

## THIRD DIVISION

[ G.R. NO. 161893, June 27, 2006 ]

**MANILA ELECTRIC COMPANY, PETITIONER, VS. HON. LORNA NAVARRO-DOMINGO, IN HER CAPACITY AS THE PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 201, LAS PIÑAS, AND CARMENCITA B. LOTA, RESPONDENT.**

### DECISION

**CARPIO MORALES, J.:**

The present petition for certiorari under Rule 65 of the 1997 Revised Rules of Civil Procedure assails the Order<sup>[1]</sup> dated December 22, 2003 issued by public respondent, Presiding Judge of the Regional Trial Court (RTC), Branch 201, Las Piñas City, directing, on the application of private respondent, Carmencita B. Lota (Carmencita), the issuance of a writ of preliminary injunction in Civil Case No. LP-03-0260, and the Order<sup>[2]</sup> dated January 28, 2004 denying the motion for reconsideration of the first order.

On November 10, 2003, at about 11:00 o'clock in the morning,<sup>[3]</sup> service inspectors of the Manila Electric Company (MERALCO) conducted an inspection of Carmencita's electric metering installation at her residence and found therein a two-line "jumper" using a stolen meter. After taking photographs of the "jumper,"<sup>[4]</sup> it was confiscated.

At about 2:00 o'clock in the afternoon of the same day, MERALCO's field personnel Renner N. Musngi (Musngi) and M. Almeda III (Almeda), together with an unidentified companion, returned to Carmencita's house and served a Notice of Disconnection and Meter Facilities Inspection Report upon her son Raymond Lota.<sup>[5]</sup>

By MERALCO's claim, the illegal installation entailed losses to it in the amount of P1,302,239.25 representing unregistered electric consumption for a 3-year period from November 28, 2000 to November 10, 2003 for which it required Carmencita to pay.<sup>[6]</sup>

Carmencita refused to settle the bill, however, hence, MERALCO refused to reconnect her service line.

Carmencita thus filed before the RTC of Las Piñas a Complaint,<sup>[7]</sup> which was later amended,<sup>[8]</sup> for reconnection of electric service line with prayer for preliminary mandatory injunction and damages, docketed as Civil Case No. LP-03-0260 (the case) and raffled to Branch 201 presided by public respondent.

On Carmencita's motion, a hearing on her prayer for the issuance of a writ of preliminary mandatory injunction was conducted following which public respondent

issued **an order dated December 22, 2003** directing the issuance of a "Writ of Injunction." MERALCO moved to reconsider this order which public respondent denied, by the **other assailed order of January 28, 2004.**<sup>[9]</sup>

It appears, however, that public respondent had earlier *motu proprio* set aside the December 22, 2003 Order, by Order of January 9, 2004 reading:

Manifestation having filed by plaintiff through counsel alleging that a **Writ of Preliminary Mandatory Injunction** be issued the Order dated December 22, 2003 is hereby set aside.

Considering that the plaintiff has showed sufficient reasons alleged in the complaint and the affidavit of plaintiff as well as the evidence presented during the hearing of this case that a **Writ of Preliminary Injunction** should issue, the plaintiff is hereby required to post a bond as required by law in the sum of TEN THOUSAND (P10,000.00) PESOS, Philippine Currency for approval of the Court within five (5) days from receipt hereof.

SO ORDERED.<sup>[10]</sup> (Emphasis and underscoring supplied)

The immediately above-quoted Order of January 9, 2004 (first order) was likewise set aside by public respondent by Order also of January 9, 2004 (second order) reading:

Under consideration is the Manifestation by plaintiff through counsel alleging that a Writ of Preliminary Mandatory Injunction be issued and finding the same to be well taken, the **Orders dated December 22, 2003 and January 9, 2004 is (sic) hereby set aside.**

It appearing, further that the plaintiff has showed sufficient reasons alleged in the complaint and the affidavit of plaintiff as well as the evidence presented during the hearing of this case that a **Writ of Preliminary Mandatory Injunction** should issue, the plaintiff is hereby required to post a bond as required by law in the sum of TEN THOUSAND (P10,000.00) PESOS, Philippine Currency for approval of the Court within five (5) days from receipt hereof.

SO ORDERED.<sup>[11]</sup> (Emphasis and underscoring supplied)

Public respondent explains that she set aside the Order of December 22, 2003 and the first Order of January 9, 2004 to incorporate, in her second January 9, 2004 Order (second paragraph thereof), the word "mandatory," Carmencita having prayed for the reconnection, not prohibition of the disconnection, of her electric service line.<sup>[12]</sup>

Carmencita soon posted a bond in the amount of P10,000, and a Writ of Preliminary Mandatory Injunction<sup>[13]</sup> was issued on February 5, 2004 by public respondent, ordering the therein defendants MERALCO, Almeda, Musngi and John Does to immediately reconnect Carmencita's electric line/services and refrain from committing further acts of disconnection.

