

BENGUET ELECTRIC COOPERATIVE, INC. AND MEMBERS OF ITS BOARD OF DIRECTORS AND BAGUIO-BENGUET COMMUNITY CREDIT COOPERATIVE, INC., PETITIONERS, VS. NATIONAL ELECTRIFICATION ADMINIS...

G.R. No. 93924. January 23, 1991

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

On July 4, 1990, petitioners Benguet Electric Cooperative, Inc. (BENECO), members of its Board of Directors and Baguio-Benguet Community Credit Cooperative, Inc., thru Atty. Emiliano L. Gayo, filed the present petition for certiorari with prayer for the issuance of a preliminary injunction and/or temporary restraining order seeking to nullify Resolution No. 51 issued by respondent National Electrification Administration (NEA) which dismissed the Board of Directors of BENECO; and to enjoin NEA from taking over the management of BENECO (pp. 2-54, Rollo). The petition was verified by Sinai C. Hamada as President of the Board of Directors of BENECO and Gregorio S. Rimas as President and Chairman of the Board of Baguio-Benguet Community Credit Cooperative, Inc. (p. 24, Rollo). On July 9, 1990, We required NEA to comment on the petition (p. 55, Rollo). On July 11, 1990, We received a telegram from Atty. Gayo requesting immediate action on their prayer for a restraining order and/or preliminary injunction since armed military men from Philippine Constabulary, Camp Dangwa, led by the Provincial Commander and/or top officers are leading NEA personnel in forcibly taking over BENECO system, offices, collection centers and substations and installing NEA personnel to replace BENECO employees. The employees of BENECO and consumers posed strong resistance against the take-over in such a manner that violence and bloodshed may occur (p. 56, Rollo). On July 25, 1990, We noted said telegram (p. 57, Rollo).

On August 23, 1990, petitioners filed a supplemental petition reiterating their prayer for a restraining order and/or preliminary injunction based on the same unrelenting persistence of the NEA personnel to take over BENECO and the mounting resistance of the BENECO employees and members-consumers (pp. 64-70, Rollo). The supplemental petition was verified by Hamada (p. 70, Rollo). On September 12, 1990, We required NEA to comment on petitioners' prayer for the issuance of a temporary restraining order (p. 76, Rollo). In the comment on the petition (pp. 77-113, Rollo) and on the prayer for the issuance of a temporary restraining order (pp. 133-140, Rollo) filed by the Solicitor General for NEA, the following grounds were invoked: (1) Hamada and BENECO are guilty of forum shopping; (2) petitioners failed to exhaust administrative remedies before instituting the present petition; (3) NEA did not abuse its discretion in dismissing the members of the Board of Directors of BENECO; and (4) the dismissed members of the BENECO Board were not denied due process of law. As regards the first ground, the Solicitor General alleged that on August 31, 1990, BENECO, thru the same counsel, filed a complaint for damages with prayer for the issuance of a preliminary injunction and/or temporary restraining order this time before the Regional Trial Court of Baguio City, docketed as Civil Case No. 2160-R, wherein similar allegations contained in these petition and supplemental petition were reproduced, namely, persistent taking over of BENECO by NEA employees and resistance by the employees of BENECO (pp. 115-123, Rollo). The

complaint was verified by Hamada and Peter M. Cosalan as General Manager of BENECO (p. 123, Rollo). On September 6, 1990, the trial court granted BENECO's prayer for a temporary restraining order (p. 128, Rollo).

On October 10, 1990, We Resolved to dismiss the petition for failure to demonstrate that the questioned resolution of NEA is tainted by grave abuse of discretion because the dissolution of the Board of Directors was for a legal cause and its members were afforded due process of law. We resolved further to (1) require Hamada and Atty. Gayo to show cause why they should not be held in contempt of this Court for having filed a similar complaint before the Regional Trial Court of Baguio City during the pendency of this petition; and (2) direct Atty. Gayo to show cause why he should not be suspended from the practice of law by reason of his having committed an act of forum shopping (p. 143, Rollo). Both parties complied by filing separate but almost identical explanations on October 30, 1990 and October 31, 1990. They enumerated the following justifications for their having filed Civil Case No. 2160-R: 1) it is a damage suit requiring presentation of evidence; and 2) it is directed against the employees of NEA in their personal capacities as differentiated from the present petition which is directed against NEA as a corporate entity. However, should this Court declare that they have erred in filing Civil Case No. 2160-R, they humbly submit that it was an honest error in the prosecution of what they perceived to be in the interest of BENECO (pp. 239-245; pp. 295-301, Rollo).

