

## FIRST DIVISION

[ G.R. No. 113079, April 20, 2001 ]

**ENERGY REGULATORY BOARD, PETITIONER, VS. COURT OF APPEALS AND PETROLEUM DISTRIBUTORS AND SERVICES CORPORATION, RESPONDENTS.**

[G.R. NO. 114923. APRIL 20, 2001]

**PILIPINAS SHELL PETROLEUM CORPORATION, PETITIONER, VS. COURT OF APPEALS AND PETROLEUM DISTRIBUTORS AND SERVICES CORPORATION, RESPONDENTS.**

### D E C I S I O N

#### **YNARES-SANTIAGO, J.:**

The propriety of building a state-of-the-art gasoline service station along Benigno Aquino, Jr. Avenue in Parañaque, Metro Manila is the bone of contention in these consolidated petitions for *certiorari* under Rule 45 of the Rules of Court. Petitioners assert that the construction of such a modern edifice is a necessity dictated by the "emerging economic landscapes." Respondents say otherwise.

The factual antecedents of the case are matters of record or are otherwise uncontroverted.

Petitioner Pilipinas Shell Petroleum Corporation (Shell) is engaged in the business of importing crude oil, refining the same and selling various petroleum products through a network of service stations throughout the country.

Private respondent Petroleum Distributors and Service Corporation (PDSC) owns and operates a Caltex service station at the corner of the MIA and Domestic Roads in Pasay City.

On June 30, 1983, Shell filed with the quondam Bureau of Energy Utilization (BEU) an application for authority to relocate its Shell Service Station at Tambo, Parañaque, Metro Manila, to Imelda Marcos Avenue of the same municipality. The application, which was docketed as BEU Case No. 83-09-1319, was initially rejected by the BEU because Shell's old site had been closed for five (5) years such that the relocation of the same to a new site would amount to a new construction of a gasoline outlet, which construction was then the subject of a moratorium. Subsequently, however, BEU relaxed its position and gave due course to the application.

PDSC filed an opposition to the application on the grounds that: 1.] there are adequate service stations attending to the motorists' requirements in the trading area covered by the application; 2.] ruinous competition will result from the

establishment of the proposed new service station; and 3.] there is a decline not an increase in the volume of sales in the area. Two other companies, namely Petrophil and Caltex, also opposed the application on the ground that Shell failed to comply with the jurisdictional requirements.

In a Resolution dated March 6, 1984, the BEU dismissed the application on jurisdictional grounds and for lack of "full title" of the lessor over the proposed site. However, on May 7, 1984, the BEU reinstated the same application and thereafter conducted a hearing thereon.

On June 3, 1986, the BEU rendered a decision denying Shell's application on a finding that there was "no necessity for an additional petroleum products retail outlet in Imelda Marcos Avenue, Parañaque." Dissatisfied, Shell appealed to the Office of Energy Affairs (OEA).

Meanwhile, on May 8, 1987, Executive Order No. 172 was issued creating the Energy Regulatory Board (ERB) and transferring to it the regulatory and adjudicatory functions of the BEU.

On May 9, 1988, the OEA rendered a decision denying the appeal of Shell and affirming the BEU decision. Shell moved for reconsideration and prayed for a new hearing or the remand of the case for further proceedings. In a supplement to said motion, Shell submitted a new feasibility study to justify its application.

The OEA issued an order on July 11, 1988, remanding the case to the ERB for further evaluation and consideration, noting therein that the "updated survey conducted by Shell" cited new developments such as the accessibility of Imelda Marcos Avenue, now Benigno Aquino, Jr. Avenue, to Parañaque residents along Sucat Road and the population growth in the trading area.

After the records of BEU Case No. 83-09-1319 was remanded to the ERB, Shell filed on March 3, 1989 an amended application, intended for the same purpose as its original application, which was docketed as ERB Case No. 89-57. This amended application was likewise opposed by PDSC.

On September 17, 1991, the ERB rendered a Decision allowing Shell to establish the service station in Benigno Aquino, Jr. Avenue. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, the application for authority to relocate a Shell service station from Tambo to Benigno Aquino Avenue, Parañaque, Metro Manila is hereby approved.

Applicant is hereby directed to:

1. Start the construction and operation of the retail outlet at the actual approved site appearing in the vicinity map previously submitted to the Board within one (1) year, from the finality of this Decision and thereafter submit a sworn document of compliance therewith;

2. Submit photographs showing the left side, right side and front view of the retail outlet within fifteen (15) days from completion of the construction work;
3. Submit to the Board a report on the total volume of petroleum products sold each month during the first six (6) months of the operation of the station. The report shall be submitted in the form of an affidavit within ten (10) days after the end of the six-month period;
4. Inform the Board in writing and the general public through a notice posted conspicuously within the premises of the station of the (a) intention of applicant or its dealer to stop operation of the retail outlet for a period longer than ninety (90) days; or (b) notice of shutdown of operation of the retail outlet that will likely extend beyond thirty (30) days. Such notice must be given fifteen (15) days before the actual cessation of operations in the case of (a) and in the case of (b) within the first five (5) days of an unplanned stoppage of operations.

SO ORDERED.

PDSC filed a motion for reconsideration of the foregoing Decision. The motion was, however, denied by ERB in an Order dated February 14, 1992.

Aggrieved, PDSC elevated its cause on April 1, 1992 to the Court of Appeals, where the same was docketed as CA-G.R. SP No. 27661.

