

NUCLEAR FREE PHILIPPINE COALITION, ET AL., PETITIONERS, VS. NATIONAL POWER CORPORATION, ET AL., RESPONDENTS.

G.R. No. 68474. February 11, 1986

Ponente: PLANA, J.

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PLANA, J.:

I. In G.R. No. 70632, (1) petitioners question the competence of respondent PAEC Commissioners to pass judgment on the safety of the Philippine Nuclear Power Plant-1 (PNPP-1) in PAEC Licensing Proceedings No. 1-77 without however seeking their ouster from office, although "proven competence" is one of the qualifications prescribed by law for PAEC Commissioners. (2) Petitioners also assail the validity of the motion (application) filed by the National Power Corporation (NPC)/or the conversion of its construction permit into an operating license for PNPP-1 on the principal ground that it contained no information regarding the financial qualifications of NPC, its source of nuclear fuel, and insurance coverage for nuclear damage. (3) Petitioners finally charge respondent PAEC Commissioners with bias and prejudgment.

1. The first issue must be resolved against the petitioners. Where the validity of an appointment is not challenged in an appropriate proceeding, the question of competence is not within the field of judicial inquiry. If not considered a qualification the absence of which would vitiate the appointment, competence is a matter of judgment that is addressed solely to the appointing power.

2. As regards the legal sufficiency of the NPC motion for conversion, petitioners contend that the deficiencies they have indicated are jurisdictional infirmities which cannot be cured. The Court believes however that said deficiencies may be remedied and supplied in the course of the hearing before PAEC. For this purpose, respondent-applicant NPC may submit pertinent testimonies and documents when the PAEC hearing is re-opened, subject to controversion and counter-proof of herein petitioners.

3. There is merit in the charge of bias and prejudgment. The PAEC pamphlets — particularly Annexes "JJ", "KK" and "LL" of the petition (G.R. 70632) — clearly indicate the prejudgment that PNPP-1 is safe.

Exhibit "JJ" is an official PAEC 1985 pamphlet entitled "The Philippine Nuclear Power Plant-1." It gives an overview specifically of PNPP-1, lauds the safety of nuclear power, and concludes with a statement of the benefits to be derived when the PNPP-1 starts operation.

"x x x When the PNPP-1 starts operating, it will generate a power of 620 megawatts enough to supply 15 percent of the electricity needs in Luzon. This is estimated to result in savings of US\$160 million a year, representing the amount of oil displaced.

"Aside from being a reliable source of electricity, nuclear power has an excellent safety record and has been found to result in lower occupational and public risks than fossil-fired (coal or oil) stations." (p. 6, Emphasis supplied.)

The second pamphlet (Exh. "KK") is entitled "NUCLEAR POWER - SAFE CLEAN ECONOMICAL AND AVAILABLE." On the surface, it merely propagates the use of nuclear power in general. But its numerous specific references to the PNPP-1 "which will be operational in 1985" and its advantages give credence to the charge that Exhibit "KK" was in reality designed to project PNPP-1 as safe, among others.

When Exhibit "KK" was published, PNPP-1 was the only nuclear plant under construction in the Philippines. It is the Philippine nuclear plant specifically mentioned therein that was to be operational in 1985. Therefore, when the pamphlet states that nuclear power is working now in other countries and "it should work for us too" because it is "safe" and "economical", it is logical to conclude that the reference is to no other than the nuclear power to be generated at the PNPP-1.

Also worth quoting is the following passage in Exhibit "KK" which sweepingly vouchsafes all nuclear power plants, including the PNPP-1:

"No member of the public has ever been injured during the last 25 years that commercial nuclear reactors have been generating electricity. As is to be expected in any complex system as nuclear power plants, there have been failure of equipment and human errors. However in every instance, the safety equipment designed into the nuclear reactor self terminated the accident without injury to the operators or the public. The Three Mile Island Incident, serious as it was, did not result in the loss of life nor did it result in the exposure of anyone beyond permissible limits.

