

THIRD DIVISION

[G.R. No. 221709, October 16, 2019]

**NATIONAL POWER CORPORATION, PETITIONER, VS. DELTA P,
INC., RESPONDENT.**

DECISION

REYES, A., JR., J.:

Challenged before this Court *via* this Petition for Review on *Certiorari*^[1] under Rule 45 of the Rules of Court is the Decision^[2] dated March 26, 2015 of the Court of Appeals (CA), and its Resolution^[3] dated November 25, 2015, in CA-G.R. CV No. 99605, which affirmed the Decision^[4] dated March 30, 2012 of the Regional Trial Court (RTC) of Puerto Princesa City, Branch 47, in Civil Case No. 3997.

The Antecedent Facts

The facts, as summarized from the CA, are as follows: respondent Delta P, Inc. (Delta P), an independent power producer, previously took over the operations of a generating plant in Puerto Princesa City owned by Paragua Power Corporation (PPC). At the time of the takeover of operations, PPC had a Power Purchase Agreement (PPA) with petitioner National Power Corporation (NAPOCOR), wherein the latter agreed to purchase the electricity generated by the former for the purpose of meeting NAPOCOR's obligation to supply the consumers of Palawan Electric Cooperative, Inc. in Puerto Princesa City and the towns of Narra, Aborlan, and Quezon, Palawan.^[5]

As a result of Delta P's takeover, NAPOCOR was requested to direct payment for the services to Delta P. However, NAPOCOR refused to do so, with the reasoning that PPC, not Delta P, is the contracting party involved in the PPA. The standstill resulted in Delta P subsequently advising NAPOCOR that it could no longer operate the power station for lack of funds.^[6]

On February 26, 2003, NAPOCOR Vice-President for Strategic Power Utilities Group, Lorenzo S. Marcelo (Marcelo), issued a Memorandum to NAPOCOR President Rogelio M. Murga (Murga) seeking approval to supply the fuel and pay the manpower services of PPC's generating plant due to the imminent power shortage in Puerto Princesa City. Allegedly, this shortage was caused by Delta P's inability to produce the required electricity due to the lack of bunker fuel.^[7]

The Memorandum was approved by Murga. Thus, Marcelo sent a letter on March 7, 2003 to Delta P's Plant Manager informing him that, upon the request of the local government of Palawan, NAPOCOR would supply fuel to the generating plant and pay the manpower salaries while Delta P's internal problems were being resolved.^[8]

The already fragile equilibrium began to further fracture when Delta P instituted on March 12, 2003 an action for collection of sum of money against NAPOCOR, docketed as Civil Case No. 3766, insisting on its right to collect payment of electricity "off-taken" by NAPOCOR. On July 15, 2003, the RTC upheld the action taken by Delta P and rendered a judgment recognizing the latter's right under the doctrines of *accion in rem verso* and unjust enrichment to be paid for the electricity "off-taken" by NAPOCOR from the months December 2002 to June 2003. This was despite the lack of any existing contract between the parties, as the RTC found that NAPOCOR benefited from Delta P without paying a single centavo.^[9]

NAPOCOR was, thus, ordered to pay P87,944,215.67 representing the P90,394,855.86 total value of the invoices from January 28, 2003 to June 27, 2003 less P2,450,640.19 for adjustment in billing due to reduction in tariff effective March 9, 2003, for the billing period February 25, 2003 to March 25, 2003.^[10] This judgment attained finality, and was subsequently implemented against NAPOCOR.

On July 30, 2003, NAPOCOR sent to Delta P a Notice of Termination reminding the latter that it undertook the supply of fuel requirement of the generating plant as a remedial measure to address the imminent power shortage in Puerto Princesa City, but with the payment of the adjudged amount in Civil Case No. 3766, there was no longer any basis for the NAPOCOR to continue its fuel supply. Thus, Delta P stated that it will terminate the said supply of fuel to the 16MW Power Plant effective August 15, 2003.^[11]

However, the parties belatedly agreed that Delta P should continue generating and supplying electricity in Palawan with the express undertaking of NAPOCOR to pay monthly invoices for the services rendered by Delta P at the power station.^[12]

The contractual relationship of the parties continued without any hitch until the NAPOCOR issued on December 4, 2003 Debit Memo S1-03-12-0041 (Debit Memo) deducting P24,449,247.36 from Delta P's account for the alleged incremental costs of the fuel it had supplied to Delta P from February 25, 2003 to June 25, 2003. Finding the same preposterous, Delta P countered by filing a sum of money case assailing the validity of the Debit Memo for lack of prior agreement authorizing payment of the fuel costs.^[13]

Therein, Delta P alleged that NAPOCOR voluntarily chose to supply fuel in the power station despite lack of request, in order to avoid a disruption of fuel, and that Delta P's acceptance of the fuel should not be construed as an implied approval to bear the costs of the same. Delta P, likewise, pointed to its previous invoices to NAPOCOR from February 25, 2003 to June 25, 2003, which did not include the fuel costs component of the electricity it generated and supplied at the power station.^[14]

In response, NAPOCOR invoked Delta's alleged voluntary acceptance and benefit from the fuel supplied, and that upon an audit, it was discovered that there were variances between the actual costs of fuel and the fuel costs tariff.^[15]

In its Decision^[16] dated March 30, 2012, the RTC ruled in favor of Delta P, the

dispositive portion of the same reading, to wit:

WHEREFORE, premises considered, judgment is hereby rendered, to wit:

1. Declaring the debit made by the [NAPOCOR] on the account of the [Delta P] for the period from February 25, 2003 to June 25, 2003 for "cost of fuel delivered to DELTA P" in the total amount of TWENTY[-]FOUR MILLION, FOUR HUNDRED FORTY-NINE THOUSAND, TWO HUNDRED FORTY-SEVEN PESOS AND TH[IR]TY-SIX CENTAVOS (Php24,449,247.36) to be void and illegal;
2. Ordering the [NAPOCOR] to pay [Delta P]:
 - a. TWENTY[-]FOUR MILLION, FOUR HUNDRED FORTY-NINE THOUSAND, TWO HUNDRED FORTY SEVEN PESOS AND TH[IR]TY-SIX CENTAVOS (PHP24,449,247.36) plus legal interest from the finality of this Decision until full payment;
 - b. FIVE HUNDRED THOUSAND PESOS (PHP500,000.00) as attorney's fees[.]

With costs against the defendant.

SO ORDERED.^[17] (Emphasis in the original)

The RTC denied the NAPOCOR's Motion for Reconsideration in an Order^[18] dated July 4, 2012. On appeal, the CA dismissed the NAPOCOR's petition for lack of merit,^[19] to wit:

WHEREFORE, the appeal is **DENIED** for lack of merit. The March 30, 2012 Decision and the July 4, 2012 Order of the [RTC], Branch 47, Puerto Princesa City in Civil Case No. 3997 are hereby **AFFIRMED**.^[20] (Emphasis in the original)

NAPOCOR's Motion for Reconsideration^[21] was, likewise, struck down for lack of merit.^[22] Hence, this Petition.

The Issues

First, whether or not NAPOCOR's supply of fuel to Delta P is gratuitous, and in the form of a donation.

Second, whether or not Delta P is liable to reimburse NAPOCOR for the latter's payment of the same, and subject to NAPOCOR's computation of the cost taking into consideration NAPOCOR's allegations that the post-audit constituted a supervening

event justifying the payment, and despite the judgment rendered by the RTC in Civil Case No. 3766.

The Arguments of the Parties

NAPOCOR argues that the lower courts mistakenly perceived the supply of fuel to be in the form of a donation and essentially gratuitous. NAPOCOR states that, had it been its intention to provide fuel to Delta P free of charge, it would have necessarily manifested that gratuity clearly to the latter, especially since public funds were utilized to fund the procurement of the fuel and as such, all the expenses would be subject to post-audit.^[23]

For NAPOCOR, the lower courts erred in finding as contrary to law NAPOCOR's act of debiting from Delta P's invoice the amount totaling P24,449,247.36. This debited amount allegedly corresponds to the incremental cost NAPOCOR had to shoulder because of its supply of fuel to Delta P's 16MW Diesel Power Station in Puerto Princesa City, Palawan.^[24]

NAPOCOR alleges that its debit was necessarily valid, as it was able to properly substantiate with competent evidence its overpayment and the alleged prevailing circumstances, rendering the execution inequitable. This overpayment was allegedly due to Delta P unjustifiably excluding the market fluctuations and transshipment costs that resulted to an erroneous computation, which led the NAPOCOR to make an overpayment of P24,449,247.36 representing the difference between the allowable fuel cost and the actual fuel cost.^[25]

When NAPOCOR took on the responsibility of delivering fuel to Delta P, the latter, thus, became liable to compensate NAPOCOR all the incremental costs for delivering fuel, including the market fluctuations and transshipment costs from the period of March 2003 to June 2003. NAPOCOR alleges that its computation showed that Delta P merely indicated a zero amount in the fuel tariff, but the incremental fuel costs were not included, and that the increase in the cost of fuel in the international market was not taken into consideration by Delta P in its computation. Delta P, instead, relied on the reference rate stated in the PPA formula, and disregarded market fluctuations and transshipment costs.^[26]

NAPOCOR, further, alleges that the principles of unjust enrichment and *solution indebiti* are applicable to the case at bar. As NAPOCOR took on the responsibility of delivering fuel to Delta P, the latter became liable to compensate NAPOCOR for all the incremental costs of the delivery, which included market fluctuations and transshipment.^[27]

On the other hand, Delta P counters that NAPOCOR was unable to raise any arguments that have not already been considered, passed upon, and resolved by the trial court and the CA, and, in fact, are merely rehashes or reiterations of the points already adjudicated upon by the lower courts.^[28]

For Delta P, the payment made to it by NAPOCOR was not made by mistake as it was pursuant to a decision that had already become final and executory^[29] and, as

such, was now immutable and unalterable. Anent NAPOCOR's contention that it had the authority to conduct a post-audit of the adjudged amount based on the PPA with PPC which provided a formula in the fuel component computable in the billings to be provided by the power producer, Delta P contends that such is irrelevant to the case as the cause of action is not based on contract, but on the decision in Civil Case No. 3766.^[30]

Delta P also points to the records showing that on cross-examination, officers of NAPOCOR admitted that any manifestation as to the amounts subjected to post-audit was only communicated internally and was not formally made known to Delta P. Witness testimony also showed that there was no disagreement regarding the fact that the invoices, which were adjusted by NAPOCOR, formed part of the decision in Civil Case No. 3766, further emphasizing the unilateral nature of NAPOCOR's deduction.^[31]

For Delta P, not only did the decision in Civil Case No. 3766 become final and executory, the same was actually and already satisfied when NAPOCOR paid the sums adjudged without any condition or qualification.^[32]

Ruling of the Court

NAPOCOR's petition is partly meritorious.

The debit was done unilaterally by the NAPOCOR.

The Court adheres to the findings of fact consistent with both the RTC and the CA that the debit made by NAPOCOR was unilaterally done, and that NAPOCOR's supply of fuel to Delta P was an act of gratuity.

As a rule, the findings of fact of the RTC, as affirmed in totality by the CA, are binding and conclusive upon this Court. In *Gatan v. Vinarao*,^[33] the Court stated it has always accorded great weight and respect to the findings of fact of trial courts, especially in their assessment of the credibility of witnesses. It was held, thus:

When it comes to credibility, the trial court's assessment deserves great weight, and is even conclusive and binding, unless the same is tainted with arbitrariness or oversight of some fact or circumstance of weight and influence. Since it had the full opportunity to observe directly the deportment and the manner of testifying of the witnesses before it, the trial court is in a better position than the appellate court to properly evaluate testimonial evidence. The rule finds an even more stringent application where the CA sustained said findings, as in this case.^[34]

In *Bank of the Philippine Islands v. Leobrera*,^[35] the Court further stressed that: