penned by Judge Guillermo P. Agloro.

[3] Annex "G" of the Petition, rollo, pp. 59-62. Penned by Judge Guillermo P. Agloro.

[4] Rollo, pp. 28-35. Penned by Associate Justice Estela M. Perlas-Bernabe and concurred in by Associate Justices Rodrigo V. Cosico and Lucas P. Bersamin.

[5] Exhibit "1," folder of exhibits.

[6] G.R. No. 142943, April 3, 2002, 380 SCRA 195, 207-208.

[7] Vide Manila Electric Company v. Macro Textile Mills Corporation, G.R. No. 126243, January 18, 2002, 374 SCRA 69.

[8] Manila Electric Company v. Wilcon Builders' Supply, G.R. No. 171534, June 30, 2008, 556 SCRA 742, 756-757.

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