

NATIONAL POWER CORPORATION, PETITIONER, VS. HON. COURT OF APPEALS AND CAGAYAN ELECTRIC POWER AND LIGHT CO., INC., RESPONDENTS.

G.R. No. 78605. May 05, 1988

Ponente: PADILLA, J.

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PADILLA, J.:

In this petition for review on certiorari of the decision[1] of the Court of Appeals, dated 20 April 1987, in CA-G.R. SP-No. 06744, petitioner prays for the reversal of said decision and that "herein petitioner be declared to have a lawful right to provide the Philippine Packing Corporation the improved/increased power supply from 34.5 KV to 69 KV."

Petitioner National Power Corporation (NPC, for short) is a government-owned and controlled corporation duly organized and existing under and by virtue of RA No. 6395, enacted on 10 September 1971, as amended by PD 395, issued on 26 February 1974. Private respondent Cagayan Electric Power and Light Co., Inc. (CEPALCO, for short) is a private corporation organized under RA No. 3247, which took effect on 17 June 1961, as amended by RA Nos. 3570 and 6020 which took effect on 21 June 1963 and 4 August 1969, respectively. Under its legislative franchise, private respondent CEPALCO was granted the right, privilege and authority to construct, maintain and operate an electric and power system within the municipalities of Tagoloan, Opol, Villanueva and Jasaan, all in the province of Misamis Oriental and in the city of Cagayan de Oro and its suburbs.

Petitioner NPC alleges that, as early as 1958, it has provided power supply, thru a direct power connection, to the BOI-registered Philippine Packing Corporation (PPC, for short) cannery at Bugo, Cagayan de Oro City at 34.5 KV level: that sometime in February 1984, PPC, because of its increased power needs, began constructing a 69 KV Transmission Line for its additional power requirement and that when private respondent CEPALCO learned about it, the latter filed a petition against petitioner and PPC for Prohibition, Mandamus, and Injunction with Preliminary Injunction before the Regional Trial Court of Quezon City, Branch XCIC.[2]

As prayed for, the trial court issued an ex-parte order enjoining the petitioner from connecting or causing the direct connection of electric service and supply of electric power, at 69 KV level, from NPC's substation to PPC's cannery in Bugo, Cagayan de Oro City.

On 27 April 1984, the day of the trial, the petition against PPC was dismissed in open court. On 30 April 1984, the trial court issued an order granting CEPALCO's prayer for the issuance of the writ of preliminary injunction against NPC.

On 31 May 1984, petitioner NPC filed with this Court a petition for certiorari and prohibition with prayer for restraining order and/or preliminary injunction, assailing the order of the trial court dated 30 April 1984. In a resolution dated 26 July 1985, this Court referred the NPC petition before it to the Court of Appeals which, in due course, dismissed the petition in its decision dated 20 April 1987. On 21 May 1987, the Court of Appeals also denied NPC's motion for reconsideration of its decision. Hence, the present appeal.

Petitioner contends that the Court of Appeals erred in holding that the ruling of this Court in "National Power Corporation vs. Canares"[3] applies to the instant case.

The Court of Appeals, in its assailed decision, quoted from this Court's decision in the Canares case, thus —

"Furthermore, 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 Corp. vs. Jacinto*. (G.R. No. 67143. prom. 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 a 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 franchise operators' right to due process or priority to be heard on such direct 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." (Italics supplied) (*National Power Corporation vs. Canares*. 140 SCRA 329, 334-336)[4]

According to petitioner, the Canares case is not applicable in the instant case, because —

xxx "In the Canares Case, the franchise holder (VECO) has long (1978) been supplying power to the customer (APOCEMCO) and it was only after the franchise holder failed to provide the customer, with continuous and adequate supply of power did the customer apply for direct connection with NPC. In other words, before the application for direct connection was made by APOCEMCO, the only existing power connection was between NPC and VECO and between VECO and APOCEMCO. The application, therefore, for direct connection from NPC to APOCEMCO is clearly for a new line connection under a new power supply contract.

In the instant case, upon the other hand, the herein petitioner, as early as 1958, or even before CEPALCO was granted its franchise in 1961, was already providing power supply directly to power customer Philippine Packing Corporation (PPC) under an existing power contract at 34.5 KV level. Accordingly, if NPC and as requested by PPC, now improves or increases the power supply to PPC to 69 KV level, it is respectfully submitted that there is no violation of CEPALCO's franchise as such improvement/increase in voltage to 69 KV level is in accordance with the existing power contract."[5]

On the other hand, private respondent CEPALCO maintains that the direct connection of power supply, subject matter of the instant petition, is for a totally new and separate electric service, just as in the Canares and Jacinto cases, and not for a mere improvement or increase in voltage. In other words, the power line connection involved is a totally new line, separate

and distinct from the existing 34.5 KV line through which petitioner heretofore supplied power to PPC.[6]

We rule against the petitioner.

No error was committed by the Court of Appeals in rendering the questioned decision. The principles enunciated by this Court in the Canares case are aptly applicable in the present case. It is immaterial whether the direct connection is merely an improvement or an increase in existing voltage, as alleged by petitioner, or a totally new and separate electric service as claimed by private respondent. 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."

Likewise, the defunct Power Development Council promulgated PDC Resolution No. 77-01-02 on 28 January 1977 to implement PD No. 395, providing among others:

"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 of National Electrification Administration whichever the case may be."

It is only after a hearing (or an opportunity for such a hearing) where it is established that the attested private franchise holder is incapable or unwilling to match the reliability and rates of NPC that a direct connection with NPC may be granted.[7] This situation does not exist in the case at bar.

WHEREFORE, the petition is DENIED. The Court of Appeals decision appealed from is hereby AFFIRMED. With costs against the petitioner.

SO ORDERED.

Yap (Chairman), C.J., Melencio-Herrera, Paras, and Sarmiento, JJ., concur.

[1] Penned by Justice Alfredo Marigomen; Justices Santiago M. Kapunan and Reynato S. Puno. concurring.

[2] Rollo. pp. 45

[3] 140 SCRA 329. 334-336.

[4] Decision of Court of Appeals, pp. 6-7.

[5] Rollo. pp. 6-7.

[6] Rollo, pp. 23-24.

[7] National Power Corporation v. Jacinto. G.R. No. 6143. January 31, 1985. 134 SCRA 431.

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