

NATIONAL POWER CORPORATION AND FINE CHEMICALS (PHILS.), INC., PETITIONERS, VS. THE COURT OF APPEALS AND THE MANILA ELECTRIC COMPANY, RESPONDENTS.*G.R. No. 84695. May 08, 1990*

Ponente: PARAS, J.

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This is a petition for review on certiorari, with prayer for the issuance of temporary restraining order, of the August 11, 1988 decision* of the Court of Appeals in CA-G.R. SP No. 12939 dismissing the petition for certiorari, prohibition and mandamus.

Herein petitioner FINE Chemicals (Phils.) Inc. (FINE for short) is a corporation registered with the Board of Investments (BOI for short) and engaged in the manufacture of plastics for export. Sometime in September, 1986, it filed an application for direct power connection with herein co-petitioner National Power Corporation (NPC for short). NPC, acting on the same, wrote a letter to herein private respondent Manila Electric Company (MERALCO for short), dated November 18, 1986 (Rollo, p. 54), wherein it stated that as per Memorandum of Understanding between NPC and BOI, the NPC is authorized to connect directly to its system qualified industrial consumers. However, due to its policy not to compete directly with its customers, NPC requests that it be informed whatever definite decision MERALCO is contemplating on the requests of FINE and of Rizal Cement for such direct connection. MERALCO, in a letter dated December 3, 1986 (Ibid., p. 55), advised NPC that they are not in a position to grant the request since to allow large consumers to tap directly to NPC will mean foregoing the share of the subsidy burden which will ultimately be borne by the other remaining large consumers, and that it will also mean costly duplication of facilities. MERALCO, in a letter dated February 27, 1987 (Ibid., p. 56) further stated, among others, that the direct connection of industries under BOI-NPC memorandum of understanding dated January 12, 1981, presupposes the inability of the utility/cooperatives to meet certain standard of financial and technical capability, both of which are not true in the case of MERALCO. NPC, in a letter dated March 16, 1987 (Ibid., p. 57), informed MERALCO that in the absence of a clear-cut policy that will inhibit NPC from acceding to the said request, NPC is now preparing and will put up the necessary facilities to supply power to FINE; and that they are now negotiating the terms and conditions of the supply. MERALCO, in a letter dated March 20, 1987 (Ibid., pp. 58-59), registered its strong objection; reiterated its assurance that it is financially and technically capable of serving the power requirements of FINE; and with the statement that a draft executive order creating the Energy Regulatory Board has been prepared and may be issued momentarily, urged NPC to hold off any further action towards serving applicant directly, lest it will pre-empt that Board from implementing government prescription on this issue. But on July 12, 1987, NPC started to supply the electric requirements of FINE by direct power supply connection.

Hence, on July 22, 1987, MERALCO filed with the Regional Trial Court of Pasig, presided over by Judge Eutropio Migrino, a petition for Prohibition, Mandamus and Damages with Preliminary Injunction against petitioners NPC and FINE Chemicals (Phil.) Inc., docketed therein as Civil No. 54733 (Ibid., pp. 23-53).

On August 4, 1987, FINE filed its opposition to MERALCO's application for preliminary injunction, maintaining that the application for injunctive relief had become moot and academic since, prior to the filing of the petition, the direct power service had already been consummated and the requisite power lines and facilities of NPC had long been installed and fully operational.

Accordingly, MERALCO amended its petition by incorporating therein an application for a writ of preliminary mandatory injunction.

On August 11, 1987, FINE moved to dismiss the amended petition on the ground of insufficiency of the allegations in the petition to plead a cause of action (*Ibid.*, pp. 60-70). NPC adopted FINE's motion to dismiss.

Meanwhile, trial judge allowed reception of MERALCO's evidence in support of its application for a writ of preliminary mandatory injunction, over FINE's objection.

On August 25, 1987, MERALCO was granted leave to file its second amended petition so as to incorporate this time an allegation of grave and irreparable injury.

With the admission of MERALCO'S second amended petition, FINE filed a manifestation adopting its motion to dismiss dated August 10, 1987 as its motion to dismiss the second amended petition. On the other hand, MERALCO filed its opposition thereto on September 11, 1987.

