

THIRD DIVISION

[G.R. NO. 152769, February 14, 2007]

MANILA ELECTRIC COMPANY, PETITIONER, VS. MA. VICTORIA JOSE, RESPONDENT.

DECISION

AUSTRIA-MARTINEZ, J.:

Sought to be annulled in this Petition for Review on *Certiorari* under Rule 45 is the March 26, 2002 Decision^[1] of the Court of Appeals (CA) in CA-G.R. CV No. 63590^[2] which affirmed the June 1, 1999 Decision^[3] of the Regional Trial Court (RTC) in Civil Case No. Q-95-25685.

Ma. Victoria D. Jose (Victoria) has been a Manila Electric Company (MERALCO) customer since 1987 with Account No. 14419-2260-23, Meter No. 31D551-57, and service address at No. 26, 5th Street, Gilmore Ave., New Manila, Quezon City.^[4]

On July 14, 1995, Meralco Polyphase Inspector Santiago Inoferio (Inoferio) visited the residence of Victoria to conduct an inspection of Meter No. 31D551-57.^[5] After inspection, Inoferio issued a Service Inspection Report where he stated that "xxx further inspection shows burned out insulation of BCT* # 24921 xxx & its non-polarity terminal xxx."^[6] Inoferio recommended that Victoria's billing be adjusted and her record updated.

On October 3, 1995, Meralco issued to Victoria a differential adjustment billing for P232,385.20^[7] and attached to it the following explanation:

A review of your billing record of your electric service at the above address shows that ***the billing rendered from Jan. 29, 1993 to Jul. 04, 1995 were affected by the metering defects (burned out insulation of BCT) found and corrected on July. 14, 1995. This defect caused the meter not to register the correct KWH consumption, in particular, the KWH meter registered only 50% of the consumption.***

We have adjusted the affected bills by correcting the registration from 50% to 100% in order to account for the unbilled consumption.

The corrected bill less payment made for the affected period gives a difference of P232,385.20 and is therefore collectible from your account.

^[8] (Emphasis ours)

In a Letter dated October 27, 1995, Victoria requested Meralco to reconsider its finding on the ground that the defect was a fortuitous event and that it was due to the negligence of Meralco personnel that the defects were not earlier detected and repaired.^[9]

Meralco did not accede to her request but offered an installment payment scheme. It clarified that the differential billing was validly issued because "xxx the Polyphase Meter Test Report and Power Metering Field Order that we have furnished you on October 18, 1995 showed that the KWH meter registered only 50% of your consumption xxx."^[10]

Victoria refused to pay the billing adjustment. On November 21, 1995, she received from Meralco an Overdue Account Notice which read:

This friendly notice is to remind you that payment for your account has not been received. Please pay on or before the expiration date of this notice in order to avoid the inconvenience of disconnection of your service.^[11]

The expiration date was set on November 24, 1995.^[12]

This prompted Victoria to file with the RTC, Branch 223, Quezon City, a Complaint for Injunction with Damages and Writ of Preliminary Injunction and/or Temporary Restraining Order.^[13] After due hearing, the RTC issued a Temporary Restraining Order^[14] and a Writ of Preliminary Injunction^[15] on January 22, 1996.

After trial on the merits, on June 1, 1999, the RTC issued a Decision, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, judgment is hereby rendered for the plaintiff and against the defendant, ordering the defendant to:

1. Permanently desist from collecting the amount of P232,385.20 for the so called "unbilled consumption" from the plaintiff and to permanently desist from cutting off electric service from plaintiff's residence, permanently [sic] desist [sic].
2. Pay moral damages in the amount of P500,000.00; exemplary damages in the amount of P500,000.00; attorney's fees in the amount of P100,000.00; and
3. Pay the costs of the suit.

SO ORDERED.^[16]

Meralco filed an appeal to the CA which, in a Decision^[17] dated March 26, 2002, affirmed the RTC Decision.

Without filing a motion for reconsideration from the CA Decision, Meralco filed the present Petition, citing the following grounds:

A. The Court of Appeals committed grave abuse of discretion amounting to lack or in excess of jurisdiction in holding that petitioner is liable to pay respondent moral damages, exemplary damages, and attorney's fees.

