

NATIONAL POWER CORPORATION, PETITIONER, VS. HON. EMILIO A. JACINTO, IN HIS CAPACITY AS PRESIDING JUDGE, REGIONAL TRIAL COURT OF CEBU, BRANCH XXIII AND MACTAN ELECTRIC CO., INC.,...*G.R. No. 67143. January 31, 1985*

Ponente: CONCEPCION JR., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-67143/>**CONCEPCION JR., J.:**

The General Milling Corporation (GMC) is a BOI-registered flour and feed milling company in Lapu-Lapu City. Until the proceedings a quo commenced, it self-generated its own electric power requirements. Respondent Mactan Electric Co., Inc. (MECO), on the other hand, is the franchised operator of the electric system in the same city. For its public service, it does not generate itself the requirements of its system. Like Meralco, it merely distributes to its subscribers electricity supplied by petitioner NPC pursuant to a contract which obliges it to supply MECO with its entire power requirements for Lapu-Lapu City.

On January 27, 1982, respondent MECO wrote petitioner NPC a letter opposing the reported application of GMC for direct NPC power supply (Annex 1, Comment dated May 28, 1984) on the ground that as the franchise holder for Lapu-Lapu City where GMC was established, it was "entitled as a matter of law and equity to be fully heard on GMC's aforementioned application." It further stated that insofar as GMC's requirements for electricity for its plant were concerned, MECO could and would provide the same "at the same industrial rate that it (GMC) would otherwise be charged by NPC under a direct ser-vice agreement."

On March 10, 1982, petitioner NPC replied to respondent MECO's aforementioned letter of January 27, 1982 by informing the latter that it (NPC) had already advised GMC to "make immediate representations with MECO since it is prepared to conclusively match both the power cost and reliability of NPC." (Annex 2 A, Ibid)

As it turned out, however, NPC and GMC had actually already signed a "Letter of Agreement" for that purpose five months before, or specifically on October 28, 1981 (Annex B, Petition) which was rendered into a formal "Contract For The Sale Of Electricity Between NPC and GMC" later on January 13, 1982. (Annex B-1, Ibid)

Pursuant to the above contract, GMC commenced the construction of its own substation in Lapu-Lapu City. On learning of it, MECO promptly filed a petition with the Regional Trial Court of Cebu for a writ of prohibition against the implementation of the aforesaid contract and a writ of mandamus to compel GMC to secure from it instead of from NPC all its requirements for electric power and energy. The petition contained a prayer for the issuance of a writ of preliminary injunction under bond which was issued by respondent judge on January 20, 1984 after due notice and hearing. It is this writ which petitioner now prays to be voided for allegedly having been issued with grave abuse of discretion and/or in excess of respondent judge's discretion.

Petitioner contends that the aforementioned writ is contrary to the provisions of P.D. 380, as amended by P.D. 395, which expressly authorizes the "sale of power in bulk without any restriction to enterprises registered with the Board of Investments." (Sec 3[g]).

The records show, however, that respondent judge correctly defined the main issue in respondent MECO's application for a writ of preliminary injunction to be one of due process rather than NPC's authority to directly provide BOI-registered firms with their electric energy needs. In fact, even in the instant petition, respondent MECO expressly concedes the authority or prerogative of NPC to provide direct electric service to BOI-registered enterprises. But the evidence received by respondent judge in the proceedings below showed respondent MECO was not merely denied any opportunity to be heard thereon; it was even deceived by petitioner NPC into believing that no such direct service contract would be approved. It should be re-called that in reply to MECO's letter-opposition on January 27, 1982, NPC informed the latter on March 10, 1982 that it had directed GMC to "make immediate representations with MECO" for its power requirements since it (MECO) was "prepared to conclusively match both the power cost and reliability of NPC". As respondent judge eventually found, however, this reply was completely misleading considering that as of October 28, 1981, or five months earlier, NPC and GMC had in fact already signed an agreement for direct service. (Annex B, Petition)

Respondent MECO has an unquestionable right to be heard on the NPC-GMC direct service contract. It is the lawful operator of the electric system in Lapu-Lapu City. It has a contract with NPC to be provided with all its requirements for its franchise area, subject alone to the availability of power supply at NPC's generating stations in the Province of Cebu. Consequently, its reliability as a power supplier is similarly beyond question. If NPC has power to service GMC directly, then it must necessarily have such supply available to MECO. In fact, MECO is entitled to the preferential allotment of any such available power because of NPC's aforementioned contractual obligation to MECO. Furthermore, MECO had already committed in writing its willingness to match the rates that GMC would purchase power from NPC directly. In petitioner's letter of March 10, 1982 to respondent MECO, it was practically admitted that the foregoing considerations, upon "the implementing guideline of the BOI-NPC Memorandum of Understanding", deprived NPC of any basis for granting GMC's application for direct connection. And very correctly so. For under "the operating guidelines which was drawn by the BOI and NPC themselves, "favorable action" on which applications (direct connection) depended on the following:

a)

Direct connection will not result in duplication of service facilities on the ground that investment resources are limited.

b)

Where an industrial firm is located in an urban center far from existing NPC transmission lines, the cost of constructing a distribution line is prohibitive because of right-of-way acquisitions.

c)

Where the required distribution will cross over or under existing distribution lines of other utility firms, probably of service interruptions will technically be very high.

d)

The industrial firm will finance the distribution system dedicated to its use.

e)

Delivery voltage shall be at 69,000 volts and above.

f)

Applicant firms fall within the categories of in-dustries as enumerated below."

