

PERLA C. BAUTISTA, GREATER MANILA FEDERATION OF JEEPNEY OPERATORS & DRIVERS ASSOCIATION, PETITIONERS, VS. BOARD OF ENERGY, MANILA ELECTRIC COMPANY, RESPONDENTS.

G.R. No. 75016. January 13, 1989

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for certiorari with preliminary injunction, seeking to annul and set aside: (a) the order of respondent Board of Energy* (BOE for brevity) dated June 11, 1986 in BOE Case No. 86-133, authorizing respondent applicant Manila Electric Company (MERALCO for brevity) to adopt and implement provisionally the revised rate schedules applied for, and (b) the order of respondent BOE dated June 18, 1986 denying petitioner's Motion for Reconsideration.

The factual background of the case is as follows:

On May 30, 1986, MERALCO filed with BOE a verified application for an upward revision of its rates. The application alleged among others, that MERALCO suffered net losses of P231.2 million in 1984 and P70.4 million in 1985 due to the devaluation of the peso, the drop in kilowatt sales, limited access to credit, high financing cost and charges of operations and maintenance and the deterioration of system loss. The application averred that the proposed rate schedule is an increase of 9.5 centavos per kilowatt hour in MERALCO's basic distribution charge which is 5.25% of the March 1986 average billing rate. However, consumptions up to 130 kilowatt hours per month of residential customers, and up to 70 kilowatt hours of small commercial customers, and consumptions of government-owned hospitals and public street lighting services are not affected by the increase. (Comment, Rollo, pp. 47-48).

In the same petition, MERALCO prayed for an ex-parte provisional approval of the proposed rates anchored on the reasons that under its existing rate schedules, it expects to incur a total cash deficit from its 1986 operations in the amount of P918,317,000.00; that its operating income is not enough to cover the payment of the interests and amortization of its foreign loan, and that it is unable to maintain its distribution system to provide safe and efficient service. Attached to the petition are the affidavits of its key officers with supporting duly certified schedules, computations, documents and papers (Order, Rollo, pp. 10-11).

On June 9, 1986, herein petitioners Perla C. Bautista and Greater Manila Federation of Jeepney Operators and Drivers Association, filed an "Opposition to the Application for the Increase in Rates" and prayed that no provisional approval should be granted by the BOE. They alleged that they, together with others similarly situated, are adversely affected by the increase in rates of MERALCO and that the increase in rates is exorbitant and unreasonable as the prices of petroleum products had already gone down (Rollo, pp. 25-26).

In an Order (Rollo, pp. 10-21) dated June 11, 1986, the BOE provisionally approved MERALCO's revised rate schedules without hearing. The Order specifically states:

"WHEREFORE, premises considered, and conformably to the provisions of Section 9(e) of Presidential Decree No. 1206, as amended, in relation to the pertinent provisions of Republic Act No. 6173, as amended, and the applicable provisions of Commonwealth Act No. 146, as amended, this Board hereby authorizes applicant Manila Electric Company to adopt and implement provisionally the revised rate schedules applied for herein effective with respect to billings based on meter readings made on July 1, 1986 and thereafter.

"In the event, however, that the Board finds, after hearing and submission by the Commission on Audit of an audit report on the books and records of account of the applicant, that the latter is entitled to a lesser increase in rates, all excess amounts collected from the applicant's customers as a result of this Order, shall either be refunded to them or correspondingly credited in their favor for application to electric bills covering future consumption." (Order, Rollo, pp. 17-18)

Petitioners moved for a reconsideration of the aforesaid order on June 16, 1986 (Motion for Reconsideration, Rollo, pp. 23-24) stating that they were not afforded the opportunity to be heard. Without setting for hearing, the BOE denied the motion for reconsideration in its Order dated June 18, 1986 (Rollo, p. 21), which states:

"Upon consideration of the Motion for Reconsideration dated June 16, 1986 filed by oppositors Perla C. Bautista and Greater Manila Federation of Jeepney Operators and Drivers Association and the opposition thereto interposed by applicant, and it appearing that the law, specifically Section 12 of Republic Act No. 6173, as amended by Presidential Decree No. 1128, in relation to Section 9(e) of Presidential Decree No. 1206, clearly empowers the Board to grant provisional relief on motion of a party in a case or even on its own initiative, this Board hereby denies the said motion for lack of merit.

"It is noteworthy to mention that the instant application has been set for hearing on June 26, 1986, at which said oppositors may adduce evidence in support of their opposition."

Dissatisfied, petitioners filed this instant petition on July 10, 1986 (Rollo, pp. 3-9).

Acting on the petition for certiorari with preliminary injunction with prayer for restraining order, the Court En Banc in its resolution dated July 10, 1986 resolved, without giving due course to the petition, to require respondents to comment thereon (Rollo, P. 27). In compliance therewith, respondent BOE submitted its comment on August 12, 1986 (Rollo, pp. 36-42), while respondent MERALCO submitted its comment on August 26, 1986 (Rollo, pp. 47-66). In a resolution dated September 4, 1986, the petitioners were required to reply to the comments (Rollo, P. 68), which they did by submitting their answer to the comments of MERALCO and the Board of Energy on September 16, 1986 (Rollo, pp. 69-75). In a resolution dated September 30, 1986, the parties were required to submit their respective memoranda (Rollo, p. 76). Petitioners submitted their memorandum (Rollo, pp. 84-87) on November 10, 1986, the BOE submitted its memorandum (Rollo, pp. 92-101) on November 24, 1986, and MERALCO submitted its memorandum (Rollo, pp. 103-114) on December 4, 1986. Upon the filing of the memoranda by the parties, the Court resolved to consider the case submitted for deliberation in its resolution dated December 11, 1986 (Rollo, p. 117).

