

FIRST DIVISION

[A.M. No. RTJ-07-2060 (Formerly OCA IPI No. 06-2498- RTJ), July 27, 2011]

**NATIONAL POWER CORPORATION, REPRESENTED BY ITS
PRESIDENT CYRIL DEL CALLAR, COMPLAINANT, VS. JUDGE
SANTOS B. ADIONG, RTC, BRANCH 8, MARAWI CITY,
RESPONDENT.**

D E C I S I O N

VILLARAMA, JR., J.:

Before us is an administrative complaint^[1] filed by the National Power Corporation (NPC) through its president Cyril C. Del Callar, charging respondent Judge Santos B. Adiong, Presiding Judge of the Regional Trial Court (RTC), Branch 8, Marawi City, with gross ignorance of the law, manifest partiality and conduct unbecoming a member of the Judiciary.

The complaint arose in connection with the following cases:

- a. Civil Case No. 1918-03 entitled "*Ibrahim Abdo, et al. v. National Power Corporation*" for Damages;
- b. Civil Case No. 1322-95 entitled "*Pacalna Sanggacala v. National Power Corporation*" for Damages;
- c. Civil Case No 1332-95 entitled "*Ali Macaraya Mato v. National Power Corporation*" for Damages;
- d. Civil Case No. 1367-95 entitled "*Camar Dipatuan v. National Power Corporation*" for Damages;
- e. Civil Case No. 1361-95 entitled "*Casimra Sultan v. National Power Corporation*" for Damages; and
- f. Civil Case No. 1355-95 entitled "*Mualam Dimatingcal v. National Power Corporation*" for Damages.

In Civil Case No. 1918-03, plaintiffs Ibrahim Abdo, et al. who styled themselves as a "group of farmers, fishermen, laborers, workers, vendors, household members, and businessmen", collectively sought to hold NPC liable for damages for operating seven Hydroelectric Power plants allegedly without due regard to the health and safety of the plaintiffs and other residents of Marawi City and the province of Lanao del Sur. The plaintiffs alleged that they and several others suffered ecological and economic disasters brought about by the operation of regulatory dams which

affected the natural flow of Lake Lanao and destroyed their farms, properties, businesses and sources of livelihood. In addition to damages, the plaintiffs also sought the refund of millions of pesos from the Purchase Power Adjustment (PPA) collected by NPC from its electric consumers through the Lanao Del Sur Electric Cooperative.^[2]

On October 21, 2003, said plaintiffs filed an ex-parte Motion for the Release of P640,000,000 worth of PPA and other generation charges. Judge Adiong granted the motion on November 9, 2004, but later set aside his order on November 24, 2005^[3] after NPC filed a motion for reconsideration on the ground of lack of notice and due process. Judge Adiong then required the parties to present their respective evidence on December 8, 2005.

Subsequently, Judge Adiong issued a Resolution on February 28, 2006, ordering NPC to refund the amount of P114,000,000, representing the Fuel Compensating Cost, Foreign Exchange, and Incremental Cost Charges collected from April 1991 to December 1995; to refund the amount of P176,000,000, representing the Fuel and Power Cost Adjustment and PPA collected from January 1996 to April 2003; and to pay the amount of P97,537,000 as attorney's fees.^[4]

NPC sought reconsideration of the order alleging that no pre-trial was conducted and yet respondent judge already passed upon the merits of the case. NPC's motion, however, was denied by Judge Adiong. Judge Adiong reasoned that before issuing the questioned resolution, full-blown hearings were conducted and NPC was afforded all the opportunities to present its evidence and to participate actively in the hearings. Having done so, NPC has submitted itself to the court's jurisdiction and could no longer claim that no pre-trial was conducted. Later, Judge Adiong also directed Sheriff Otto Gomampong to implement the February 28, 2006 Resolution ratiocinating that the same has already become final.^[5]

Thus, NPC filed the present administrative complaint, asserting that the issuance of the February 28, 2006 Resolution is contrary to and violative of the Rules of Court because said resolution was issued by respondent judge without first conducting the requisite pre-trial conference and despite the fact that no formal offer of exhibits was made by plaintiffs in support of their allegations. Also, NPC complains of respondent judge's failure to lay down the basis for granting the plaintiff's ex-parte motion to release the PPA refunds, and in awarding the exorbitant amount of P97,537,000.00 as attorney's fees.^[6]

NPC further states that while it admits that judges are not to be administratively charged for acts committed in the exercise of their judicial functions, respondent judge had acted in violation of elementary rules that was equivalent to intolerable and inexcusable gross ignorance of the law.