"The designers of nuclear plants assume failure to occur, and provide multiple safeguards protection against every conceivable malfunction." (p. 7, Emphasis supplied.)

The third pamphlet (Exh. "LL") is entitled NUCLEAR POWER PLANT and ENVIRONMENTAL SAFETY. Speaking specifically of the PNPP-1, it categorically states that the Bataan nuclear plant will not adversely affect the public or the flora or fauna in the area. One of the stated reasons in support of the conclusion is ?

"And environmentally, a nuclear power plant emits only insignificant amount of radioactivity to the environment. It does not cause chemical pollution of air or water, it does not emit sulfur dioxide or nitrogen oxides like plants fired by fossil fuels such as coal and oil. Besides, even coal fired plants may emit radioactive particles of uranium and thorium because these may be found naturally associated with coal deposits.

"Comparatively therefore, a nuclear power plant is the cleanest and the safest, environmently no other technology in modern times has been developed with so dominant concern for public safety as nuclear power." (p. 8)

Respondent PAEC Commissioners cannot escape responsibility for these official pamphlets. Exhibit "JJ" was published in 1985, when respondent Commissioners had already been appointed to their present positions. Exhibits "KK" and "LL" were issued earlier, but the majority of respondent Commissioners even then were already occupying positions of responsibility in the PAEC. Commissioner Manuel Eugenio was Acting Chief of the PAEC Department on Nuclear Technology and Engineering from June, 1980 to July, 1984, Commissioner Quirino Navarro was PAEC Chief Science Research Specialist from May, 1980 to September, 1984; and Commissioner Alejandro Ver Albano was PAEC Deputy Commissioner from March, 1980 to September, 1984. Additionally, the stubborn fact remains un rebutted that Exhibits "JJ", "KK" and "LL" continued to be distributed by PAEC as late as March, 1985. In other words their official distribution continued after the filing of NPC's motion for conversion on June 27, 1984 and even after PAEC had issued its order dated February 26, 1985 formally admitting the said motion for conversion.

At any rate, even if it be assumed that there are some doubts regarding the conclusion that there has been a prejudgment of the safety of PNPP-1, the doubts should be resolved in favor of a course of action that will assure

an unquestionably objective inquiry, considering the circumstances thereof and the number of people vitally interested therein.

Having thus prejudged the safety of the PNPP-1, respondent PAEC Commissioners would be acting with grave abuse of discretion amounting to lack of jurisdiction were they to sit in judgment upon the safety of the plant, absent the requisite objectivity that must characterize such an important inquiry.

The Court therefore Resolved to RESTRAIN respondent PAEC Commissioners from further acting in PAEC Licensing Proceedings No. 1-77.

II. In G.R. No. 68474, acting on the motion filed therein dated June 8, 1985 to order PAEC to reconsider its orders of May 31 and June 5, 1985, the urgent motion for mandatory injunction and/or restraining order dated August 3, 1985, the second urgent motion for mandatory injunction dated August 12, 1985, and the various pleadings and other documents submitted by the parties relative thereto, and considering the paramount need of a reasonable assurance that the operation of PNPP-1 will not pose an undue risk to the health and safety of the people, which dictates that the conduct of the inquiry into the safety aspects of PNPP-1 be characterized by sufficient latitude, the better to achieve the end in view, unfettered by technical rules of evidence (Republic Act 5207, section 34), and in keeping with the requirements of due process in administrative proceedings, the Court Resolved to ORDER respondent PAEC (once reconstituted) to re-open the hearing on PNPP-1 so as to give petitioners sufficient time to complete their cross-examination of the expert witnesses on quality assurance, to cross-examine the witnesses that petitioners have failed to cross-examine on and after August 9, 1985, and to complete the presentation of their evidence, for which purpose, respondent PAEC shall issue the necessary subpoena and subpoena duces tecum to compel the attendance of relevant witnesses and/or the production of relevant documents. For the said purposes, the PAEC may prescribe a time schedule which shall reasonably assure the parties sufficient latitude to adequately present their case consistently with the requirements of dispatch. It is understood that the PAEC may give NPC the opportunity to correct or supply deficiencies in its application or evidence in support thereof.