The Court finds their explanations far from acceptable. To begin with, this Court frowns upon BENECO's omission in not disclosing to Us that a complaint involving the same subject matter had been filed and is pending before the trial court and a temporary restraining order had been obtained by it from said court. Information on the existence and status of the case before the trial court was revealed only in the Solicitor General's comment (see *Collado, et al. v. Hernando, etc., et al.*, G.R. No. L-43866, May 30, 1988, 161 SCRA 639). Now, in an attempt to make the present petition and Civil Case No. 2160-R appear to be distinct, BENECO impleaded different respondents/defendants therein and sought ostensibly different reliefs (see *Danville Maritime, Inc. v. Commission on Audit*, G.R. No. 85285, July 28, 1989, 175 SCRA 701). Yet, the allegation that Civil Case No. 2160-R is a damage suit directed against the employees of NEA in their personal capacities whereas the present petition is directed against NEA as a corporate entity is nothing but specious (see *Palm Avenue Realty Development Corporation, et al. v. Philippine Commission on Good Government, et al.*, G.R. No. 76296, August 31, 1987, 153 SCRA 579). A reading of the allegations of the complaint in Civil Case No. 2160-R and those of the present petition show that both actions arose from the same facts and circumstances (see *Danville Maritime, Inc. v. Commission on Audit*, *supra*). The allegation that the respondents in the present petition and the defendants in Civil Case No. 2160-R are different is likewise beside the point because what is material is the fact that BENECO, in seeking to enjoin the acts complained of, resorted to both this Court and the trial court. This is the very misdeed which the sanction on forum shopping seeks to correct. BENECO's filing of a complaint before the trial court during the pendency of this petition is indicative of lack of faith in this Court in the evenhanded administration of law. In so doing, BENECO certainly ridiculed our judicial processes (see *Limpin, Jr., et al. v. Intermediate Appellate Court, et al.*, G.R. No. 70987, May 5, 1988, 161 SCRA 83; *Minister of Natural Resources, et al. v. Heirs of Orval Hughes, et al.*, G.R. No. 62664, November 12, 1987, 155 SCRA 566) and played havoc with Our rules on orderly procedure. A party should not be allowed to pursue simultaneous remedies in two different forums (see *People v. Court of Appeals, et al.*, G.R. No. 54641, November 28, 1980, 101 SCRA 450). What aggravates BENECO's case is that it deceived the highest court of the land (see *Collado, et al. v. Hernando, etc., et al.*, *supra*). If, indeed, the purpose in filing Civil Case No. 2160-R is to protect the interest of BENECO, is the Supreme Court incapable of protecting said interest? But the lower court can? We certainly cannot unfold our compassionate mantle in this instance. Instead, We will lay our disciplinary hand to strike down the reprehensible stratagem employed by Hamada and Atty. Gayo.

In Our resolution in the case of *E. Razon, Inc., et al. v. Philippine Port Authority, et al.*, G.R. No. 75197, July 31,

1986, p. 121, We made it clear that:

"x x x forum-shopping (is) an act of malpractice that is proscribed and condemned as trifling with the courts and abusing their processes. It is improper conduct that tends to degrade the administration of justice. The rule has been formalized in Section 17 of the Interim Rules and Guidelines issued by this Court on January 11, 1983 in connection with the implementation of the Judiciary Reorganization Act, specifically with the grant in Section 9 of B.P. Blg. 129 of equal original jurisdiction to the Intermediate Appellate Court to issue writs of mandamus, prohibition, etc., and auxiliary writs or processes, whether or not in aid of its appellate jurisdiction. Thus, the cited Rule provides that no such petition may be filed in the Intermediate Appellate Court 'if another similar petition has been filed or is still pending in the Supreme Court' and vice-versa. The Rule orders that 'A violation of this rule shall constitute contempt of court and shall be a cause for the summary dismissal of both petitions, without prejudice to the taking of appropriate action against the counsel or party concerned.' The rule applies with equal force where the party having filed an action in the Supreme Court shops for the same remedy of prohibition and a restraining order or injunction in the regional trial court."

On November 5, 1990, petitioners filed a motion for reconsideration of Our October 10, 1990 resolution (pp. 247-263, Rollo). On November 9, 1990, petitioners filed a supplemental motion for reconsideration of said resolution (pp. 272-290, Rollo).

It appears to the Court that this motion for reconsideration merely reiterates the same arguments earlier raised and does not present any substantial reasons not previously invoked nor any matters not already considered and passed upon.

ACCORDINGLY, the Court Resolved (1) to grant the motion of Atty. Emiliano L. Gayo praying that he be given until November 7, 1990 to submit his explanation; (2) to note the aforesaid explanation; (3) to deny the motion for reconsideration as well as the supplemental motion for reconsideration; (4) to note the explanation of petitioner Sinai C. Hamada; (5) to order the Regional Trial Court of Baguio City, First Judicial Region, Branch 5, to dismiss Civil Case No. 2160-R and to set aside, effective immediately, the temporary restraining order and any other orders or processes issued in said case; (6) to declare Sinai C. Hamada and Atty. Emiliano L. Gayo in contempt of this Court and ordering them to pay a fine of P1,000.00 each within five (5) days from notice; and (7) to suspend Atty. Emiliano L. Gayo from the practice of law for a period of three (3) months effective from notice. Let a copy of this resolution be attached to the personal record of Atty. Emiliano L. Gayo. Let another copy of this resolution be served on Judge Salvador J. Valdez, Jr., presiding judge of said trial court.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Grino-Aquino, JJ., concur.

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