Hence, the present petition for certiorari of MERALCO.<sup>[14]</sup>

MERALCO (hereafter referred to as petitioner) posits that public respondent acted with grave abuse of discretion

I

. . . IN ISSUING THE WRIT OF PRELIMINARY INJUNCTION IN THE ABSENCE OF BAD FAITH ON THE PART OF THE PETITIONER IN EXERCISING ITS RIGHT UNDER THE LAW; [AND]

II

. . . IN REQUIRING THE PRIVATE RESPONDENTS TO POST AN INJUNCTION BOND NOT IN THE AMOUNT OF THE DIFFERENTIAL BILLING BEING CLAIMED BY THE PETITIONER AS REQUIRED BY RA 7832.<sup>[15]</sup>  
(Underscoring supplied)

Petitioner argues that the inspection conducted on November 10, 2003 which resulted in the discovery of the illegal electrical connection, as well as the disconnection of the electric service, was done in full compliance with the requirements of Republic Act No. 7832, "ANTI-ELECTRICITY AND ELECTRIC TRANSMISSION LINES/MATERIALS PILFERAGE ACT OF 1994" – in the presence of a police officer, with notice of disconnection, albeit after the act, duly served on Carmencita's representative containing its findings and differential billing.<sup>[16]</sup> It further argues that the said law allows "automatic" disconnection by the electric utility in case of illegal use of electricity.<sup>[17]</sup>

Petitioner furthermore argues that public respondent gravely abused her discretion amounting to lack or excess of jurisdiction when she fixed the injunction bond in the amount of P10,000 only, instead of P1,302,239.25, as under the law, the bond should be equal to the differential billing, penalties and other charges.<sup>[18]</sup>

Carmencita, on the other hand, contends that the petition is moot because the assailed December 22, 2003 Order directing the issuance of a "Writ of Injunction" had been set aside by public respondent by Order of January 9, 2004.

Petitioner counters, however, that public respondent merely reproduced, in its Order of January 9, 2004 (second), not set aside, its Order dated December 22, 2003 granting Carmencita's application for the issuance of a writ of preliminary injunction.

The record fails to show, and there is no word from the parties, that the Writ of Preliminary Mandatory Injunction eventually issued by public respondent had been implemented.

While the assailed December 22, 2003 Order was indeed set aside, it was reissued, by the first and second January 9, 2004 Orders, with the intercalation of the word "mandatory" in the first and second paragraphs of these January 9, 2004 Orders, respectively.

The decision of the present petition thus hinges on the propriety of the issuance of the Order directing the issuance of the Writ of Preliminary Mandatory Injunction requiring petitioner to reconnect Carmencita's electric service, conditioned upon her posting of a P10,000 bond.

Section 9 of Republic Act No. 7832 provides:

SECTION 9. *Restriction on the Issuance of Restraining Orders or Writs of Injunction.* – No writ of injunction or restraining order shall be issued by any court against any private electric utility or rural electric cooperative exercising the right and authority to disconnect electric service as provided in this Act, **unless there is *prima facie* evidence that the disconnection was made with evident bad faith or grave abuse of authority.** (Emphasis and underscoring supplied)

Unless, therefore, there is *prima facie* evidence that the disconnection of electric service was made with evident bad faith or grave abuse of authority, a writ of injunction or restraining order may not issue against any private electric utility or rural electric cooperative exercising the right and authority to disconnect such service.

By petitioner's witness Almeda's own admission,<sup>[19]</sup> however, the Notice of Disconnection was served on her son three hours after the disconnection of Carmencita's electric service. Evidently, the prior notice requirement under the law was violated. This *prima facie* evinces bad faith or grave abuse of authority on the part of petitioner which sufficed as basis for the grant of the order for the issuance of the Writ of Preliminary Mandatory Injunction.

The requirement of prior notice before disconnection of electric service is not a futile expletive in the law. In fact, even if there is *prima facie* evidence of illegal use of electricity and immediate disconnection is warranted under the circumstances, prior notice is still required as mandated under Section 4 of R.A. 7832 which reads:

SECTION 4. *Prima Facie Evidence.* — (a) The presence of any of the following circumstances shall constitute *prima facie* evidence of illegal use of electricity, as defined in this Act, by the person benefitted thereby, and shall be the basis for: (1) **the immediate disconnection by the electric utility to such person after due notice**, (2) the holding of a preliminary investigation by the prosecutor and the subsequent filing in court of the pertinent information, and (3) the lifting of any temporary restraining order or injunction which may have been issued against a private electric utility or rural electric cooperative:

x x x x

(v) The presence in any part of the building or its premises which is subject to the control of the consumer or on the electric meter, of a current reversing transformer, **jumper**, shorting and/or shunting wire, and/or loop connection or any other similar device;

x x x x (Emphasis and underscoring supplied)