As regards Civil Case Nos. 1322-95, 1332-95, 1367-95, 1361-95, and 1355-95, said cases involve identical causes of action arising from the same facts and raising common issues. The plaintiffs in said cases sought to hold NPC liable for damages for its refusal to open the Agus regulation dams causing perennial flooding on their rice farmlands in 1979, 1984, 1986, 1989, 1993, 1994, 1995 and 1996. In all of these cases, respondent judge rendered judgments in favor of the plaintiffs. Later, respondent judge also issued Joint Special Order^[7] dated January 25, 2006 granting

the Joint Motion for the Issuance of the Writ of Execution Pending Appeal^[8] filed by the plaintiffs in Civil Case Nos. 1367-95, 1361-95, and 1355-95 on January 2, 2006.^[9]

A similar Order^[10] granting execution pending appeal was likewise issued in the two other cases, Civil Case Nos. 1322-95 and 1332-95, on January 17, 2006. Nine days later, on January 26, 2006, a Joint Writ of Execution^[11] for the two cases was issued.

NPC alleges that Judge Adiong's act of granting execution pending appeal failed to conform strictly to the rigid criteria outlined by jurisprudence for executions pending appeal. There was no special reason for the issuance of the writ, and the grant of the writ was whimsical and clearly manifested the partiality of respondent judge. Further, Judge Adiong's evident bias and unexplained interest to execute the decisions manifested when he immediately set for hearing a motion to cite in contempt a Land Bank personnel who allegedly refused to comply with the notice of garnishment despite the fact that the motion lacked the required notice of hearing and the failure of the plaintiffs to comply with Rule 71 of the Rules of Court.^[12]

In his Comment^[13] dated June 1, 2006, respondent judge raised the following in his defense. With regard to the lack of pre-trial conference, respondent judge asserts that he has set the case for hearing on December 8 and 15, 2005, and January 12, 13, and 27, 2006. In all these hearings, the parties were allowed to present whatever evidence they had to support their claims. He also claims that the lack of pre-trial was never raised by NPC since the time it filed its answer on May 15, 2003 up to the time plaintiffs started presenting their evidence on December 8, 2005. It was only on February 14, 2006 that NPC belatedly filed a manifestation calling the court's attention to the lack of pre-trial, without formally asking or praying for the setting of one. In addition, the records show that the plaintiffs filed their pre-trial brief while defendant NPC did not. Thus, he argues that NPC is deemed to have waived the holding of a pre-trial conference. Perforce, Judge Adiong argues that he should not be held administratively liable for not conducting pre-trial.^[14]

On the charge that he was biased and has unexplained interest to execute the Decisions in Civil Case Nos. 1322-95, 1332-95, 1367-95, 1361-95 and 1355-95, respondent judge denied the allegations and explained that he complied with the requirements for allowing an execution pending appeal. He asserts there was good reason for its issuance and there was evidence substantiating the need to issue the writ of execution which were clearly spelled out and stated in the Special Orders dated January 17, 2006 and January 25, 2006. Further, there is no reason to complain about the bank personnel being held for contempt, as said bank personnel was not even adjudged guilty of contempt.^[15]

Respondent judge adds that he should be absolved from the charges against him. He argues that mere suspicion that a judge is partial to one of the parties to the case is not enough; there should be evidence to support the charge.^[16] Also, he asserts that a judge cannot be held administratively liable for errors in the appreciation of evidence unless the errors are gross or made in bad faith.^[17] When such errors of judgment are committed, complainants may avail themselves of the remedy of appeal or certiorari and not the filing of administrative charges against

the judge who rendered the challenged decision.

On October 2, 2007, this Court referred the present complaint to the Court of Appeals, Cagayan De Oro City, for investigation, report and recommendation. Pursuant to the Rules of Court, now retired Associate Justice Ruben C. Ayson, to whom this case was assigned, sent notices to the parties informing them of the schedule of investigation and hearings. The case was heard for five days, from May 25 to 29, 2009, and the parties were required to present oral, as well as documentary evidence in support of their respective allegations and counter-allegations.

On July 10, 2009, Justice Ayson submitted his report finding respondent judge administratively liable. Justice Ayson did not delve into the correctness of the Resolution dated February 28, 2006, granting the refund of millions of pesos representing the PPA charges, as the resolution is now the subject of an appeal with this Court, docketed as G.R. No. 177288 entitled, *Ibrahim Abdo, et al. v. Court of Appeals and National Power Corporation*. Neither did he delve into the merits of all the other cases from which the administrative cases filed by NPC against Judge Adiong arose, for the reason that the proper venue for their review would be through the usual judicial process of review by appellate courts.^[18]

The Investigating Justice also noted the well-entrenched rule that a judge may not be held administratively liable for every erroneous decision he renders, for no person called upon to determine the facts or interpret the law in the administration of justice can be infallible. However, he also noted that there is a prominent exception to the rule, that is, when the law is so elementary that not to know it constitutes gross ignorance of the law.^[19] In said cases, a judge committing such error may face administrative sanctions.

