

EN BANC

[G.R. NO. 157492, March 10, 2006]

NAPOCOR EMPLOYEES CONSOLIDATED UNION (NECU), REPRESENTED BY ITS PRESIDENT, ABNER P. ELERIA, WHO IS ALSO SUING IN HIS PERSONAL CAPACITY; NPC RETIREES, REPRESENTED BY THEIR ATTORNEYS-IN-FACT, JAIME B. ENRIQUEZ AND ZENAIDA N. ATIENZA WHO ARE ALSO SUING IN THEIR PERSONAL CAPACITIES; AND OTHER SIMILARLY SITUATED NPC EMPLOYEES AND RETIREES, PETITIONERS, VS. THE NATIONAL POWER CORPORATION (NPC); THE NATIONAL POWER BOARD OF DIRECTORS (NPB): CHAIRMAN, JOSE ISIDRO N. CAMACHO, AND MEMBERS VINCENT S. PEREZ, JR., EMILIA T. BONCODIN, LUIS P. LORENZO, ROMULO L. NERI, ELISEA G. GOZUN, JOSE D. LINA, JR., MANUEL A. ROXAS AND ROGELIO M. MURGA; AND NIEVES L. OSORIO, GIL P. MONTALBO, JOCELYN I. BOLANTE, MARIUS P. CORPUS, RUBEN S. REINOSO, GREGORY L. DOMINGO, REPRESENTATIVES/ DELEGATEES TO THE NPB, RESPONDENTS.

D E C I S I O N

GARCIA, J.

In this original special civil action for *Mandamus With Damages*, petitioners urge the Court to issue a writ of mandamus commanding the respondents, their successors-in-interest, assigns, agents and representatives, to remit to the Welfare Fund of respondent National Power Corporation (NPC) the 10% employer's contribution by way of **employees' welfare allowance**, as allegedly mandated under Board Resolution No. 78-119, dated September 26, 1978, of the NPC Board of Directors.

The factual backdrop:

Under Republic Act No. 6395, *An Act Revising the Charter of the National Power Corporation*, the National Power Board of Directors (NPB), as the policy-making body of the state-owned power generating company, is given the power, upon recommendation of the NPC General Manager and subject to existing laws, rules and regulations, to fix the salaries, allowances and benefits of NPC personnel.^[1]

At the time this petition was filed, the NPB is composed of the following respondents, most of whom were then department secretaries, to wit:

Jose Isidro N. Camacho, Department of Finance, Chairman;

Members:

Vincent S. Perez, Jr.

Department of Energy;

Emilia T. Boncodin	Department of Budget and Management;
Luis P. Lorenzo	Department of Agriculture;
Romulo L. Neri	National Economic Development Authority;
Elisea G. Gozun	Department of Environment and Environmental Resources;
Jose D. Lina	Department of Interior and Local Government;
Manuel A. Roxas	Department of Trade and Industry; and
Rogelio M. Murga	NPC President.

Respondents Nieves Osorio, Gil Montalbo, Jocelyn Bolante, Marius Corpus, Ruben Reinoso and Gregory Domingo are representatives of the above-named department secretaries to the NPB.

On September 26, 1978, respondent NPB passed Board Resolution No. 78-119^[2], approving the grant to NPC employees of a **monthly welfare allowance** equivalent to ten percent (10%) of their basic pay. In full, Board Resolution No. 78-119 reads:

RESOLVED, That the proposed grant of a monthly welfare allowance equivalent to 10% of the employee's basic pay to all NPC employees and personnel of the Office of the Auditor, NPC, effective October 1, 1978, is hereby approved;

RESOLVED FURTHER, That the amount of P2,150,000.00 needed to meet payment of the monthly welfare allowance up the end of the current calendar year, is hereby provided by transfer of the Car Plan revolving fund as of September 30, 1978, and the deficiency to be charged against Contingencies and other Expenditures;

RESOLVED FINALLY, That the above-approved monthly welfare allowance shall constitute the fund for the EMPLOYEES' SAVINGS AND WELFARE PLAN which is hereby established effective October 1, 1978, and shall be operated subject to the provisions of the RULES AND REGULATIONS GOVERNING THE NATIONAL POWER CORPORATION EMPLOYEES' SAVINGS AND WELFARE PLAN, xxx.