Respondent Judge, in an order dated September 16, 1987, denied the motion to dismiss (*Ibid.*, p. 79), the pertinent portion of which, reads:

"The Motion to Dismiss is anchored on the ground of lack of cause of action.

Well settled rule is that when the motion to dismiss is anchored on lack of cause of action, the facts alleged in the complaint are assumed and no other fact can be considered in resolving said motion.

After going carefully over the complaint, the Court believes, and so holds, that if not properly traversed, it can render a valid judgment thereon.

WHEREFORE, respondent Fine Chemicals (Phils.), Inc.'s said motion to dismiss is hereby denied."

FINE, without filing a motion for reconsideration, on October 1, 1987, filed with respondent Court of Appeals a Petition for Certiorari, Prohibition and Mandamus (*Ibid.*, pp. 80-98). NPC, on the other hand, on October 13, 1987, filed a Petition for Leave to File Intervention to Adopt Petition and Motion for Extension of Time to File Supplemental Petition (*Ibid.*, pp. 93-103) which was filed on October 28, 1987 (*Ibid.*, pp. 6-7).

Respondent Court of Appeals, in a decision promulgated on August 11, 1988, dismissed the petition for certiorari, prohibition and mandamus (*Ibid.*, pp. 149-154). Hence, the instant petition.

The Second Division of this Court, after the filing of the required pleadings, in a resolution dated March 8, 1989 (*Ibid.*, p. 199), resolved to give due course to the petition, and to require the parties to submit simultaneously their respective memoranda. In compliance therewith, petitioners' filed their memorandum on June 30, 1989 (*Ibid.*, pp. 221-233) while MERALCO filed its memorandum on July 3, 1989 (*Ibid.*, pp. 240-253).

The instant petition is impressed with merit.

The main issue in this case is whether or not MERALCO's petition in the lower court should be dismissed.

The answer is in the affirmative.

It is significant that this case is elevated to the Court of Appeals and now to this Court because of the denial of

petitioner's motion to dismiss the amended petition of MERALCO. Unquestionably, it is but an incident to the main case and the ordinary procedure would have been to file an answer, go to trial and if the decision is adverse, reiterate the issue on appeal (*Newsweek, Inc. v. I.A.C.*, 142 SCRA 177 [1986]). But this general rule is subject to certain exceptions, among which are, if the court in denying the motion to dismiss acts without or in excess of jurisdiction or with grave abuse of discretion. The reason is, it would be unfair to require the defendant to undergo the ordeal and expense of trial under such circumstances as the remedy of appeal would not be plain and adequate. More importantly, petitioner's motion to dismiss is based on the ground that the complaint states no cause of action, so that there is no need for a full blown trial (*Newsweek, Inc. v. I.A.C.*, *Ibid*).

In addition, applying the rule enunciated in *Gayos v. Gayos* (67 SCRA 146 [1975]) and reiterated in *Alger Electric, Inc. v. Court of Appeals* (135 SCRA 43 [1985]), that it is a cherished rule of procedure for this Court to always strive to settle the entire controversy in a single proceeding leaving no root or branch to bear the seeds of future litigation, it appears that the disposition of the incident as well as the main issue in the case at bar is in consonance with an efficient administration of justice, now that the facts are before this Court.

MERALCO's claim in its petition for Prohibition and Mandamus before the Regional Trial Court is anchored on its standing as a holder of a franchise for the sale and distribution of electric power in various areas of the country including Calamba, Laguna. MERALCO asserts that it has the right to be heard on any application for direct power connection and to defeat such application by showing its ability or willingness to match the rates of NPC (Rollo, pp. 222-223). As earlier stated, it also expressed the fear that to allow large consumers to tap directly to NPC will mean foregoing the share of the subsidy burden which will ultimately be borne by the other consumers.

As consistently ruled by this Court pursuant to P.D. No. 380 as amended by P.D. No. 395, 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 (*National Power Corporation v. Jacinto*, 134 SCRA 435 [1985]; *National Power Corporation v. Canares*, 140 SCRA 336 [1985]; *National Power Corporation v. Court of Appeals*, 161 SCRA 103 [1988]).