B. The Court of Appeals committed grave abuse of discretion amounting to lack or in excess of jurisdiction in ruling that the petitioner is not entitled to recover the unregistered consumption arising from the defect in respondent's meter.
[18]

We shall resolve the second issue ahead of the first.

An injunctive writ issues only upon showing that: a) the applicant possesses a clear and unmistakable right; b) there is a material and substantial invasion of such right; and c) there is urgent and permanent necessity for an injunctive writ to prevent serious damage.^[19]

Meralco contends that the first element was not proven as Victoria lost her right to continued electric services when she refused to pay her differential billing of P232,385.20. Meralco claims that by such refusal to pay, Victoria violated her service contract under which she is liable for unregistered or unbilled electric consumption. It insists that Victoria's unbilled electric consumption amounted to P232,385.20^[20] because it was found that due to defects in Meter No. 31D551-57, only 50% of the latter's actual electric consumption was registered and billed.

On the other hand, Victoria maintains that she is entitled to uninterrupted electric service because she has been paying her monthly bills on time.^[21] She disclaims liability for any differential billing because it was never established that her electric meter was defective or that it failed to register her actual consumption.^[22]

Meralco's position is untenable.

The service contract between Meralco and Victoria stipulates that "xxx [in] the event of the stoppage or the failure by any meter to register the full amount of energy consumed, the Customer shall be billed for such period on an estimated consumption based upon his use of energy in a similar period of like use or the registration of a check meter."^[23] Under this provision, Victoria is liable for any differential billing that may be issued in case of failure of Meter No. 31D551-57 to register her actual electric consumption.

We have declared such provision to be valid and binding.^[24] Its rationale is to allow Meralco or any electric company a measure of self-preservation and protection in situations where the highly technical machinery, equipment and devices it utilizes in the operation of its business break down or become worn out that they fail to register the correct level of electric consumption and prevent the proper billing of their users.^[25]

However, the right of Meralco to collect on differential billings is not without limitation. Before it may exercise such right, Meralco must establish the factual basis for differential billing. Specifically, in this case, it must prove: a) that Meter No. 31D551-57 was defective; b) that, being defective, Meter No. 31D551-57 failed

to register the actual electric consumption of Victoria; and c) that Meralco was not negligent in the inspection and repair of said electric meter.

Agreeing with the RTC, the CA held that Meralco failed to prove the factual basis for charging Victoria a differential billing. The CA held:

But whether plaintiff-appellee is liable for her alleged unregistered consumption is entirely a different matter. We agree with the trial court that based on the evidence presented by both parties, the trial court found that there is no significant difference in the energy consumed by the plaintiff-before the so-called defective period (January 29, 1993 to July 4, 1995) and the defective period itself. The court said:

First, there was no proven dramatic increase nor decrease between the KWH consumption of the plaintiff before January 29, 1993 and July 4, 1995. While defendant claims that subsequent laboratory testing done on the meter revealed that the meter did not register the correct KWH consumption, this cannot stand alone to convince the Court on the propriety of a 50% differential billing upon plaintiff, there being a disturbing fact that "no dramatic increase or decrease of KWH consumption" was reflected on plaintiff's electric billing after the alleged defective meter was replaced, this fact having been confirmed by defendant's witness Roberto Salas upon cross-examination, to wit:

Q: Just to make it clear so we will not be confused, Mr. Witness. This Exhibit AA-1 is a part of the period during which the brushing transformer of Mrs. Jose which is alleged found to be defective by you company and AA-2 is the period during which no defect found by your company. Now, can you please tell this Honorable Court whether or not you see any dramatic increase in the kilowatt consumption between thiss AA-1 and AA-2, by dramatic I mean a 50% increase and decrease?

Court: AA-1 that is prior to January 29, 1995?

Atty. Sugayan: This is supposedly "defective period". Exhibit AA-2 is the period prior to the "defective period".

Witness: I can see no sudden increase or sudden drop in kilowatt consumption.

Court: Well, can you clarify Mr. Witness because the counsel is asking you what is the difference.

Atty. Sugayan: If there is a dramatic increase or decrease.

Court: Between AA-1 which is found to be alleged