

## FIRST DIVISION

[ G.R. NO. 156208, September 26, 2006 ]

**NPC DRIVERS AND MECHANICS ASSOCIATION, (NPC DAMA), REPRESENTED BY ITS PRESIDENT ROGER S. SAN JUAN, SR., NPC EMPLOYEES & WORKERS UNION (NEWU) - NORTHERN LUZON REGIONAL CENTER, REPRESENTED BY ITS REGIONAL PRESIDENT JIMMY D. SALMAN, IN THEIR OWN INDIVIDUAL CAPACITIES AND IN BEHALF OF THE MEMBERS OF THE ASSOCIATIONS AND ALL AFFECTED OFFICERS AND EMPLOYEES OF NATIONAL POWER CORPORATION (NPC), ZOL D. MEDINA, NARCISO M. MAGANTE, VICENTE B. CIRIO, JR., NECITAS B. CAMAMA, IN THEIR INDIVIDUAL CAPACITIES AS EMPLOYEES OF NATIONAL POWER CORPORATION, PETITIONERS, VS. THE NATIONAL POWER CORPORATION (NPC), NATIONAL POWER BOARD OF DIRECTORS (NPB), JOSE ISIDRO N. CAMACHO AS CHAIRMAN OF THE NATIONAL POWER BOARD OF DIRECTORS (NPB), ROLANDO S. QUILALA, AS PRESIDENT - OFFICER- IN-CHARGE/CEO OF NATIONAL POWER CORPORATION AND MEMBER OF NATIONAL POWER BOARD, AND VINCENT S. PEREZ, JR., EMILIA T. BONCODIN, MARIUS P. CORPUS, RUBEN S. REINOSO, JR., GREGORY L. DOMINGO AND NIEVES L. OSORIO, RESPONDENTS.**

### D E C I S I O N

#### **CHICO-NAZARIO, J.:**

Before Us is a special civil action for *Injunction* to enjoin public respondents from implementing the National Power Board (NPB) Resolutions No. 2002-124 and No. 2002-125, both dated 18 November 2002, directing, among other things, the termination of all employees of the National Power Corporation (NPC) on 31 January 2003 in line with the restructuring of the NPC.

On 8 June 2001, Republic Act No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001" (EPIRA Law), was approved and signed into law by President Gloria Macapagal-Arroyo, and took effect on 26 June 2001. Section 2(i) and Section 3 of the EPIRA Law states:

Section 2. *Declaration of Policy.* - It is hereby declared the policy of the State:

x x x x

(i) To provide for an orderly and transparent privatization of the assets and liabilities of the National Power Corporation (NPC);

x x x x

Section 3. *Scope.* - This Act shall provide a framework for the restructuring of the electric power industry, including the privatization of the assets of NPC, the transition to the desired competitive structure, and the definition of the responsibilities of the various government agencies and private entities.<sup>[1]</sup>

Under the EPIRA Law,<sup>[2]</sup> a new National Power Board of Directors was constituted composed of the Secretary of Finance as Chairman, with the Secretary of Energy, the Secretary of Budget and Management, the Secretary of Agriculture, the Director-General of the National Economic and Development Authority, the Secretary of Environment and Natural Resources, the Secretary of Interior and Local Government, the Secretary of the Department of Trade and Industry, and the President of the National Power Corporation as members.

On 27 February 2002, the Secretary of the Department of Energy (DOE) promulgated the Implementing Rules and Regulations (IRR) of the EPIRA Law, pursuant to Section 77<sup>[3]</sup> thereof. Said IRR were approved by the Joint Congressional Power Commission on even date. Meanwhile, also in pursuant to the provisions of the EPIRA Law, the DOE created the Energy Restructuring Steering Committee (Restructuring Committee) to manage the privatization and restructuring of the NPC, the National Transmission Corporation (TRANSCO), and the Power Sector Assets and Liabilities Corporation (PSALM).

To serve as the overall organizational framework for the realigned functions of the NPC mandated under the EPIRA Law, the Restructuring Committee proposed a new NPC Table of Organization which was approved by the NPB through NPB Resolution No. 2002-53 dated 11 April 2002. Likewise, the Restructuring Committee reviewed the proposed 2002 NPC Restructuring Plan and assisted in the implementation of Phase I (Realignment) of said Plan, and thereafter recommended to the NPB for approval the adoption of measures pertaining to the separation and hiring of NPC personnel. The NPB, taking into consideration the recommendation of the Restructuring Committee, thus amended the Restructuring Plan approved under NPB Resolution No. 2002-53.

On 18 November 2002, pursuant to Section 63<sup>[4]</sup> of the EPIRA Law and Rule 33<sup>[5]</sup> of the IRR, the NPB passed NPB Resolution No. 2002-124 which provided for the Guidelines on the Separation Program of the NPC and the Selection and Placement of Personnel in the NPC Table of Organization. Under said Resolution, all NPC personnel shall be legally terminated on 31 January 2003, and shall be entitled to separation benefits. On the same day, the NPB approved NPB Resolution No. 2002-125, whereby a Transition Team was constituted to manage and implement the NPC's Separation Program.

In a Memorandum dated 21 November 2002, the NPC OIC-President and CEO Rolando S. Quilala circulated the assailed Resolutions and directed the concerned NPC officials to disseminate and comply with said Resolutions and implement the same within the period provided for in the timetable set in NPB Resolution No. 2002-125. As a result thereof, Mr. Paquito F. Garcia, Manager - HRSD and Resources and Administration Coordinator of NPC, circulated a Memorandum dated 22 November 2002 to all NPC officials and employees providing for a checklist of the documents

required for securing clearances for the processing of separation benefits of all employees who shall be terminated under the Restructuring Plan.