While initially, MERALCO may have been deprived of the right to be heard in an administrative proceeding, but in subsequent proceedings before the courts, it had been given ample opportunity to show that it is capable and willing to match NPC rates but failed. On the contrary, in a hearing before the trial court on August 12, 1987, for the issuance of preliminary mandatory injunction, MERALCO thru its witness V.C. Flordeliza, admitted on cross examination that it cannot charge the same rate NPC is charging because MERALCO has to make a profit on its investment.

Flordeliza testified as follows:

"Q. By the way, are you also aware of the power rates that Meralco is charging Fine Chemicals, Inc. for the supply of electric power?

"A. Per kilowatthour, it is about P2.00 sir.

"Q. And, are you also aware of the charges of NPC to Meralco for the supply of power of electricity that Meralco supplies to its customers of any nature?

"A. Approximately the rate is P1.00 per kilowatthour, sir.

"Q. Would you say that it is the same rate NPC charging its all direct customers, the rates NPC is charging

Meralco, the rate Meralco is charging its customers?

"A. I am not sure of that, sir.

xxx xxx xxx.

"Q. You said a while ago that the rate Meralco is charging its customers, the same rate NPC charges its customers also?

"A. Of course Meralco would have to make some profit on its investment. Meralco charges P2.00 per kilowatt-hour to its customers. Naturally, it would make some profit as allowed by the Board of Energy, sir.

"Q. But, the rate NPC is charging Meralco is just a minimal rate?

"A. No, because NPC is the wholesaler and Meralco is only a retailer. WE NATURALLY CANNOT SELL TO OUR CUSTOMERS THE SAME RATE NPC IS CHARGING US. AS I HAVE SAID, WE HAVE TO MAKE A PROFIT ON OUR INVESTMENT, SIR." (Cont. of Cross Examination of Witness V.C. Flordeliza, 12 August 1987, p. 41, tsn.)" (Rollo, pp. 20-21)

In this Court, MERALCO never committed itself by categorically stating that it can match NPC rates. Instead it confined itself to the statement that it is financially and technically capable of meeting FINE's power requirements while in its Memorandum it avers that "At this point in time, it would be highly improper to ask Meralco whether it can match the rate of NPC." Verily, the intent to evade the issue and to avail of technicalities to annul the contract between FINE and NPC are clearly evident so that no useful purpose will be served to remand this case to the trial court only to have the latter's decision raised again to the Court of Appeals and then to this Court.

Moreover, there is no denial of due process to speak of. As ruled by this Court, the heart of procedural due process is the need for notice and an opportunity to be heard (*Planters Products, Inc. v. National Labor Relations Commission*, G.R. No. 78524, January 20, 1989). What due process abhors is not lack of previous notice but absolute lack of opportunity to be heard (*Relucio III v. Macaraig*, G.R. No. 82007, May 10, 1989).

Ultimately, the issue of exclusivity has already been laid to rest by this Court with the established principle that the exclusive nature of any public franchise is not favored and that in all grants by the government to private corporations, the interpretation of rights, privileges or franchises is taken against the grantee. More specifically, this Court ruled:

"x x x Exclusivity is given by law with the understanding that the company enjoying it is self-sufficient and capable of supplying the needed service or product at moderate or reasonable prices. It would be against public interest where the firm granted a monopoly is merely an unnecessary conduit of electric power, jacking up prices as a superfluous middleman or an inefficient producer which cannot supply cheap electricity to power intensive industries. It is in the public interest when industries dependent on the heavy use of electricity are given reliable and direct power at the lowest costs thus enabling the sale of nationally marketed products at prices within the reach of the masses. x x x" (*Alger Electric, Inc. v. Court of Appeals*, 135 SCRA 45-46 [1985]).

PREMISES CONSIDERED, MERALCO's petition in the lower court is hereby DISMISSED.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Sarmiento, and Regalado, JJ., concur.

* Special Second Division; penned by Associate Justice Alfredo Marigomen and concurred in by Associate

Justices Reynato S. Puno and Regina Ordonez Benitez.

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