

EN BANC

[G.R. Nos. 156556-57, October 04, 2011]

**ENRIQUE U. BETOY, PETITIONER, VS. THE BOARD OF
DIRECTORS, NATIONAL POWER CORPORATION, RESPONDENT.**

D E C I S I O N

PERALTA, J.:

Before this Court is a special civil action for *certiorari*^[1] and supplemental petition for *mandamus*,^[2] specifically assailing National Power Board Resolutions No. 2002-124 and No. 2002-125, as well as Sections 11, 34, 38, 48, 52 and 63 of Republic Act (R.A.) No. 9136, otherwise known as the *Electric Power Industry Reform Act of 2001* (EPIRA). Also assailed is Rule 33 of the Implementing Rules and Regulations (IRR) of the EPIRA.

The facts of the case are as follows:

On June 8, 2001, the EPIRA was enacted by Congress with the goal of restructuring the electric power industry and privatization of the assets of the National Power Corporation (NPC).

Pursuant to Section 48^[3] of the EPIRA, a new National Power Board of Directors (NPB) was created. On February 27, 2002, pursuant to Section 77^[4] of the EPIRA, the Secretary of the Department of Energy promulgated the IRR.

On the other hand, Section 63 of the EPIRA provides for separation benefits to officials and employees who would be affected by the restructuring of the electric power industry and the privatization of the assets of the NPC, to wit:

Section 63. *Separation Benefits of Officials and Employees of Affected Agencies.* - **National Government employees displaced or separated from the service as a result of the restructuring of the electricity industry and privatization of NPC assets pursuant to this Act, shall be entitled to either a separation pay and other benefits in accordance with existing laws, rules or regulations or be entitled to avail of the privileges provided under a separation plan which shall be one and one-half month salary for every year of service in the government: Provided, however,** That those who avail of such privileges shall start their government service anew if absorbed by any government-owned successor company. In no case shall there be any diminution of benefits under the separation plan until the full implementation of the restructuring and privatization.

Displaced or separated personnel as a result of the privatization, if

qualified, shall be given preference in the hiring of the manpower requirements of the privatized companies. x x x^[5]

Rule 33^[6] of the IRR provided for the coverage and the guidelines for the separation benefits to be given to the employees affected.

On November 18, 2002, pursuant to Section 63 of the EPIRA and Rule 33 of the IRR, the NPB passed NPB Resolution No. 2002-124^[7] which, among others, resolved that all NPC personnel shall be legally terminated on January 31, 2003 and shall be entitled to separation benefits. On the same day, the NPB passed NPB Resolution No. 2002-125^[8] which created a transition team to manage and implement the separation program.

As a result of the foregoing NPB Resolutions, petitioner Enrique U. Beto, together with thousands of his co-employees from the NPC were terminated.

Hence, herein petition for *certiorari* with petitioner praying for the grant of the following reliefs from this Court, to wit:

1. Declaring National Power Board Resolution Nos. 2002-124 and 2002-125 and its Annex "B" Null and Void, the fact [that] it was done with extraordinary haste and in secrecy without the able participation of the Napocor Employees Consolidated Union (NECU) to represent all career civil service employees on issues affecting their rights to due process, equity, security of tenure, social benefits accrued to them, and as well as the disclosure of public transaction provisions of the 1987 Constitution because during its proceeding the National Power Board had acted with grave abuse of discretion and disregarding constitutional and statutory injunctions on removal of public servants and non-diminution of social benefits accrued to separated employees, thus, amounting to excess of jurisdiction;

2. Striking down Section 11, Section 48 and Section 52 of RA 9136 (EPIRA) for being violative of Section 13, Article VII of the 1987 Constitution and, therefore, unconstitutional;

3. Striking Section 34 of RA 9136 (EPIRA) for being exorbitant display of State Power and was not premised on the welfare of the FILIPINO PEOPLE or principle of **salus populi est suprema lex**;

4. Striking down Section 38 for RA 9136 (EPIRA) for being a prelude to **Charter Change** without a valid referendum for ratification of the entire voter citizens of the Philippine Republic;

5. Striking down all other provisions of RA 9136 (EPIRA) found repugnant to the 1987 Constitution;

6. Striking down all provisions of the Implementing Rules and Regulations (IRR) of the EPIRA found repugnant to the 1987 Constitution;

7. Striking down Section 63 of RA 9136 (EPIRA) for classifying such provisions in the same vein with Proclamation No. 50 used against MWSS employees and its failure to classify which condition comes first whether the restructuring effecting total reorganization of the electric power industry making NPC financially viable or the privatization of NPC assets where manpower reduction or sweeping/lay-off or termination of career civil service employees follows the disposal of NPC assets. This is a clear case of violation of the *EQUAL PROTECTION CLAUSE*, therefore, unconstitutional;

8. Striking down Rule 33 of the Implementing Rules [and] Regulations (IRR) for disregarding the constitutional and statutory injunction on arbitrary removal of career civil service employees; and

9. For such other reliefs deemed equitable with justice and fairness to more than EIGHT THOUSAND (8,000) EMPLOYEES of the National Power Corporation (NPC) whose fate lies in the sound disposition of the Honorable Supreme Court.^[9]

In addition, petitioner also filed a supplemental petition for *mandamus* praying for his reinstatement.

