

## EN BANC

[ G.R. No. 248061, March 09, 2021 ]

**MORE ELECTRIC AND POWER CORPORATION, PETITIONER, VS. PANAY ELECTRIC COMPANY, INC., RESPONDENT.**

[G.R. No. 249406, March 9, 2021]

**REPUBLIC OF THE PHILIPPINES, PETITIONER-OPPOSITOR, MORE ELECTRIC AND POWER CORPORATION, PETITIONER, VS. PANAY ELECTRIC COMPANY, INC., RESPONDENT.**

### R E S O L U T I O N

**CARANDANG, J.:**

For resolution is the Motion for Reconsideration<sup>[1]</sup> filed by respondent Panay Electric Company, Inc. (PECO) of the Court's Decision<sup>[2]</sup> dated September 15, 2020 of this Court, the dispositive portion of which reads:

**WHEREFORE**, the instant Petitions are **GRANTED**. The assailed Judgment dated July 1, 2019 is **REVERSED** and **SET ASIDE**. Section 10 and 17 of Republic Act No. 11212 are **DECLARED CONSTITUTIONAL**.

**SO ORDERED.**<sup>[3]</sup> (Emphasis in the original)

#### **Antecedents**

On July 23, 2018, Republic Act (R.A.) No. 11212<sup>[4]</sup> was enacted granting petitioner More Electric and Power Corporation (MORE) a franchise to establish, operate, and maintain an electric power distribution system in Iloilo City. Section 10 of R.A. No. 11212<sup>[5]</sup> confers on MORE the authority to exercise the right of eminent domain.

The distribution system, which is presently being used in Iloilo City, comprises of "five 5 sub-transmission line substations, 450 kilometers of electrical lines, 20,000 poles, 1,300 transformers and 64,000 electrical meters"<sup>[6]</sup> owned by PECO, a holder of the franchise since 1922.<sup>[7]</sup> The franchise of PECO expired on January 18, 2019 and no new franchise had been issued in its favor.

Nonetheless, since MORE has not established its service yet, Section 17 of R.A. No. 11212 permits PECO to continue operating the existing distribution system during the interim period.<sup>[8]</sup> Accordingly, through a Provisional Certificate of Public Convenience and Necessity (CPCN) that the Energy Regulatory Commission (ERC) on May 21, 2019 issued, PECO continues to operate its existing distribution system.<sup>[9]</sup> The same provision also states that even if PECO is operating the distribution system, the interim arrangement shall not prevent MORE from acquiring the system through the exercise of the right of eminent domain.

Incidentally, on March 6, 2019, PECO filed a Petition for Declaratory Relief<sup>[10]</sup> docketed as Civil Case No. R-MND-19-00571 assailing the constitutionality of Sections 10 and 17 of R.A. No. 11212, arguing that these provisions encroach on its constitutional right to due process<sup>[11]</sup> and equal protection.<sup>[12]</sup> PECO alleged that the authority granted to MORE to takeover PECO's business by seizing its assets under the veil of expropriation cannot be done without violating its right to substantive due process.<sup>[13]</sup> PECO also pointed out provisions in R.A. No. 11212 that

are not present in other legislative franchises granted to distribution utilities and that MORE is given more leeway in its exercise of the right of eminent domain as compared to other distribution utilities.<sup>[14]</sup> For PECO, the grant of authority to expropriate all of its assets is arbitrary and unduly oppressive.<sup>[15]</sup> PECO also claimed that R.A. No. 11212 authorized taking that is not for public use.<sup>[16]</sup>

Meanwhile, on March 11, 2019, MORE filed a Complaint for Expropriation with the Regional Trial Court (RTC) of Iloilo City over the distribution system of PECO in the same city.<sup>[17]</sup>

On March 14, 2019, the RTC issued a Temporary Restraining Order enjoining the commencement of expropriation proceedings, the takeover by MORE of the distribution system in Iloilo City, and the issuance of a CPCN by the ERC in favor of MORE.<sup>[18]</sup>