Specifically, Justice Ayson noted that in Civil Case No. 1918-03, Judge Adiong failed to conduct a pre-trial conference and erred in conducting the series of hearings in the case without determining the existence of necessary pre-conditions before the court could take cognizance of the case. Records revealed that Judge Adiong failed to resolve (1) the issue on the insufficiency of the complaint as a class suit; (2) the issue of nonpayment of docket fees necessary to vest the court with jurisdiction over the case; (3) the issue on forum-shopping allegedly committed by therein plaintiffs; and (4) the question regarding the alleged failure of therein plaintiffs to state with particularity their respective residences. Justice Ayson noted that without a proper resolution of these threshold jurisdictional questions, any decision in the case is premature and without factual and legal basis. In other words, the court would only be engaged in a useless exercise and would merely be wasting the time and resources of the parties.^[20]

Further, the Investigating Justice stressed that the conduct of a pre-trial is mandatory. He explained that pre-trial is a procedural device whereby the court is called upon to compel the parties and their lawyers to appear before it and negotiate an amicable settlement or otherwise make a formal statement and embody in a single document the issues of fact and law involved in the action. Respondent judge asserts that NPC only called the attention of the court in passing in one of its hearings held sometime in December 8, 2005 and January 27, 2006. Judge Adiong alleges that he then advised NPC to file the appropriate pleading, but

it was only after the case was terminated that NPC made a manifestation on the lack of pre-trial. Judge Adiong adds that the conduct of a pre-trial conference would have been a mere superfluity, and claims that the absence of pre-trial did not cause substantial prejudice or injury to the parties as the purpose of expediting the proceedings has been attained. However, Justice Ayson opined that under the circumstances, Judge Adiong should have scheduled the case for pre-trial as he was already aware of the procedural defect. His act of not minding the setting of pre-trial, when he had every opportunity and reasonable time to do so, can be characterized as negligent and imprudent, according to Justice Ayson. Justice Ayson added that respondent judge apparently failed to comply with the rules and failed to exercise the required initiative to set the case for pre-trial. Considering Judge Adiong's long years of service, a total of thirty-nine (39) years in the Judiciary, more than anyone else, he should be presumed to be conversant with the law and the rules. The law involved in this case being elementary, failure to consider it or to act as if he does not know it, constitutes gross ignorance of the law. Justice Ayson said,

x x x Indeed, when the inefficiency springs from a failure to consider so basic and elemental a rule, a law or a principle in the discharge of his duties, a judge is either too incompetent and undeserving of the position and the title he holds or is too vicious that the oversight or omission was deliberately done in bad faith and in grave abuse of judicial authority.^[21]

As to the granting of the motions for execution pending appeal, Justice Ayson pointed out that respondent judge gave flimsy and unsupported reasons to support his order to issue the writ of execution pending appeal.

In Civil Case No. 1367-95, respondent judge granted the execution pending appeal on the ground that the plaintiff therein suffered a stroke and allegedly needed to undergo an operation costing millions of pesos. However, said allegations were based only on the self-serving testimony of the plaintiff's sister whose testimony was uncorroborated by any other evidence.

In Civil Case Nos. 1361-95 and 1355-95, Judge Adiong granted the motion for execution pending appeal based on the testimony of the plaintiff who testified on his medical condition as stated in his medical certificate. Said medical certificate, however, was never verified by the doctor who allegedly issued it. Hence, it was unreliable and was merely hearsay evidence.

Meanwhile, in Civil Case No. 1322-95, the motion for execution pending appeal was granted based on the plaintiff's claim that he is getting old and needed money to support his family of four wives and twenty-nine (29) children. But the plaintiff's allegation was not corroborated by any competent evidence.

In all these cases, respondent judge found justification that the financial conditions of the plaintiffs warranted the issuance of the writ of execution pending appeal. Justice Ayson, however, opined that while the power to grant or deny immediate or advance execution is addressed to the sound discretion of the court, it is required that good reason exists for granting execution pending appeal as provided under Section 2,^[22] Rule 39 of the Rules of Court. Absent any such good reason, the special order of execution must be struck down for having been issued with grave