Pursuant thereto, respondent NPC remitted the employee welfare allowance to the Fund established therefor, the **NPC Employees' Welfare Fund**.

On July 26, 1982, respondent NPB passed Board Resolution No. 82-172^[3], increasing personnel compensation and providing that 5% of the adjusted basic pay

of the employees be contributed to the NPC Employees' Welfare Fund. We quote the pertinent portions of Board Resolution No. 82-172:

RESOLVED, That pursuant to the provisions of Executive Order No. 698 and LOImp No. 97, the implementation of the following increases in personnel compensation effective July 1, 1982:

- a. Two (2) salary steps in the approved salary schedule or equivalent to approximately 10% for those receiving above P8,400.00 per annum, and three (3) salary steps in the approved salary schedule or equivalent to 15% for those receiving P8,400.00 per annum and below;
- b. 5% increase in Cost of Living Allowance (COLA) from the present 30% of basic pay or P300.00 whichever is higher, to 35% of the basic pay or P300.00, whichever is higher; and
- c. 5% of basic pay as Social Amelioration Allowance (SAA),

is hereby authorized: Provided, That 5% of the adjusted basic pay of the employees shall be contributed to the Employees' Welfare Fund to improve the Fund's capacity to extend assistance facilities to its members;

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The NPC Employees' Welfare Fund is thus composed of two components, to wit: (i) the NPC share (equivalent to 10% of the employee's basic pay); and (ii) the employee share (equivalent to 5% of his adjusted pay).

Then, on July 1, 1989, **Republic Act No. 6758**, also known as the *Compensation and Position Classification Act of 1989* or the *Salary Standardization Law*, took effect. Aimed at rationalizing the compensation of government employees, Section 12 of the law provides for the consolidation of allowances into the standardized salary rates of government employees, with certain exceptions. On the same day — July 1, 1989 — respondent NPC stopped remitting its employer's contribution to the NPC Employees' Welfare Fund.

On October 2, 1989, the Department of Budget and Management (DBM), by way of implementing Rep. Act No. 6758, issued *DBM Corporate Compensation Circular No. 10*^[4] (**DBM-CCC No. 10**), thereunder providing that payment by government corporations of discontinued allowances effective November 1, 1989 "*shall be considered as illegal disbursement of public funds*". Addressed to all heads of government-owned and/or controlled corporations and financial institutions and all others concerned, the Circular pertinently reads:

5.8 Payment of other allowances/fringe benefits and all other forms of compensation granted on top of basic salary, whether in cash or in kind, xxx shall be discontinued effective November 1, 1989. Payment made for such allowances/fringe benefits after said date shall be considered as illegal disbursement of public funds.

On April 5, 1993, Republic Act No. 7648, also known as the *Electric Power Crisis Act of 1993*, took effect. Among other things, this law authorizes the President of the Philippines to reorganize NPC to make it more effective, innovative and responsive

to the power crisis (Sec. 5) and to upgrade the compensation of NPC personnel at rates comparable to those prevailing in privately-owned power utilities (Sec. 6). Pursuant thereto, the President issued Memorandum Order No. 198,^[5] outlining the NPC Compensation Plan.^[6]

Subsequently, pursuant to NBP Board Resolutions Nos. 95-08^[7] and 95-52^[8] dated January 6 and March 23, 1995, respectively, respondent NPC issued Circular No. 95-19^[9] dated March 23, 1995, directing the **resumption** of the payment by NPC to the NPC Employees' Welfare Fund of its employer's share equivalent to 10% of an employee's basic salary as of January 1, 1995. Paragraph 3.1 of NPC Circular No. 95-19 reads:

3.1 Welfare Fund. The Corporation shall resume payment to the Welfare Fund of employer's share equivalent to 10% of the basic salary as of 01 January 1995 of officials and employees. In turn, employees qualified to Welfare Fund membership shall contribute to the Fund an amount equivalent to 5% of their basic salary.

In 1998, this Court, in *De Jesus vs. Commission on Audit*,^[10] declared DBM-CCC No. 10, supra, as without force and effect on account of its non-publication in the Official Gazette or in a newspaper of general circulation, as required by law.

In 1999, DBM re-issued its DBM-CCC No. 10 in its entirety and submitted for publication in the Official Gazette.