On July 1, 2019, upon motion by PECO for judgment on the pleadings, the RTC rendered its Judgment,<sup>[19]</sup> the dispositive portion of which states:

WHEREFORE, premises considered, judgment is hereby rendered declaring Section 10 and 17 of RA No. 11212 void and unconstitutional for infringing on PECO's rights to due process and equal protection of the law. Consequently, PECO has no obligation to sell and respondent has no right to expropriate PECO's assets under Sections 10 and 17 of RA No. 11212; and, PECO's rights to its properties are protected against arbitrary and confiscatory taking under the relevant portions of Sections 10 and 17 of RA No. 11212.

Finally, the Temporary Restraining Order dated 14 March 2019 insofar as it enjoins respondent MORE and/ or any of its representatives from enforcing, implementing and exercising any of the rights and obligations set forth under RA 11212, including but not limited to commencing or pursuing the expropriation proceedings against petitioner PECO under the assailed provisions; and takeover by respondent MORE of petitioner PECO's distribution assets in the franchise area is hereby made permanent.

SO ORDERED.<sup>[20]</sup>

The RTC found the element of public use wanting in the present case. The RTC explained that PECO's properties, including the distribution assets, are already being devoted to public use and that the only tangible effect of the exercise of eminent domain is to replace PECO with MORE as the owner of the existing electric power distribution system in Iloilo City. For the RTC, the State should not intervene in this corporate take-over.<sup>[21]</sup> The RTC also held that there is no substantial distinction between MORE, on the one hand, and all other distribution utilities, on the other, to warrant the unwarranted benefits granted to MORE.<sup>[22]</sup>

MORE filed a petition for review on *certiorari* under Rule 45 before this Court, docketed as G.R. No. 248061, raising the constitutional question of whether Sections 10 and 17 of R.A. No. 11212 violate the constitutional guarantee of due process and equal protection of laws. It posed the legal question in this wise: "[m]ay the distribution assets of a power distribution company whose franchise has expired, be acquired by a new power distribution utility with the new franchise, through expropriation, to ensure the continuous and uninterrupted service in the franchise area?"<sup>[23]</sup>

MORE argued that expropriation under Sections 10 and 17 of R.A. No. 11212 serves the distinct emergency public purpose of ensuring the continuous and uninterrupted supply of electricity in Iloilo City, as the city transitions from the old franchise holder to the new franchise holder. Sections 10 and 17 recognize that MORE is differently situated from other distribution utilities. For one, there is already an existing distribution system in Iloilo City that continues to burden public space. This distribution system occupies streets, land, and properties owned by the government. MORE further averred that the clear legislative intent under R.A. No. 11212 is for

MORE, as the new franchisee, to take over the operation of the distribution system in Iloilo City and to pay just compensation to PECO.

A separate petition for review on *certiorari* was filed by the Republic of the Philippines, through the Office of the Solicitor General (OSG), docketed as G.R. No. 249406. The OSG argued that R.A. No. 9136,<sup>[24]</sup> otherwise known as the "Electric Power Industry Reform Act of 2001" (EPIRA) delegated to public utilities like MORE the power of eminent domain to enable them to exercise their public function. Section 17 of R.A. No. 11212 emphasized a specific public need, which is to ease the transition of operations from PECO to MORE by expressly providing that the right of MORE to expropriate the distribution system of PECO for the public purpose of electricity and power distribution system, will not be prejudiced by the *interim* authority given to PECO to continue to operate the said system for the very same purpose of power distribution.

On motion<sup>[25]</sup> of PECO, G.R. Nos. 248061 and 249406 were consolidated.

### **Decision dated September 15, 2020 of this Court**

On September 15, 2020, this Court rendered its Decision reversing and setting aside the Decision dated July 1, 2019 of the RTC. The Court declared Sections 10 and 17 of R.A. No. 11212 constitutional. The Court held that: (1) the legislative franchise of PECO authorizing it to operate a distribution system in Iloilo City is susceptible to expropriation for the same public purpose of power and electricity distribution; and (2) the expropriation by MORE of the distribution system of PECO pursuant to Sections 10 and 17 of R.A. No. 11212 is in accordance with the constitutional requirements of due process and equal protection of laws. The Court took into account the history of the legislative franchises governing the distribution system in Iloilo City which established that the distribution system of PECO can be subjected to expropriation for the same public purpose. Further, the Court ruled that the expropriation of the distribution system of PECO under Sections 10 and 17 of R.A. No. 11212 serves both the general public interest of conveying power and electricity in Iloilo City and the peculiar public interest and security of ensuring the uninterrupted supply of electricity.

### **PECO'S Motion for Reconsideration**

In its Motion for Reconsideration,<sup>[26]</sup> PECO asks the Court to take a second hard look at the facts surrounding the case and the alleged far-reaching legal implications of the Decision dated September 15, 2020. PECO faults the Court in allowing the expropriation of its distribution system for the same public purpose it was already devoted to.<sup>[27]</sup> While PECO concedes that its previous legislative franchise allows expropriation of its assets and distribution system upon the termination of its franchise, this power maybe exercised only by the government and its political subdivisions, should it desire to operate and maintain the system by itself, and not by private entities such as MORE.<sup>[28]</sup> Additionally, PECO disagrees with the conclusion of the Court that its ownership of the distribution system is co-existent with its franchise. PECO insists that franchise merely pertains to the privilege granted by the government and not synonymous to ownership of the facilities used thereof.<sup>[29]</sup>

Further, PECO insists that there is no genuine public purpose served by the transfer of its distribution system to MORE. PECO alleges that the inexperience and incompetence of MORE in the business of electric distribution adversely affects the public.<sup>[30]</sup> PECO claims that the Court erroneously held that the expropriation is needed to prevent any disruption in the supply of electricity. According to PECO, as the distribution system is not burdened with public use and is privately owned by PECO, it can devote the same to private use; such as by disposing the system or by using it in another business. PECO proposes that MORE should establish, operate, and maintain its own distribution system.<sup>[31]</sup>

PECO maintains that the expropriation of its distribution system violates its right to due process of law. According to PECO, to successfully invoke the exercise of eminent domain, it is required

that there is a compelling state interest and that the means employed to effect it should be least restrictive.<sup>[32]</sup>

Lastly, PECO insists that Sections 10 and 17 of R.A. No. 11212 violate its constitutional right to equal protection of laws because MORE was given undue and unwarranted benefits<sup>[33]</sup> and for having been singled out as the only entity against whom expropriation may be directed.<sup>[34]</sup>

### **MORE's Opposition**

MORE counters that PECO's distribution assets are not sacrosanct private property that PECO has absolute discretion on how and when to dispose. The distribution system assets are regulated assets established for the sole purpose of supplying electricity to end-users in Iloilo City. MORE avers that PECO had no more right to occupy public streets and skyline when its franchise expired, thus, PECO had the obligation to uproot, dismantle and remove its posts, wires, transformers, and electric meters from the streets and skyline of Iloilo City. The public space that they occupy are now under easement for use of MORE under its franchise. MORE posits that the cost of regulated assets have been charged to and paid for by the consumers in Iloilo City. The consumers of Iloilo City have the right to the continued use of these regulated assets to serve their basic need for electricity, as provided for under the EPIRA.

Further, MORE contends that to require it to build a new distribution system is anti-consumer and would deny the consumers of Iloilo City their right to continued service. The determination of MORE's technical competence and capability to operate the distribution system in Iloilo City is a matter within the primary jurisdiction of the ERC. Also, the matter of just compensation is an issue which must be resolved in the expropriation court.

### **Issue**

The primary issue to be resolved is whether Sections 10 and 17 of R.A. No. 11212 are constitutional.

### **Ruling of the Court**

After a careful review of the arguments raised by PECO, the Court finds no reason to depart from its Decision dated September 15, 2020.