Contending that the assailed NPB Resolutions are void and without force and effect, herein petitioners, in their individual and representative capacities, filed the present Petition for Injunction to restrain respondents from implementing NPB Resolutions No. 2002-124 and No. 2002-125. In support thereof, petitioners invoke Section 78 of the EPIRA Law, to wit:

Section 78. *Injunction and Restraining Order.* - The implementation of the provisions of this Act shall not be restrained or enjoined except by an order issued by the Supreme Court of the Philippines.

In assailing the validity of NPB Resolutions No. 2002-124 and No. 2002-125, petitioners maintain that said Resolutions were not passed and issued by a majority of the members of the duly constituted Board of Directors since only three of its members, as provided under Section 48<sup>[6]</sup> of the EPIRA Law, were present, namely: DOE Secretary Vincent S. Perez, Jr.; Department of Budget and Management Secretary Emilia T. Boncodin; and NPC OIC-President Rolando S. Quilala. According to petitioners, the other four members who were present at the meeting and signed the Resolutions were not the secretaries of their respective departments but were merely representatives or designated alternates of the officials who were named under the EPIRA Law to sit as members of the NPB. Petitioners claim that the acts of these representatives are violative of the well-settled principle that "delegated power cannot be further delegated." Thus, petitioners conclude that the questioned Resolutions have been illegally issued as it were not issued by a duly constituted board since no quorum existed because only three of the nine members, as provided under Section 48 of the EPIRA Law, were present and qualified to sit and vote.

It is petitioners' submission that even assuming *arguendo* that there was no undue delegation of power to the four representatives who signed the assailed Resolutions, said Resolutions cannot still be given legal effect because the same did not comply with the mandatory requirement of endorsement by the Joint Congressional Power Commission and approval of the President of the Philippines, as provided under Section 47 of the EPIRA Law which states that:

Section 47. *NPC Privatization.* - Except for the assets of SPUG, the generation assets, real estate, and other disposable assets as well as IPP contracts of NPC shall be privatized in accordance with this Act. Within six (6) months from effectivity of this Act, the PSALM Corp. shall submit a plan for the endorsement by the Joint Congressional Power Commission and the approval of the President of the Philippines, on the total privatization of the generation assets, real estate, other disposable assets as well as existing IPP contracts of NPC and thereafter, implement the same, in accordance with the following guidelines, except as provided for in paragraph (f) herein: x x x.

Petitioners insist that if ever there exists a valid wholesale abolition of their positions and their concomitant separation from the service, such a process is an integral part of "privatization" and "restructuring" as defined under the EPIRA Law and, therefore, must comply with the above-quoted provision requiring the endorsement of the Joint Congressional Power Commission and the approval of the President of the Philippines. Furthermore, petitioner highlight the fact that said Resolutions will have

an adverse effect on about 5,648 employees of the NPC and will result in the displacement of some 2,370 employees, which, petitioners argue, is contrary to the mandate of the Constitution to promote full employment and security of tenure.

Respondents, on the other hand, uphold the validity of the assailed Resolutions by arguing that while it is true that four members of the National Power Board of Directors, particularly the respective Secretaries of the Department of Interior and Local Government, the Department of Trade and Industry, and the Department of Finance, as well as the Director-General of the National Economic and Development Authority, were not the actual signatories in NPB Resolutions No. 2002-124 and No. 2002-125, they were, however, ably represented by their respective alternates. Respondents claim that the validity of such administrative practice whereby an authority is exercised by persons or subordinates appointed by the responsible official has long been settled. Respondents further contend that Section 48 of the EPIRA Law does not in any way prohibit any member of the NPB from authorizing his representative to sign resolutions adopted by the Board.

From the arguments put forward by herein parties, it is evident that the pivotal issue to be resolved in this Petition for Injunction is whether or not NPB Resolutions No. 2002-124 and No. 2002-125 were properly enacted. It is petitioners' contention that the failure of the four specifically identified department heads<sup>[7]</sup> under Section 48 of the EPIRA Law to personally approve and sign the assailed Resolutions invalidates the adoption of said Resolutions. Petitioners maintain that there was undue delegation of delegated power when only the representatives of certain members of the NPB attended the board meetings and passed and signed the questioned Resolutions.

We agree with petitioners. In enumerating under Section 48 those who shall compose the National Power Board of Directors, the legislature has vested upon these persons the power to exercise their judgment and discretion in running the affairs of the NPC. Discretion may be defined as "the act or the liberty to decide according to the principles of justice and one's ideas of what is right and proper under the circumstances, without willfulness or favor."<sup>[8]</sup> Discretion, when applied to public functionaries, means a power or right conferred upon them by law of acting officially in certain circumstances, according to the dictates of their own judgment and conscience, uncontrolled by the judgment or conscience of others.<sup>[9]</sup> It is to be presumed that in naming the respective department heads as members of the board of directors, the legislature chose these secretaries of the various executive departments on the basis of their personal qualifications and acumen which made them eligible to occupy their present positions as department heads. Thus, the department secretaries cannot delegate their duties as members of the NPB, much less their power to vote and approve board resolutions, because it is their personal judgment that must be exercised in the fulfillment of such responsibility.

There is no question that the enactment of the assailed Resolutions involves the exercise of discretion and not merely a ministerial act that could be validly performed by a delegate, thus, the rule enunciated in the case of *Binamira v. Garrucho*<sup>[10]</sup> is relevant in the present controversy, to wit:

An officer to whom a discretion is entrusted cannot delegate it to another, the presumption being that he was chosen because he was deemed fit