Teehankee, Concepcion, Jr., Melencio-Herrera, De la Fuente, and Cuevas, JJ., concur.

Abad Santos, J., filed a separate concurring opinion.

Aquino, C.J., and Patajo, J., dissents.

Gutierrez, Jr., separate concurring and dissenting opinion.

Escolin and Alampay, JJ., took no part.

SEPARATE CONCURRING OPINION

ABAD SANTOS, J.:

I associate myself with Justice Plana's position. Additionally, I would like to answer the question posed by Justice Patajo who asks: "Can We compel the President to designate another body to try the case pending before PAEC or appoint temporary commissioners while respondents are still holding office?"

No, this Court cannot compel the President to designate another body or appoint temporary commissioners. It would be unthinkable for this Court to compel the President of the Philippines to do anything at anytime. What this Court should do is to restrain the commissioners from further acting in PAEC Licensing Proceedings No. 1-77. What the President does thereafter is for him to decide. This Court does not tell him what to do. It cannot because of the separation of powers and the obvious fact that he is not a party to the proceedings.

DISSENTING OPINION

AQUINO, C.J.:

I dissent. G.R. No. 68474 is an action filed on September 1, 1984 for mandamus and injunction, wherein the petitioners, as taxpayers and citizens, prayed that the Philippine Atomic Energy Commission (PAEC) and the National Power Corporation be ordered to give public notice and hold a public hearing and give the petitioners copies of the contracts with Westinghouse.

This prayer had been granted by the respondents. As noted by the Solicitor General, that case had been terminated (pp. 370-371, Vol. II, Rollo of G. R. No. 68474, p. 410 Vol. II, Rollo of G.R. No. 70632). Therefore, G. R. No. 68474 had become MOOT and ACADEMIC.

G.R. No. 70632 is an action filed on April 27, 1985 by the petitioners, as citizens and taxpayers, for prohibition and injunction praying that the PAEC be enjoined from hearing the NPC's motion for a license to operate the Bataan Nuclear Plant.

In its resolution of August 29, 1985 this Court issued a temporary restraining order enjoining the PAEC from further proceeding in the licensing proceedings. The petitioners had participated in the hearings on said motion. They used about 153 hours out of the 205 hours consumed in the course of the hearings (p. 413, Vol. II, Rollo of G. R. No. 70632).

The instant case of G.R. No. 70632 should be DISMISSED because the petitioners HAVE NO CAUSE OF ACTION FOR PROHIBITION AND INJUNCTION (See dissent in G.R. No. 68474 dated May 14, 1985, 395-B, Vol. II, Rollo).

As taxpayers and citizens, they have no legal standing to file the petition. Generally, a citizen and taxpayer cannot invoke judicial power to determine the validity of an executive or legislative action (*Subido vs. Sarmiento*, 108 Phil. 150, 157).

Prohibition is not the same as injunction. Lawyers often make the mistake of confusing prohibition with injunction. Basically, prohibition is a remedy to stop a tribunal from exercising a power beyond its jurisdiction. The PAEC has been acting within its jurisdiction. Prohibition does not lie against it.

"Prohibition is an extraordinary prerogative writ of a preventive nature, its proper function being to prevent courts or other tribunals, officers, or persons from usurping or exercising a jurisdiction with which they are not vested" (73 C.J.S. 10).

This Court has no original jurisdiction to issue the writ of injunction. Hence, that remedy cannot be invoked here.

The matter of the operation of a nuclear plant is a political question. It is a question of policy as to which the Executive Department has discretionary authority (*Tañada and Macapagal vs. Cuenco*, 103 Phil. 1051, 1067).

No justiciable controversy is involved in the instant case. The great public interest involved in the dispute does not justify the petitioners in USING THIS COURT TO INTERFERE with the hearings conducted by the PAEC and with its interlocutory orders.