Thereafter, in a Decision dated November 8, 1993,<sup>[1]</sup> the appellate court's Tenth Division reversed the ERB judgment thus:

WHEREFORE, the challenged Decision dated September 17, 1991, as well as the Order dated February 14, 1992, both of the respondent Energy Regulatory Board in ERB Case No. 89-57, are hereby REVERSED and SET ASIDE. Correspondingly, the application of respondent Pilipinas Shell Petroleum Corporation to construct and operate the petroleum retail outlet in question is DENIED.

SO ORDERED.

A motion for reconsideration was denied by the Court of Appeals in a Resolution dated 6 April 1994.<sup>[2]</sup> Dissatisfied, both Shell and ERB elevated the matter to this Court by way of these petitions, which were ordered consolidated by the Court in a Resolution dated July 25, 1994.<sup>[3]</sup>

It appears, however, from the record that even as the proceedings in CA-G.R. SP No. 27661 were pending in the appellate court, Caltex filed on January 24, 1992 a similar application for the construction of a service station in the same area with the

ERB, docketed as ERB Case No. 87-393. This application was likewise opposed by respondent PDSC, citing the same grounds it raised in opposing Shell's application in ERB Case No. 89-57.

In the aforesaid case, petitioner ERB thereafter rendered a Decision dated June 19, 1992 approving the application of Caltex. This ERB Decision was challenged by PDSC, again on the same grounds it raised in CA-G.R. SP No. 27661, in a petition for review filed with the Court of Appeals, where the same was docketed as CA-G.R. SP No. 29099.

Subsequently, the appellate court's Sixteenth Division dismissed PDSC's petition in a Decision dated May 14, 1993.<sup>[4]</sup>

As grounds for the petition in the instant case, ERB asserts that -

(1) THE EVIDENCE UPON WHICH THE ERB BASED ITS DECISION IS NEITHER STALE NOR IRRELEVANT AND THE SAME JUSTIFIES THE ESTABLISHMENT OF THE PROPOSED PETROLEUM OUTLET.

(2) THE EVIDENCE PRESENTED BY APPLICANT SHELL REGARDING VEHICLE VOLUME AND FUEL DEMAND SUPPORTS THE CONSTRUCTION OF THE PROPOSED OUTLET.

(3) THE ESTABLISHMENT OF THE SERVICE STATION WILL NOT LEAD TO RUINOUS COMPETITION.

For its part, Shell avers that -

I.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN MAKING FINDINGS OF FACTS CONTRARY TO THOSE OF THE ENERGY REGULATORY BOARD WHOSE FINDINGS WERE BASED ON SUBSTANTIAL EVIDENCE.

II.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN FINDING THAT THE FEASIBILITY STUDY SUPPORTING PETITIONER'S APPLICATION TO CONSTRUCT A SERVICE STATION BEFORE THE ENERGY REGULATORY BOARD HAS BECOME "IRRELEVANT" FOR HAVING BEEN PRESENTED IN EVIDENCE ABOUT TWO (2) YEARS AFTER IT WAS PREPARED.

III.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN PASSING JUDGMENT AND MAKING PRONOUNCEMENTS ON PURELY ECONOMIC AND POLICY ISSUES ON PETROLEUM BUSINESS WHICH ARE WITHIN THE REALM OF THE ENERGY REGULATORY BOARD WHICH HAS A

## RECOGNIZED EXPERTISE IN OIL ECONOMICS.

### IV.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN FINDING THAT THE PROPOSED SERVICE STATION OF PETITIONER WOULD POSE RUINOUS COMPETITION TO PRIVATE RESPONDENT'S SERVICE STATION BASED MAINLY ON EVIDENCE SUBMITTED FOR THE FIRST TIME WITH THE SAID COURT AND WITHOUT CONDUCTING A HEARING THEREON.

### V.

ASSUMING THE HONORABLE COURT OF APPEALS HAS THE POWER TO CONSIDER NEW EVIDENCE PRESENTED FOR THE FIRST TIME BEFORE SAID COURT, IT SHOULD HAVE REFERRED SUCH MATTER TO THE ENERGY REGULATORY BOARD UNDER THE DOCTRINE OF PRIOR RESORT OR PRIMARY JURISDICTION.

The issues raised by the parties in these consolidated cases bring to the fore the necessity of rationalizing or reconciling two apparently conflicting decisions of the appellate court on the propriety of building gasoline service stations along Benigno Aquino, Jr. Avenue in Parañaque, Metro Manila. Considering that the questions raised concern within the oil industry, whose impact on the nation's economy is pervasive and far-reaching, the Court is constrained to look into the policy and purposes of its governing statutes to resolve this dilemma.

The policy of the government in this regard has been to allow a free interplay of market forces with minimal government supervision. The purpose of governing legislation is to liberalize the downstream oil industry in order to ensure a truly competitive market under a regime of fair prices, adequate and continuous supply, environmentally clean and high-quality petroleum products.<sup>[5]</sup> Indeed, exclusivity of any franchise has not been favored by the Court,<sup>[6]</sup> which is keen on promoting free competition and the development of a free market consistent with the legislative policy of deregulation as an answer to the problems of the oil industry.<sup>[7]</sup> The Court finds the petitions impressed with merit.

The interpretation of an administrative government agency like the ERB, which is tasked to implement a statute, is accorded great respect and ordinarily controls the construction of the courts.<sup>[8]</sup> A long line of cases establish the basic rule that the courts will not interfere in matters which are addressed to the sound discretion of government agencies entrusted with the regulation of activities coming under the special technical knowledge and training of such agencies.<sup>[9]</sup> More explicitly -

Generally, the interpretation of an administrative government agency, which is tasked to implement a statute, is accorded great respect and ordinarily controls the construction of the courts.<sup>[10]</sup> The reason behind this rule was explained in *Nestle Philippines, Inc. vs. Court of Appeals*,<sup>[11]</sup> in this wise: