

**CAGAYAN ELECTRIC POWER AND LIGHT COMPANY, INC.,
PETITIONER-APPELLEE, VS. NATIONAL POWER CORPORATION,
RESPONDENT-APPELLANT.***G.R. No. 72085. December 28, 1989*

Ponente: FERNAN, C.J.

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The sole issue raised in this appeal certified to us involving a pure question of law by the then Intermediate Appellate Court (now Court of Appeals) in its Resolution dated August 29, 1985[1] is not novel. The question of whether or not respondent-appellant National Power Corporation (NPC) is authorized under existing laws to sell, supply and deliver electric power directly to BOI-registered enterprises without giving priority to franchised utilities servicing the area involved, has been laid to rest in the case of National Power Corporation vs. Caneres[2] and only very recently reiterated in National Power Corporation vs. Cagayan Electric Power and Light Company[3] involving the parties herein.

The facts are undisputed.

Petitioner-appellee Cagayan Electric Power and Light Company, Inc. (CEPALCO, for short) is a private corporation organized under Republic Act No. 3247 as amended by R.A. Nos. 3570 and 6020. Under its legislative franchise, CEPALCO is authorized to construct, maintain and operate electric and power systems within the municipalities of Tagoloan, Opol, Villanueva and Jasaan, Province of Misamis Oriental and in Cagayan de Oro City and its suburbs. Respondent-appellant NPC, on the other hand, is a government-owned and controlled corporation authorized under its Charter[4] to generate and transmit electric energy and set up transmission line grids and generation facilities in Luzon, Visayas and Mindanao.

On August 20, 1980, respondent-appellant NPC entered into an agreement with Ferrochrome Philippines, Inc. (FPI, for short) for the direct sale and supply by the former of all the latter's plant operations power requirements. FPI is a power-intensive industry registered with the Board of Investment. Its facilities are located at Phividec Industrial Estate, Tagoloan, Misamis Oriental, within the area covered by CEPALCO's franchise.

Contending that the aforesaid agreement violates not only its rights as the authorized operator of an electric light and power system in the area involved but also the national electrification policy[5] under existing laws, CEPALCO instituted before the Regional Trial Court of Quezon City[6] a petition for prohibition, mandamus and injunction with prayer for a restraining order and/or preliminary injunction against NPC. Finding the petition docketed as Civil Case No. C-35945 to be sufficient in form and substance, the lower Court issued an Order on August 12, 1982 directing, among others, NPC to maintain the status quo by refraining from directly connecting or causing direct connection, supply and delivery of electric power from its lines to FPI. That order was subsequently modified by the same court in view of the joint "Manifestation and Motion" filed by the parties embodying their agreement to allow NPC to supply electrical power to FPI during the pendency of the case under the terms and conditions stated therein.

In its answer, the NPC countered that its agreement with FPI is allowed by law as NPC is authorized by its Charter to sell electric power "in bulk" to industrial enterprises as well as to enterprises registered with the BOI, without restrictions in the latter case. It further contended that the agreement in question could not be violative of petitioner's franchise, the latter being non-exclusive.

On May 2, 1984, the court a quo rendered judgment ordering NPC "to permanently desist from effecting, causing, and continuing the direct supply, sale and delivery of electricity from its power line to the plant of Ferrochrome Philippines, Inc., and from entering into and/or implementing any agreement or arrangement for such direct power connection, unless coursed through the power line of" CEPALCO, and declaring "any and all acts, arrangements and/or contracts entered into by (NPC) for direct power connection, and the direct sale, supply and delivery of electric power by (NPC) to Ferrochrome, without coursing the same through (CEPALCO) (to be) violative of the rights of (CEPALCO) under its legislative franchise, and are therefore illegal, null and void." [7]

Hence, this recourse.