Presidential Decree No. 380, as amended, PDC Resolution No. 77-01-02 and NPC's own operational guidelines for the implementation of the BOI-NPC Memorandum of Understanding on direct connection establish the state policy that NPC is statutorily empowered to directly service all the requirements of a BOI-registered enterprise provided that, first, any affected private franchise holder is afforded an opportunity to be heard on the application therefor, and second, from such a hearing, it is established that the said private franchise holder is incapable or unwilling to match the reliability and rates of NPC for directly serving the latter. But even without the aforementioned statutory or administrative bases, still said franchised operators' right to due process or priority be heard on such direct service contracts cannot be denied. Like certificates of public conveyance, legislative or municipal franchises for the operation of a public utility are properties (*Raymundo vs. Luneta Motor Co.*, 58 Phil. 889) and therefore guaranteed the due process protection of the Constitution.

Lastly, this Court has carefully gone over the records of the instant petition and noted the absence of any denial of the following factual findings of respondent judge in his questioned Order, as follows:

"One of the basic consideration of the Court in arriving at its present course of action is the allegation or claim by petitioners at the hearing on January 13, 1984 that NPC in fact presently has an existing sub-station in Lapu-Lapu City which has an un-utilized capacity that is more than adequate for purposes of servicing Genmill's total power requirements. According to petitioner, in a scale of ten (10), only four (4) is now being used of the said sub-station by NPC whereas Genmill's demand under the contract in question is just another four (4), thus leaving another two (2) units of its rated capacity in the above scale of ten (10) unavailed of or unused. The records of the proceedings will show that both NPC's and Genmill's counsels remained absolutely silent on this claim. They did not deny nor give any negative comment to it what-soever, thereby implicitly affirming that fact.

"Taking into consideration the foregoing undenied fact in this case that NPC has an existing sub-station which can at anytime serve to supply Genmill's power requirements, either directly by NPC or thru the distribution system of the petitioner, it is then clear that a writ of preliminary injunction in this case will serve to remove the risk that Genmill's huge investments in its own sub-station it is now constructing are not wasted ultimately. On the other hand, the Court is similarly persuaded that in view of the aforementioned existing and under-utilized sub-station of NPC, the requirements of Genmill can be supplied by said NPC at a moment's notice or immediately, with or without such a writ of preliminary injunction." (pp. 7-8, Annex M, Petition)

Consequently, We likewise sustain respondent judge's conclusion that no injury to either or both GMC or petitioner NPC could result from the issuance of the questioned writ. It is significant in this regard that GMC, or the party most affected by the writ in dispute, has elected not to appeal from the ruling of respondent judge assailed in this proceedings or join NPC in its instant petition.

The records of the proceedings below, as furnished Us in the instant petition, do not suggest the least deficiency or inefficiency in MECO's electric system for providing GMC's need. More specifically, We find absolutely no such charge here or before the court a quo. Furthermore, neither have We come across any allegation or discussion in the instant petition which disputes MECO's submission that insofar as availability, reliability, and quality of its power supply to GMC are concerned, absolutely no issue thereon may validly be raised since the

same will be entirely sourced by NPC. In other words, it is the very same power supply that NPC will itself otherwise give under a direct service contract. Without doubt, therefore, said GMC cannot complain of any danger to or impairment of the power requirements of its industrial plant.

Upon the foregoing considerations, We find nothing to sustain the charge in the petition that respondent judge gravely abused his discretion in the issuance of the subject writ of preliminary injunction. On the contrary, his actions and judgment in that regard have every earmark of prudence and even-handedness.

WHEREFORE, the court hereby DISMISSES the petition for lack of merit and accordingly LIFTS the temporary restraining order issued in this case under the Resolution of July 23, 1984, effective immediately. If in view of the said restraining order, NPC and GMC have proceeded to implement their direct service contract involved in the instant petition, the same is hereby ordered discontinued immediately and petitioner NPC is hereby ordered to provide GMC's requirements promptly but only through the existing distribution system of respondent MECO which should, in turn, charge said GMC the same rates that it otherwise would have secured under a direct connection contract with NPC. No pro-nouncement as to costs.

SO ORDERED.

Aquino, Abad Santos, Escolin, and Cuevas, JJ., concur.
Makasiar, J., (Chairman), no part.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.