On March 13, 2001, Atty. Victoriano Orocio, on behalf of NPC retirees, sent a letter^[11] to then NPC President Jesus Alcorido demanding the payment by NPC of its employer's share to the NPC Employees' Welfare Fund for the **period from July 1, 1989 to December 31, 1994**. Portions of the letter read:

As DBM CCC No. 10 is null and void ab initio, it could not have produced any legal effect, i.e. discontinuance of the 10% Employer Contribution to the NPC Welfare Fund. Consequently, said discontinuance is illegal and null and void ab initio.

In the light of the foregoing, it is crystal clear that aforementioned NPC retirees are legally entitled to the payment of the 10% NPC (Employer) Contribution to the NPC Welfare Fund (equivalent to 10% of their basic salaries) which were withheld/discontinued starting July 1, 1989 up to December 31, 1994, while they were still connected with NPC and prior to their retirement. As the said NPC retirees are legally entitled to the 10% employees' contribution since July 1, 1989, it is just and warranted that they should also be entitled to the payment of interests thereon (12% annual interests for forbearance of money) for the period July 1, 1989 to December 31, 1994. Consequently, formal demand is made upon your Good Office for the payment of the aforementioned amounts illegally withheld from said NPC retirees.

This formal demand is being made in the spirit of the "Principle of exhaustion of administrative remedies" in order to obviate the need of undertaking court action in order to enforce their rights. Should your

Good Office desire to have a dialogue on this matter in order to arrive at an amicable out-of-court settlement thereof, the undersigned is more than willing to meet with you at a time and place of your convenience within five (5) days from receipt hereof. Otherwise, should this lawful demand remain unheeded, we shall be constrained, much to our regrets, to institute the corresponding legal actions in court.

Respondent NPC refused to act favorably on the retirees' claim.

On August 8, 2001, petitioner Napocor Employees Consolidated Union (NECU), represented by its president, petitioner Abner Eleria, wrote NPC President Jesus Alcorido informing the latter that NECU fully supports the claim of NPC retirees^[12].

When asked by then Senior Deputy Executive Secretary Waldo Flores to comment on the claim of NPC retirees, DBM Secretary Emilia Boncodin, *via* a reply-letter dated January 24, 2002^[13], pointed out that despite this Court's ruling in *De Jesus vs. Commission on Audit*, *supra*, declaring DBM-CCC No. 10 as without force and effect for non-publication in the Official Gazette, Section 12 of Rep. Act No. 6758 can still be implemented. Partly says Secretary Boncodin in her reply-letter:

xxx With the integration of the employee welfare allowance into the basic salary, NPC as employer no longer need to provide for the counterpart fund to the employee welfare fund which for all intents and purposes had been dissolved. There is, therefore, no legal basis for the NPC to grant the claim of NPC retirees for the period July 1, 1989 to December 31, 1994.

Petitioners, noting that respondents continue to refuse to comply with the latter's alleged duty to remit to the NPC Employees' Welfare Fund the NPC's counterpart thereon, as allegedly mandated under NPB Board Resolution No. 78-119, now come to this Court via this direct action for mandamus. The grounds:

1. Respondents have unlawfully neglected the performance of an act that the law specifically enjoins as their duty resulting from their office or station;
2. Respondents have unlawfully excluded petitioners from the use and enjoyment of a right to which they are lawfully entitled; and
3. There is no other plain, speedy and adequate remedy in the course of law.^[14]

Petitioners maintain respondent NPC reneged on its duty under its Revised Charter (Rep. Act No. 6395) when it stopped, without lawful reason, its contribution to the NPC Employees' Welfare Fund as mandated in NPB Board Resolution No. 78-119. Petitioners reiterate their demand for the payment by respondent NPC of its share to the NPC Employees' Welfare Fund for the period July 1, 1989 to December 31, 1994.

To petitioners, respondent NPC stopped the grant of employee welfare allowance in obedience to DBM-CCC No. 10. *Ergo*, since said circular did not legally take effect per the Court's decision in *De Jesus, supra*, NPC's rationale had lost its validity. Upon this premise, petitioners submit that respondent NPC is bound to comply with its obligation under NPB Resolution No. 78-119 by returning the employee welfare allowance due the petitioners for the period July 1, 1989 to December 31, 1994.