As earlier intimated, the present controversy will be resolved on the basis of our pronouncements in *National Power Corporation vs. Caneres*, supra. We categorically stated therein that:

"x x x we find nothing in the provisions of P.D. No. 395 (amending P.D. No. 380) which expressly or impliedly allowed or sanctioned the sale in bulk by the NPC of energy direct to BOI-registered enterprises even if it would be violative of the rights of existing franchise holders. In *National Power Corporation vs. Jacinto* (G.R. No. 67413, promulgated January 31, 1985, by this Court's Second Division, 134 SCRA 431) this Court had occasion to stress the following:

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 hearing, it is established that 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 to be heard on such direct contracts cannot be denied. Like certificates of public conveyance, (sic) 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." [8]

It is likewise worthy of note that the defunct Power Development Council, in implementing P.D. No. 395, promulgated on January 28, 1977 PDC Resolution No. 77-01-02, which in part reads:

"1) At any given service area, priority should be given to the authorized cooperative or franchise holder in the right to supply the power requirement of existing or prospective industrial enterprises (whether BOI-registered or not) that are located or plan to locate within the franchise area or coop service area as shall be determined by the Board of Power or National Electrification Administration whichever the case may be." [9]

The statutory authority given to respondent-appellant NPC in respect of sales of energy in bulk direct to BOI-registered enterprises should always be subordinate to the "total-electrification-of-the-entire-country-on-an-area-coverage-basis policy" enunciated in P.D. No. 40. Thus, in *NPC vs. CEPALCO*, supra, this Court held:

"x x x The law on the matter is clear. PD 40 promulgated on 7 November 1972 expressly provides that the generation of electric power shall be undertaken solely by the NPC. However, Section 3 of the same decree also provides that the distribution of electric power shall be undertaken by cooperatives, private utilities (such

as the CEPALCO), local governments and other entities duly authorized, subject to state regulation. The pertinent provisions of the aforecited decree read:

"1. The attainment of total electrification on an area coverage basis, which is a declared policy of the State, shall be effected primarily through:

- a) The setting up of island grids with central/linked-up generation facilities
- b) The setting up of cooperatives for distribution of power.

2. The setting up of transmission line grids and the construction of associated generation facilities in Luzon, Mindanao and major islands of the country, including the Visayas, shall be the responsibility of the National Power Corporation (NPC) as the authorized implementing agency of the State.

- a) Plant additions necessary to meet the increase in power of the area embraced by any grid set up by the NPC shall be constructed and owned by the NPC.
- b) In areas not embraced by the NPC grid, the State shall permit cooperatives, private utilities and local governments to own and operate isolated grids and generation facilities, subject to State regulation.

3. The distribution of electric power generated by the NPC shall be undertaken by:

- a) Cooperatives
- b) Private utilities
- c) Local governments
- d) Other entities duly authorized subject to state regulation."

Nor should we lose sight of the factual findings of the court a quo that petitioner-appellee CEPALCO had not only been authorized by the Phividec Industrial Authority to provide electrical power to the Phividec Industrial Estate within which the FPI plant is located, but that petitioner-appellee CEPALCO had in fact, supplied the latter's power requirements for the construction of its plant, upon FPI's application therefor as early as October 17, 1980.

It bears emphasis then that "it is only after a hearing (or an opportunity for such a hearing) where it is established that the affected private franchise holder is incapable or unwilling to match the reliability and rates of NPC that a direct connection with NPC may be granted." [10] Here, petitioner-appellee's reliability as a power supplier and ability to match the NPC rates were never put in issue.

It is immaterial that petitioner-appellee's franchise was not exclusive. A privilege to sell within specified territory, even if not exclusive, is a valuable property right entitled to protection against unauthorized competition. [11]

WHEREFORE, the present appeal is hereby DENIED and the decision appealed from is hereby AFFIRMED in toto. No pronouncement as to costs.

SO ORDERED.

Gutierrez, Jr., Bidin, and Cortes, JJ., concur.
Feliciano, J., on leave.

[1] in AC-G.R. SP No. 05109, Justice Nathanael P. de Pano, Jr., ponente. Justices Isidro C. Borromeo and Luis A.

Javellana, concurring.

[2] 140 SCRA 329.

[3] G.R. No. 78602, May 5, 1988.

[4] Republic Act No. 6395, as amended by P.D. Nos. 380 and 395.

[5] Policy enunciated in P.D. No. 40 entitled, "Establishing Basic Policies for the Electric Power Industry" whereby generation and transmission of electrical energy was reposed in the NPC and the distribution of the same was to be coursed through, among other entities, franchised utilities.

[6] Presided over by Judge Eduardo C. Tutaan.

[7] p. 12, Decision, p. 32, Rollo.

[8] Underscoring supplied.

[9] Underscoring ours.

[10] NPC v. CEPALCO, *supra*.

[11] Castro v. Ice Cold Storage Industries of the Philippines, L-10147, December 27, 1958.

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