SECOND DIVISION

[G.R. No. 135925, December 22, 2004]

BATELEC II ELECTRIC COOPERATIVE INC., PETITIONER, VS. ENERGY INDUSTRY ADMINISTRATION BUREAU (EIAB), PUYAT STEEL CORP. AND NATIONAL POWER CORPORATION, RESPONDENTS.

D E C I S I O N

CHICO-NAZARIO, J.:

> *...Exclusivity is given by law with the understanding that the company enjoying it is self-sufficient and capable of supplying the needed service or product at moderate or reasonable prices. It would be against public interest where the firm granted a monopoly is merely an unnecessary conduit of electric power, jacking up prices as a superfluous middleman or an inefficient producer which cannot supply cheap electricity to power intensive industries. It is in the public interest when industries dependent on heavy use of electricity are given reliable and direct power at the lower costs thus enabling the sale of nationally marketed products at prices within the reach of the masses.*[1]

Impugned, in this petition for review, is the decision[2] dated 25 June 1998 of the Court of Appeals in CA-G.R. SP No. 47880 dismissing the special civil action for *certiorari* filed by petitioner Batangas II Electric Cooperative, Inc. (BATELEC II), questioning the resolution of the Energy Industry Administration Bureau (Bureau) of the Department of Energy which granted the application of private respondent Puyat Steel Corporation (PSC) for direct power connection with the National Power Corporation (NPC). Petitioner likewise assails the Court of Appeals resolution[3] dated 13 October 1998 denying the motion for reconsideration filed by BATELEC II.

The particulars that ushered the filing of the petition, as culled from the resolution of the Bureau, which we find to be amply supported by the records, follow:

Petitioner BATELEC II is an electric cooperative authorized to distribute electric power in Rosario, Province of Batangas.[4]

Private respondent PSC is a galvanizing steel sheet company in the Philippines having been established in 1956. Granted a pioneer status by the Board of Investments, it embarked to build in Rosario, Batangas Province, its new plant, envisioned as a modern galvanizing plant utilizing a state-of-the-art non-oxidizing furnace-type process, the first of its kind in the country.[5]

As this new plant would entail a delivery voltage of 69 kilovolts (kv), PSC commenced on 14 November 1997 its negotiations for the supply of said energy requirement with BATELEC II, the electric franchise holder in the area. As the 69 kv transmission lines owned by the NPC are located about 1.4 kilometers away from the plant, PSC and BATELEC II entered into an agreement wherein the latter, not having any 69 kv transmission lines at present, shall handle the construction of the needed 69 kv transmission lines.[6]

In a letter dated 02 December 1996, BATELEC II, through its manager Evangel A. Manundo, submitted to PSC a Bill of Materials for the proposed construction of the 69 kv transmission lines amounting to P2,956,838.56 with a *proviso* that additional costs shall later be incurred for other items. In said letter, BATELEC II requested that the amount be settled so that the procurement of the needed materials be facilitated.[7]

In a letter dated 18 December 1996, PSC accepted BATELEC II's proposal. PSC further stated that said letter shall serve as a notice of award and to proceed with the construction of the needed 69 kv transmission lines.[8]

BATELEC II vouched to complete the installation of the needed facilities by April 1997. yet, BATELEC II botched in making good its part of the bargain. The scheduled completion was never fulfilled by BATELEC II even several months after the targeted date.[9]

On 17 November 1997, PSC filed with the Bureau an application for direct connection with the NPC.[10] The Bureau, under the umbrella of the Department of Energy, derives its mandate from Section 12(c) of Republic Act No. 7638,[11] known as *An Act Creating the Department of Energy, Rationalizing The Organization and Functions of Government Agencies Related To Energy, And for Other Purposes*, approved on 09 December 1992. Its functions embrace the following-

> (1) Assist in the formulation of regulatory policies to encourage and guide the operations of both government and private entities involved in energy resource supply activities such as independent power production, *electricity distribution*, as well as the importation, exportation, stockpiling, storage, shipping, transportation, refinement, processing, marketing, and *distribution of all forms of energy and energy products*, whether conventional or nonconventional;
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> (2) Draw up plans to cope with contingencies of energy supply interruptions; and
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> (3) Assist in the *formulation of financial and fiscal policies, rules, guidelines, and requirements relative to the operations of entities involved in the supply of energy resources* such as oil companies, petroleum product dealers, coal importing and distributing companies, natural gas distributing companies, independent power producers, and all other entities involved in conventional energy supply activities and implement and enforce said policies. (Emphases supplied)

