

SECOND DIVISION

[G.R. No. 178913, February 12, 2009]

MANILA ELECTRIC COMPANY, PETITIONER, VS. HSING NAN TANNERY PHILS., INC., RESPONDENT.

D E C I S I O N

CARPIO MORALES, J.:

On October 8, 1999, employees of the Manila Electric Co. (MERALCO) conducted an inspection of the electric meters bearing serial numbers 91SA12293 and 91GDQ1476 installed in the office premises of Hsing Nan Tannery Phils., Inc. (respondent). The inspection was witnessed by respondent's representative. The MERALCO employees found that the active and reactive meters bore fake cover seals showing tampering, hence, the employees removed and replaced the meters with new ones and brought the replaced meters to the laboratory for testing. MERALCO thereafter issued a differential billing to respondent by demand letter dated November 17, 1999 and invited respondent to a conference which did not push through, however. MERALCO thus issued another demand letter dated February 15, 2000 to respondent.

On February 16, 2000, respondent filed with the Regional Trial Court (RTC) of Malolos, Bulacan a Complaint^[1] for damages with application for the issuance of a temporary restraining order and/or writ of preliminary injunction against MERALCO.

In its Complaint, respondent alleged that, *inter alia*, the assessment of electric consumption reflected in the differential billing "is not only unlawful and baseless, but arbitrary and despotic, because the same was based on mere assumption and conjecture"; and unless the notice of disconnection based on the unlawful differential billing is restrained, it would suffer irreparable damages and injury. Accordingly, respondent prayed for the award to it of P1,000,000 for actual damages and P200,000 for attorney's fees, plus costs of the suit.

Branch 83 of the Malolos RTC issued the temporary restraining order prayed for by respondent.

Justifying the inspection of respondent's premises which was witnessed by respondent's representative, MERALCO counterclaimed for the payment of P7,421,397.70 as differential billing, P200,000 for attorney's fees, and P200,000 for exemplary damages.

For failure of respondent to move for the setting of the case for pre-trial, Branch 83 of the Malolos RTC dismissed its complaint without prejudice, by Order^[2] dated December 18, 2000 reconsideration by respondent of which was denied.

MERALCO thus presented evidence on its counterclaims.

By Decision^[3] of November 7, 2003, the trial court held respondent liable for manipulating the electric meters and ordered it to pay the differential billing in the above-stated amount, and attorney's fees and exemplary damages in the amounts of P50,000 and P100,000, respectively, observing that as respondent benefited from consuming the electricity, it could not be allowed to unjustly enrich itself at MERALCO's expense.

Respondent appealed to the Court of Appeals, maintaining that it was denied due process when MERALCO disconnected its electrical supply and removed its meters.

By Decision^[4] of March 8, 2007, the appellate court reversed the trial court's Decision, finding that MERALCO failed to satisfactorily prove that it is entitled to its counterclaims.

In reversing the trial court's decision, the appellate court noted that only sample meters, and not the allegedly tampered meters, were presented during the trial to demonstrate the alleged manipulation of the meters.

The appellate court also noted that the inspection by MERALCO left much to be desired "in terms of transparency and fairness," as it was conducted in the absence of any officer of the law or a duly authorized representative of the Energy Regulatory Board (ERB), which is now Energy Regulatory Commission, whose presence and participation are required, to constitute *prima facie* presumption of illegal use of electricity under Sec. 4 of Republic Act No. 7832 or the "Anti-Pilferage of Electricity and Theft of Electric Transmission Lines/Materials Act of 1994."

Because of MERALCO's failure to observe the requirement of the law, the appellate court found the testimony of MERALCO's Polyphase Inspector, Emmanuel Bautista, on the alleged meter tampering, self-serving; and while the laboratory testing was alleged to have been made in the presence of one Engineer Albano as ERB representative, he was not presented in court to attest to the veracity thereof.

The appellate court added that while the inspection was consented to and witnessed by respondent's representative, Chito Bañez, MERALCO's findings were not necessarily accurate.

Its motion for reconsideration of the appellate court's Decision having been denied, MERALCO filed the present recourse.

MERALCO maintains that the inspection was proper and lawful and in accordance with the "Terms and Conditions of Service,"^[5] as approved by the Board of Energy in BOE Case No. 85-121, which governs its relationship with customers; and that under the said contract, its employees or representatives are permitted by its customers to enter the latter's premises in order to inspect, install, read, remove, test and replace its apparatus for any cause - acts which could be done without the presence of a police officer or ERB representative.

MERALCO adds that even if Sec. 4 of Republic Act No. 7832 is made applicable to the questioned inspection, the absence of a police officer or ERB representative does not *ipso facto* render the inspection illegal, for the provision only requires the