

SECOND DIVISION

[G.R. NO. 145399, March 17, 2006]

**MANILA ELECTRIC COMPANY (MERALCO), PETITIONER, VS.
ENERGY REGULATORY BOARD (ERB), AND EDGAR L. TI, DOING
BUSINESS UNDER THE NAME AND STYLE OF ELT ENTERPRISE,
RESPONDENTS**

D E C I S I O N

GARCIA, J.:

Before us is this petition for review on certiorari to annul and set aside the decision^[1] dated September 22, 2000 of the Court of Appeals (CA) in *CA G.R. SP No. 56946*, which effectively affirmed the Orders of the Energy Regulatory Board^[2] (ERB) dated October 22, 1999 and December 27, 1999 in *ERB Case No. 99-67*.

The assailed CA decision upheld public respondent ERB's exercise of jurisdiction over cases involving complaints for reconnection of electric service cut-off for alleged violation of Republic Act (R.A.) No. 7832, otherwise known as the "Anti-electricity and Electric Transmission Lines/Materials Pilferage Act of 1994," as well as ERB's authority to issue a provisional order of reconnection.

The factual background:

On October 18, 1999, herein private respondent Edgar L. Ti, doing business under the name and style *ELT Enterprise*, filed a verified complaint^[3] before the ERB against petitioner Manila Electric Company (MERALCO). In it, Ti alleged inter alia that MERALCO unlawfully disconnected partially the electric service in his business establishment located at Little Baguio, San Juan, Metro Manila and seized three (3) of his electric meters on mere suspicion of meter tampering. Aggravating the situation, Ti adds, was the fact that the notice of disconnection was served at night, while the actual disconnection was not done in the presence of the owner of ELT Enterprise or his representative. The unauthorized disconnection, Ti claimed, has caused him great damage which, if not immediately addressed, would result to irreparable injury. He thus prayed that pending hearing of his complaint, docketed as *ERB Case No. 99-67*, electric service be restored in his establishment.

In an **Order dated October 22, 1999**,^[4] the ERB, by way of provisional relief, ordered the desired reconnection of electric service and, at the same, directed MERALCO to submit its comment on the complaint.

On October 29, 1999, MERALCO moved for a reconsideration of the aforementioned provisional reconnection order, alleging that an inspection conducted by its service inspectors accompanied by elements of the Philippine National Police found Ti to have tampered three (3) electric meters installed in his business premises by manipulating the dial pointers thereof. The fraudulent act of Ti, according to

MERALCO, constituted a violation of R.A. No. 7832 legally warranting the immediate disconnection of the electric supply on his establishment, as provided under Section 4^[5] in relation to Section 6^[6] thereof. MERALCO further argued that the ERB is without jurisdiction to issue a provisional relief and order the restoration of electric service, that authority being vested only on regular courts.

On the same day, MERALCO instituted a criminal complaint against Ti for violation of R. A. No. 7832 before the Prosecutor's Office of Rizal. The criminal complaint appears to be still pending resolution.

On November 11, 1999, MERALCO filed its comment^[7] to Ti's complaint in ERB Case No. 99-67 and there moved for the dismissal thereof on the ground of lack of jurisdiction.

On **December 27, 1999**, the ERB issued an Order^[8] denying MERALCO's motion for reconsideration, thereby virtually reiterating the reconnection directive contained in its earlier Order of October 22, 1999.^[9] Partly wrote the ERB in its December 27, 1999 Order:

[Petitioner MERALCO's] contention that this Board has no jurisdiction over the subject matter of the instant complaint, which is the restoration of the partial shutdown of the electric service to complainant's building, cannot be upheld. The law gives consumers who have a cause of grievance against any public utility, such as herein [petitioner] MERALCO, a complete, speedy and adequate remedy. That is the purpose of Commonwealth Act No. 146, as amended, creating the Public Service Commission, this Board's predecessor office, and prescribing its duties and powers, and the reason why it was enacted^[10] (Words in bracket added.)

Dissatisfied, MERALCO went to the CA on a petition for certiorari, thereat docketed as CA-G.R. SP No. 56946, assailing as having been issued without jurisdiction or with grave abuse of discretion, the ERB's orders dated October 22, 1999 and December 27, 1999.