Its decisions are reviewable by the Appellate Court in accordance with section 9 of the Judiciary Revamp Law in relation to section 36 of Republic Act No. 5207. The petitioners should not be allowed to use this Court as an instrument to stop the operation of the nuclear plant. This Court is not competent, and it has no jurisdiction in this case, to determine its safety. This case cannot be utilized for making a pronouncement as to its safety.

Secretary Vicente Abad Santos in his opinion dated February 27, 1976 held that the nuclear plant contract is lawful (p. 111, Vol. I, Rollo of G. R. No. 68474).

The matter of safety had been passed upon by a Commission composed of Justices Puno, Vasquez and Bautista in a 140-page report dated November 13, 1979 and by the International Atomic Energy Agency in 1984 and in 1985. (See Comment of NPC dated November 20, 1985, Vol. IV, Rollo of G.R. No. 68474.)

Petitioners should resort to other forums for the articulation of their opposition to the nuclear plant. It is not wrong to oppose the nuclear plant. What is wrong is to employ this Court without justification as a weapon for opposing it.

G.R. No. 70632 should be DISMISSED FOR LACK OF MERIT. The restraining order should be lifted. As already shown, G. R. No. 68474 had become MOOT.

DISSENTING OPINION

PATAJO, J.:

I vote for the dismissal of G.R. No. 68474 for being moot and academic joining in this score the separate opinion of the Chief Justice.

I vote also for the dismissal of G.R. No. 70632, said action being premature. There is no showing that the competence of PAEC Commissioners to seat on the case had been properly brought against said Commissioners and the latter had denied said challenge. More importantly prohibition or injunction is not the proper remedy to question the competence or qualification of one properly appointed to an office or position. If respondent Commissioners have been validly appointed as PAEC Commissioners prohibition will not lie to prevent them from performing their functions on the ground that they do not possess necessary competence or know how to do their job.

I believe, further, that the pamphlets and articles published by PAEC regarding the safety of nuclear plants which have not been shown to have been prepared by the Commissioners themselves can be taken as evidence of bias in favor of granting the license to operate the nuclear plant in question. I am more inclined to believe that said articles refer to the safety of nuclear plants per se and not particularly to the Bataan nuclear plant. I trust that respondent Commissioners can still be objective in their disposition of the petition pending before them and can decide the same on the basis of the evidence presented during the continuation of the hearing. From their decision the aggrieved party can appeal to the Intermediate Appellate Court.

Another important consideration that must not be overlooked is that if respondent PAEC Commissioners are disqualified who will try the case? Can We compel the President to designate another body to try the case pending before PAEC or appoint temporary commissioners while respondents are still holding office? Would not such a dilemma result in a stalemate and further delay? It is no answer to said dilemma as suggested by petitioners that respondent Commissioners could resign and pave the way for the appointment of their replacements. For them to resign would be a virtual admission of the claim of petitioners that they are incompetent.

CONCURRING OPINION

GUTIERREZ, JR., J.:

I concur in the Court's resolution but am registering a dissent insofar as Commissioner Reynaldo Suarez is

concerned. The PAEC exercises both quasi-legislative and quasi-judicial powers. During the hearings involving tens of billions of pesos of public funds, the immediate resolution of difficult procedural questions is often necessary. Complex issues calling for the application of an entirely new field of substantive law are raised before the Commission. Resultant criminal prosecutions or civil suits are ever present possibilities. I believe that the constitutional requirement of due process calls for the appointment of a qualified "law member" in the Commission. Commissioner Suarez, a former Nueva Ecija Regional Trial Court Judge and prominent practising lawyer of Angeles City is qualified for the position. Regarding the official pamphlets issued by PAEC, all except one of the pamphlets were issued before Commissioner Suarez' appointment to the Commission and as for the one exception, there is no showing that he was involved or had anything to do with its preparation and issuance.

Considering the foregoing, the law member should not be included in the Court's action regarding the respondent Philippine Atomic Energy Commission.

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