As a standard operating procedure, the Bureau, in its evaluation of an application for direct power connection, whether new or for renewal, takes into account the technical or financial capability of the electric franchise holder in the applicant's site, in this case BATELEC II, to serve the energy needs of the applicant. Thus, on 04

December 1997, the Electricity Division of the Bureau endorsed to the Hearing Division its evaluation report on the technical and financial capability of BATELEC II.[12]

For the purpose of looking for any possibility of settlement, the parties concerned were invited to a conference on 17 December 1997. In said meeting, representatives of BATELEC II explained their difficulties in acquiring the right of way for the 69 kv transmission lines. PSC, on the other hand, averred that it is precisely because of BATELEC II's failure to accomplish its undertaking that prompted it to file its application with the Bureau to source its direct power supply from NPC, inasmuch as it is a business enterprise with a crucial timetable.[13]

The Bureau then directed BATELEC II and PSC to submit their respective position papers on the matter on or before 15 January 1998, after which the application was deemed submitted for resolution.[14]

PSC reiterated in its position paper that it was BATELEC II's breach of their contract that impelled it to file an application for direct connection with the NPC.[15] For its part, BATELEC II, in its Comment and Manifestation, claimed that it has finally solved the problem with the owner of the land where the 69 kv lines were to cross and that said 69 kv lines were finally constructed and ready for use by the PSC.[16] However, the Bureau decreed that BATELEC II's claim that it had already constructed the needed 69 kv transmission lines has remained a bare claim, not supported by evidence on record as BATELEC II itself admitted in the meeting of 17 December 1997 that it has yet to construct said facility.[17]

Further, the Bureau made the determination that BATELEC II was neither technically nor financially capable of supplying the 69 kv of power supply to PSC. The following were the specific findings of the Bureau concerning BATELEC II's technical and financial capability:

> The technical capability evaluation covered the system loss, the power factor, and the average voltage variation.
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> On the system loss, records show that BATELEC II improved in 1996 having registered 24.70 percent against the cooperative's system loss for 1994 and 1995 of 27.98 percent and 28.57 percent, respectively. Notwithstanding, with the set standard at 22%, BATELEC II failed.
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> For its Power Factor, it is significant to note that BATELEC II's reactive metering was only installed in April, 1996. Thus, the cooperative's system power factor was only established in that same year. Nonetheless, having registered an 84.33 percent power factor, BATELEC II failed to meet the prescribed 90 percent power factor standard.
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> Regarding the system's average voltage variation … BATELEC II passed.
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> For the Financial Capability, the following were discovered:
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> For its Outstanding Debt to NPC (ODNPC), BATELEC II incurred unpaid power bills in 1994 but was current for the years 1995 and 1996. The set

> standard is at no outstanding/overdue account with the National Power Corporation.
>
> As to its Amortization Payments (AP) records show that in 1994, BATELEC II was three (3) quarters behind with its amortization payments while for 1995 and 1996 it was one (1) quarter behind its payment schedule with the National Electrification Administration (NEA). Under this parameter, the set standard is a maximum of one (1) month delayed payment.
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> As to its Average Collection Period (ACP), BATELEC II improved its collection efficiency having posed an average collection period from 1994 to 1996 of 60 days, 48 days, and 32 days, respectively. The set standard is 45 days.
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> For its Operating Expense Ratio (OER), BATELEC II posed 95.1 percent, 92.1 percent, and 91.62 percent, respectively, for the three years of 1994 to 1996. The set standard is 95%.
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> From all of the above, it is clear that BATELEC II failed to meet the performance standards set forth by ER 1-97. It is thus concluded that it is not capable of serving applicant's bulk energy needs.
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> Further, the Bureau took note that the National Electrification Administration (NEA), the overseer of electric cooperatives, rated BATELEC II's performance as under Category "E" "C" and "D" for the years 1994, 1995 and 1996. These are equivalent to "POOR" performance based on NEA's Annual Categorization Reports.[18]