The petition is without merit.

Before anything else, this Court shall first tackle whether it was proper for petitioner to directly question the constitutionality of the EPIRA before this Court.

Section 5(1) and (2), Article VIII of the 1987 Constitution provides that:

SECTION 5. The Supreme Court shall have the following powers:

1. Exercise *original jurisdiction over cases* affecting ambassadors, other public ministers and consuls, and over *petitions for certiorari, prohibition, mandamus, quo warranto, and habeas corpus*.

2. Review, revise, reverse, modify, or affirm *on appeal or certiorari*, as the law or the rules of court may provide, final judgments and orders of lower courts in:

(a) All cases in which the *constitutionality or validity* of any treaty, international or executive agreement, *law*, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.^[10]

Based on the foregoing, this Court's jurisdiction to issue writs of *certiorari*, prohibition, *mandamus, quo warranto*, and *habeas corpus*, while concurrent with that of the Regional Trial Courts and the Court of Appeals, does not give litigants

unrestrained freedom of choice of forum from which to seek such relief. [11] The determination of whether the assailed law and its implementing rules and regulations contravene the Constitution is within the jurisdiction of regular courts. The Constitution vests the power of judicial review or the power to declare a law, treaty, international or executive agreement, presidential decree, order, instruction, ordinance, or regulation in the courts, including the Regional Trial Courts. [12]

It has long been established that this Court will not entertain direct resort to it unless the redress desired cannot be obtained in the appropriate courts, or where exceptional and compelling circumstances justify availment of a remedy within and call for the exercise of our primary jurisdiction. [13] Thus, herein petition should already be dismissed at the outset; however, since similar petitions have already been resolved by this Court tackling the validity of NPB Resolutions No. 2002-124 and No. 2002-125, as well as the constitutionality of certain provisions of the EPIRA, this Court shall disregard the procedural defect.

Validity of NPB Resolutions No. 2002-124 and No. 2002-125

The main issue raised by petitioner deals with the validity of NPB Resolutions No. 2002-124 and No. 2002-125.

In *NPC Drivers and Mechanics Association (NPC DAMA) v. National Power Corporation (NPC)*, [14] this Court had already ruled that NPB Resolutions No. 2002-124 and No. 2002-125 are void and of no legal effect.

NPC Drivers involved a special civil action for Injunction seeking to enjoin the implementation of the same assailed NPB Resolutions. Petitioners therein put in issue the fact that the NPB Resolutions were not concluded by a duly constituted Board of Directors since no quorum in accordance with Section 48 of the EPIRA existed. In addition, petitioners therein argued that the assailed NPB Resolutions cannot be given legal effect as it failed to comply with Section 47 of the EPIRA which required the endorsement of the Joint Congressional Power Commission and the President of the Philippines. Ruling in favor of petitioners therein, this Court ruled that NPB Resolutions No. 2002-124 and No. 2002-125 are void and of no legal effect for failure to comply with Section 48 of the EPIRA, to wit:

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. 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. 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.

x x x x

In the case at bar, it is not difficult to comprehend that in approving NPB Resolutions No. 2002-124 and No. 2002-125, it is the representatives of the secretaries of the different executive departments and not the secretaries themselves who exercised judgment in passing the assailed Resolution, as shown by the fact that it is the signatures of the respective representatives that are affixed to the questioned Resolutions. This, to our mind, violates the duty imposed upon the specifically enumerated department heads to employ their own sound discretion in exercising the corporate powers of the NPC. Evidently, the votes cast by these mere representatives in favor of the adoption of the said Resolutions must not be considered in determining whether or not the necessary number of votes was garnered in order that the assailed Resolutions may be validly enacted. Hence, there being only three valid votes cast out of the nine board members, namely those of DOE Secretary Vincent S. Perez, Jr.; Department of Budget and Management Secretary Emilia T. Boncodin; and NPC OIC-President Rolando S. Quilala, **NPB Resolutions No. 2002-124 and No. 2002-125 are void and are of no legal effect.**^[15]

However, a supervening event occurred in *NPC Drivers* when it was brought to this Court's attention that NPB Resolution No. 2007-55 was promulgated on September 14, 2007 confirming and adopting the principles and guidelines enunciated in NPB Resolutions No. 2002-124 and No. 2002-125.

On December 2, 2009, this Court promulgated a Resolution^[16] clarifying the amount due the individual employees of NPC in view of NPB Resolution No. 2007-55. In said Resolution, this Court clarified the exact date of the legal termination of each class of NPC employees, thus:

From all these, it is clear that our ruling, pursuant to NPB Resolution No. 2002-124, covers all employees of the NPC and not only the 16 employees as contended by the NPC. However, as regards their right to reinstatement, or separation pay in lieu of reinstatement, pursuant to a validly approved Separation Program, plus backwages, wage adjustments, and other benefits, the same shall be computed from the date of legal termination as stated in NPC Circular No. 2003-09, to wit:

a) The legal termination of **key officials**, *i.e.*, the Corporate Secretary, Vice-Presidents and Senior Vice-Presidents who were appointed under NP Board Resolution No. 2003-12, shall be at the close of office hours of **January 31, 2003**.

b) The legal termination of personnel who availed of the **early leavers'**