Eventually, the CA, in a Decision dated September 22, 2000,^[11] veritably rejected MERALCO's imputation of lack of jurisdiction or grave abuse of discretion on the part of the ERB and, accordingly, affirmed the latter's twin assailed orders and dismissed MERALCO's recourse thereto. Partly says the CA in its decision:

The agency charged with regulatory and adjudicatory functions covering the energy sector is the Energy Regulatory Board created under E.O. No. 172 dated May 8, 1987. The nucleus of the ERB was the Board of Energy established by P.D. No. 1206 dated October 6, 1977, which had the power to regulate and fix power rates to be charged by electric companies and to issue certificates of public convenience for the operation of electric power utilities and services. ^[12]

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xxx. E.O. No. 172, dated June 5, 1987, saw the further need to create an

independent body which gave birth to the present ERB. The aim of course is to achieve a more coherent and effective policy formulation, coordination, implementation and monitoring within the energy sector, and to consolidate in one body all the regulatory and adjudicatory functions covering the energy sector.^[13]

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There should be no debate then about ERB's possessing jurisdiction to regulate and adjudicate matters relating to its functions as highlighted above. The law clearly affords any customer, like private respondent, a plain, complete and adequate remedy for any grievance against a public utility, and the ERB not only has the right, but the duty as well, to grant relief in proper cases. Relevant provisions of the Public Service Act have been substantially carried over in statutes creating independent specialized agencies, like ERB, with regulatory and adjudicatory powers.^[14]

Hence, petitioner MERALCO's present recourse, on the following grounds:

A.

THE CONCLUSION OF THE [CA] THAT THE PUBLIC RESPONDENT HAS JURISDICTION TO HEAR CONTROVERSIES BETWEEN PRIVATE RESPONDENT AND PETITIONER ARISING FROM VIOLATION OF THE SERVICE CONTRACT AND CASES FALLING UNDER R.A. 7832 IS CONTRARY TO EXISTING LAW.

B.

THE [CA] ERRONEOUSLY CONCLUDED THAT PUBLIC RESPONDENT HAS AUTHORITY TO ISSUE PROVISIONAL REMEDY IN THE NATURE OF WRIT OF PRELIMINARY MANDATORY INJUNCTION. ASSUMING ARGUENDO THAT IT HAS THE POWER, IT VIOLATED R.A. 7832 WHEN IT ORDERED THE RECONNECTION OF SERVICE WITHOUT THE REQUISITE BOND.^[15]

The pivotal issue before the Court turns on whether or not public respondent ERB has jurisdiction to order the reconnection of electric service in cases arising from alleged violation of R. A. No. 7832.

Petitioner MERALCO urges the resolution of the issue in the negative on the rationale that there is no provision in *Executive Order (E.O.) No. 172*, series of 1987, the ERB charter, granting that agency adjudicative jurisdiction over violations of R. A. No. 7832, let alone order the restoration of a disconnected electric service. Such jurisdiction, as petitioner insisted all along, is vested with the regular courts.

The Court disagrees.

Jurisdiction is conferred by law.^[16] Corollary to this basic postulate is the general rule that the jurisdiction of a court or tribunal over the subject matter is determined by the allegations in the complaint^[17] or petition and not in those of the defendant's answer or similar responsive pleading.

To determine the ERB's jurisdiction, a look at the legislative history of the regulatory agencies preceding it is apropos. These agencies and the corresponding statute or issuance creating each are as indicated below:

1. The first regulatory body, the **Board of Rate Regulation (BRR)**, was created by virtue of **Act No. 1779**.^[18] Its regulatory mandate under Section 5 of the law was limited to fixing or regulating rates of every public service corporation.
2. In **1913, Act No. 2307**^[19] created the **Board of Public Utility Commissioners (BPUC)** to take over the functions of the BRR. By express provision of Act No. 2307, the BPUC was vested with jurisdiction, supervision and control over all public utilities and their properties and franchises.
3. On **November 7, 1936, Commonwealth Act (C.A.) No. 146, or the Public Service Act (PSA)**, was passed creating the **Public Service Commission (PSC)** to replace the BPUC. Like the BPUC, the PSC was expressly granted jurisdiction, supervision and control over public services, with the concomitant authority of calling on the public force to exercise its power, to wit:

SEC. 13. Except as otherwise provided herein, the Commission shall have general supervision and regulation of, **jurisdiction and control over, all public utilities,** and also over their property, property rights, equipment, facilities and franchises so far as may be necessary for the purpose of carrying out the provisions of this Act, and in the exercise of its authority it shall have the necessary powers and the aid of the public force xxx xxx xxx. (Emphasis supplied)

Section 14 of C.A. No. 146 defines the term "*public service*" or "*public utility*" as including "every individual, copartnership, association, corporation or joint-stock company, . . . that now or hereafter may own, operate, manage or control within the Philippines, for hire or compensation, any common carrier, xxx xxx, **electric light, heat, power, xxx xxx, when owned, operated and managed for public use or service** within the Philippines xxx xxx." Under the succeeding Section 17(a), the PSC has the power even without prior hearing —

(a) To investigate, upon its own initiative, or upon complaint in writing, any matter concerning any public service as regards matters under its jurisdiction; to require any public service to furnish safe, adequate and proper service as the public interest may require and warrant, to enforce compliance with any standard, rule, regulation, order or other requirement of this Act or of the Commission, xxx.

4. Then came **Presidential Decree (P.D.) No. 1**,^[20] reorganizing the national government and implementing the **Integrated Reorganization Plan**. Under the reorganization plan, jurisdiction, supervision and control over public services related to electric light, and power heretofore vested in the PSC were transferred to the **Board of Power and Waterworks (BOPW)**.

Later, **P.D. No. 1206**^[21] abolished the BOPW. Its powers and function relative to power utilities, including its authority to grant provisional relief,^[22] were transferred to the newly-created **Board of Energy (BOE)**.

5. On May 8, 1987, then President Corazon C. Aquino issued **E.O. No. 172** reconstituting the **BOE** into the ERB, transferring the former's functions and powers under P.D. No. 1206 to the latter^[23] and consolidating in and entrusting on the ERB "*all the regulatory and adjudicatory functions covering the energy sector.*"^[24] Section 14 of E.O. No. 172 states that "(T)he applicable provisions of [C.A.] No. 146, as amended, otherwise known as the "Public Service Act"; xxx and [P.D.] No. 1206, as amended, creating the Department of Energy, shall continue to have full force and effect, except insofar as inconsistent with this Order."^[25]

Given the foregoing consideration, it is valid to say that certain provisions of the PSA (C.A. No. 146, as amended) have been carried over in the executive order, *i.e.*, E.O. No. 172, creating the ERB. Foremost of these relate to the transfer to the ERB of the jurisdiction and control heretofore pertaining to and exercised by the PSC over electric, light and power corporations owned, operated and/or managed for public use or service. And as Section 17(a) of C.A. No. 146, as amended, *supra*, provides, this jurisdiction and control includes the power to investigate any matter concerning any public service and to require any public utility or public service corporation to furnish adequate and proper service. Any suggestion that the transfer of PSC's functions and powers to the ERB is inconsistent with E.O. No. 172 must be rejected, the principal objective of the said issuance being precisely to reinforce the powers of the ERB as the sole regulatory body over the energy sector.^[26]

Needless to stress, petitioner MERALCO, being an electric service provider, is under the regulatory jurisdiction and supervision of the ERB.

What remains to be determined then is whether or not, based on the allegations in private respondent Ti's complaint in *ERB Case No. 99-67*, the ERB's jurisdiction, supervision and/or control over petitioner MERALCO is/are duly invoked.

The pertinent allegations in the complaint are, as follows:

3. [Respondent Ti] is the owner of ELT Center ... a consumer of electric light and power for its 8-storey building supplied by [Meralco] ... since his operation in October 1998 to the present.
4. That ... [Meralco] through its authorized inspectors, agents or representatives swooped down on ...the ELT Building and proceeded by force, ... to disconnect the electric service of [respondent Ti] and in the process seized three (3) electric meters The claim of the raiding team that the tampering on the electric meters confiscated was done "n flagrante delicto" is a pure fabrication without any factual basis. This unfortunate incident occurred on October 13 and