Accordingly, in a resolution dated 16 March 1998, the Bureau approved PSC's application for bulk power supply with the NPC after it made the determination that BATELEC II is not technically and financially capable of serving the bulk energy needs of psc. The Bureau concluded, with a *fallo* in this wise:

> WHEREFORE, in view of all the foregoing, the Bureau is convinced that BATELEC II is not technically and financially capable of serving the energy requirements of applicant and hereby APPROVES the instant application for bulk power supply with the National Power Corporation by Puyat Steel Corporation.
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> It is to be noted however that the applicant will be provided bulk service at 69 kv due to technical limitations. Furthermore since under ER 1-97 the prescribed minimum transmission voltage level in the Luzon area is 230 kv, the rates to be applied in the instant application shall permit the recovery by NPC of all costs associated with said 230 kv service. Finally, it is understood that applicant will comply with the rules and regulations that the DOE will issue governing bulk power supply.
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> Accordingly, applicant PUYAT STEEL CORPORATION is hereby directed to pay the amount of ONE THOUSAND PESOS (p1,000.00) to the Bureau pursuant to the DOF-DBM Circular No. 2-94 within thirty (30) days from receipt of this Resolution.[19]

Consequently, private respondent PSC filed a complaint for Damages With Prayer for Preliminary Injunction and Temporary Restraining Order with the Regional Trial Court (RTC), Branch 87, Rosario, Batangas to enjoin petitioner BATELEC II from committing acts that would prevent direct power connection between respondents PSC and the NPC. In its complaint, PSC alleged that on 28 May 1998 BATELEC II maliciously switched off the air brake switch and removed cables and insulators from the transmission poles supplying electricity from the NPC to PSC resulting in complete electric power failure to the facilities of the latter in Rosario, Batangas.

On 08 June 1998, the trial court issued a temporary restraining order[20] valid for twenty (20) days enjoining petitioner BATELEC II to desist from committing acts that would prevent the supply of electric power from NPC to PSC's plant in Rosario, Batangas, pursuant to respondent Bureau's Resolution of 16 March 1998.

Displeased, Batelec ii filed before the Court of Appeals a petition for *certiorari* with a prayer for the issuance of a writ of preliminary injunction and temporary restraining order. BATELEC II ascribed grave abuse of discretion to the Bureau for issuing a resolution allegedly sans the benefit of a hearing and for its alleged failure to resolve *inter alia* the issue of NPC's disqualification from distributing electric power directly to consumers within the franchised area of BATELEC II.[21] Later, BATELEC II amended its petition to include the RTC, Branch 87, Rosario, Batangas which issued a temporary restraining order valid for twenty (20) days in favor of PSC.

The Court of Appeals denied the petition on the grounds of: (1) failure to exhaust administrative remedies as petitioner did not file a motion for reconsideration of the Bureau's resolution; and (2) failure to attach a certified true copy or duplicate original copy of the Bureau's resolution in defiance of Supreme Court Administrative Circular No. 3-96. The dispositive portion of the Court of Appeals decision provides:

> **ACCORDINGLY**, the instant special civil action is hereby ***DISMISSED.*** [22]

Petitioner was met with similar lack of success in its motion for reconsideration, denied by the Court of Appeals for lack of merit in a resolution dated 13 October 1998.[23]

In this appeal, petitioner lays the following errors at the door of the Court of Appeals:

A. ... IN NOT DELVING INTO THE MERITS OF THE ABOVE PETITION, ABNEGATED ITS AUTHORITY TO DECIDE A QUESTION OF SUBSTANCE NOT THERETOFOR DETERMINED BY THE HONORABLE SUPREME COURT;

B. ... IN DISMISSING THE PETITION FILED, THE COURT OF APPEALS OVERLOOKED THE FACT THAT THE PETITION FOR CERTIORARI FILED UNDER RULE 65 (RULES OF COURT) IS AN EXCEPTION TO THE RULE THAT A MOTION FOR RECONSIDERATION SHOULD FIRST BE FILED AND/OR THAT ADMINISTRATIVE REMEDIES SHOULD BE EXHAUSTED BEFORE RESORT TO COURT IS HAD;

C. ... IN DISMISSING THE PETITION FILED, THE COURT OF APPEALS ERRED IN RULING THAT PETITIONER DID NOT COMPLY WITH SUPREME COURT