The sole issue in this case is whether or not -

"The Board of Energy acted with grave abuse of discretion amounting to lack of jurisdiction when it provisionally approved ex-parte the application for increase in rates of MERALCO in its order dated June 11, 1986. (Petition, Rollo, p. 5)

Petitioners argue that the authority of the BOE to grant provisional approval without hearing is not absolute, but is subject to the due process clause of the constitution and that their opposition to the grant of provisional approval should have been set for hearing for MERALCO to present a prima facie case on the issue of urgent public need (Memorandum, Rollo, pp. 84-87). They further contend that the BOE should wait for the resolution of a pending

appeal involving another case before the Court of Appeals of its decision approving the last rate increase of MERALCO before it can grant the provisional relief prayed for.

The petition is devoid of merit.

The records show that the issue has become moot and academic as MERALCO decreased its rate by 12.6 centavos per kilowatt hour in its electric bills for August 1986, apart from a 4.2 centavo cut per kilowatt-hour for September 1986. In fact a similar petition (G.R. No. 75045, Philippine Consumers Foundation, Inc. v. Board of Energy et al.) raising a like issue and with the same factual backdrop was dismissed by this Court in the resolution of October 3, 1986 for having become moot and academic (Rollo, pp. 93-94).

Verily, where during the pendency of the case, certain events or circumstances have taken place which would render the case moot and academic, the petition for certiorari will be dismissed (*Kapisanan ng mga Manggagawa sa Manila Railroad Co. v. De Veyra*, 14 SCRA 353 [1965]; see also *People v. Mohica*, 2 SCRA 1201 [1961]; *Paranpan v. Querubin*, 18 SCRA 787 [1966]; *Meralco Workers Union v. Yatco*, 19 SCRA 177 [1967]; *Lachica v. Yap*, 25 SCRA 140 [1968]). Hence, the Court will neither determine an abstract proposition nor express an opinion in a case in which no practical relief may be granted in view of supervening events (*Bongat v. Bureau of Labor Relations*, 135 SCRA 225 [1985]; Rollo, pp. 94-95).

Assuming that this case has not yet become moot, it is beyond dispute that when BOE provisionally authorized private respondent's application without hearing, it merely exercised a prerogative granted to it by law.

Section 9(e), paragraph 2 of PD 1206 provides:

"The provisions of Sections 11 and 12, Republic Act No. 6173, as amended by Presidential Decree No. 1128, shall govern proceedings before the Board, the mode of review of its decisions or orders, including its authority to grant provisional relief." (Underscoring ours).

Section 12 of RA 6173, as amended by Section 11 of PD 1128 pertinently reads:

"The Commission may, upon the filing of an application, petition or complaint or at any stage thereafter, and without prior hearing, on the basis of supporting papers duly verified or authenticated, grant provisional relief on motion of a party in the case or on its own initiative, without prejudice to a final decision after hearing, should the Commission find that the pleadings, together with such affidavits, documents and other evidence which may be submitted in support of the motion, substantially support the provisional order." (Underscoring ours).

Section 16 (c) of CA 146 empowers respondent board -

"(c) To fix and determine individual or joint rates, toll charges, classifications, or schedules thereof, as well as commutation, mileage, kilometrage, and other special rates which shall be imposed, observed, and followed thereafter by any public service; Provided, That the Commission may, in its discretion approve rates proposed by public services provisionally and without necessity of any hearing; but it shall call a hearing thereon within thirty days thereafter, upon publication and notice to the concerns operating in the territory affected x x x." (Rollo, pp. 96-97).

Section 2 of Rule 12 of the Rules of Practice of the BOE provides:

"Provisional Relief - Upon the filing of an application, petition or complaint or at any stage thereafter, the Board may grant on motion of the pleader or on its own initiative the relief prayed for without prejudice to a final decision after completion of the hearing should the Board find that the pleading, together with the affidavits and supporting documents attached thereto and such additional evidence as may have been presented, substantially support the provisional order, and such action will be consistent with the public

interest."

Under similar circumstances, this Court has upheld the authority of regulatory boards like the Energy Regulatory Board (*Citizens Alliance for Consumer Protection v. Energy Regulatory Board, et al.*, G.R. No. 78888-90, June 23, 1988), to grant provisional relief upon the filing of an application, petition or complaint or at any stage thereafter and without the need of prior hearing, but it shall call a hearing thereon within thirty days thereafter for the determination of its final decision. The order granting such provisional relief, however, must be based upon substantial evidence - supporting papers duly verified or authenticated, and is without prejudice to rendition of a final decision after hearing. This Court ruled in the case of the Board of Transportation that the provisional nature of the authority and the fact that the primary application is given a full hearing, are the safeguards against its abuses (*Matienso v. Abellera*, G.R. No. L-45839, June 1, 1988).

In the case at bar, petitioners were given the opportunity to air their side and put to test the reasonableness of the revised rate schedules applied for during the hearings for the determination of the principal relief sought. The allegations, therefore, that due process had been denied to the petitioners are without basis, they themselves having participated at the hearing for the final determination of the application of MERALCO by the BOE (Rollo, p. 100).

PREMISES CONSIDERED, this petition is hereby DISMISSED.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Cortes, Griño-Aquino, Medialdea, and Regalado, JJ., concur.

[*]Penned by Chairman Ponciano G.A. Mathay and Member Jaime S. Mejia.

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