The issues raised in the Motion for Reconsideration have been squarely and extensively discussed in the Court's Decision dated September 15, 2020. Nonetheless, the Court deems it prudent to clarify and discuss further the matters raised in the Motion.

### **A franchise emanates from the constitutional power of the Legislature to grant concessions and privileges to private entities.**

A franchise stated out as a "royal privilege or (a) branch of the King's prerogative, subsisting in the hands of a subject."<sup>[35]</sup> This definition was given by Finch, adopted by Blackstone, and accepted by every authority since.<sup>[36]</sup> Further, "a franchise is defined to be a special privilege to, do certain things conferred by government on an individual or corporation, and which does not belong to citizens generally of common right."<sup>[37]</sup> Insofar as the great powers of government are concerned, "[a] franchise is basically a legislative grant of a special privilege to a person."<sup>[38]</sup> Section 11, Article XII of the 1987 Constitution further states that "x x x for the operation of a public utility," no "such franchise or right [shall] be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the common good so requires. x x x"

Pursuant to this prerogative of the State, Section 27 of the EPIRA vests on Congress the power to grant franchises to persons engaged in the transmission and distribution of electricity, to wit:

Section Franchising Power in the Electric Power Sector. - The power to grant franchises to persons engaged in the transmission and distribution of electricity shall be vested exclusively in the Congress of the Philippines and all laws inconsistent with this Act particularly, but not limited to, Section 43 of PD 269, otherwise known as the "National Electrification Decree", are hereby deemed repealed or modified accordingly: Provided, That all existing franchises shall be allowed to their full term: Provided, further, That in the case of electric cooperatives, renewals and cancellations shall remain with the National Electrification Commission under the National Electrification Administration for five (5) more years after the enactment of this Act.

Since 1923 until January 18, 2019, PECO was the holder of a franchise to "establish, operate, and maintain, for commercial purposes and in the public interest, a distribution system for the conveyance of electric power to end users in the City of Iloilo."<sup>[39]</sup> However, upon the expiration of PECO's franchise in 2019, Congress, exercising its constitutionally-mandated and plenary power to grant franchises, did not renew the privilege given to PECO. Instead, it awarded the franchise to MORE, as embodied in R.A. No. 11212.

The power of Congress to award the franchise to MORE is broad and plenary, subject only to limitations given by the Constitution and the fundamental principle of due process. It is beyond the power of the Court to question the wisdom of Congress in granting the franchise to MORE. The Court cannot venture into this because that would mean violating the deep-rooted principle of separation of powers. Thus, Sections 10 and 17 of R.A. No. 11212, giving MORE the power to expropriate the distribution system of PECO, are but integral parts of the grant of the franchise by Congress. Since the exercise of eminent domain is necessary to carry out the franchise, it is prudent that the Court accords respect to the legislative will.

**The authority granted to MORE under its franchise to expropriate the existing distribution system of PECO is a valid delegation of power.**

In its motion for reconsideration, PECO faults the Court in allowing the expropriation of its distribution system for the same public purpose it was already devoted to. While PECO concedes that its previous legislative franchise allows expropriation of its assets and distribution system upon the termination of its franchise, it also asserts that this power may be exercised only by the government and its political subdivisions, and not by private entities such as MORE.

PECO's argument fails to convince the Court.

The power of eminent domain is exercised by the Legislature. However, it may be delegated by Congress to the President, administrative bodies, local government units, and even to **private enterprises performing public services.**<sup>[40]</sup>

The exercise of the right to expropriate given to MORE under its franchise is a **delegated** authority granted by Congress. The restrictive view that expropriation may be exercised by the State alone, without any consideration for the State's authority to delegate its powers, cannot be upheld. Being a private enterprise allowed by the Congress to operate a public utility for public interest, the delegation by Congress of the power to expropriate PECO's distribution system is valid.

**The requisites for a valid exercise of the power of eminent domain are present.**

Over the years and in a plethora of cases, this Court has recognized the following requisites for the valid exercise of the power of eminent domain: (1) the property taken must be private property; (2) there must be genuine necessity to take the private property; (3) the taking must