396 Phil. 709

FIRST DIVISION

[G.R. No. 109853, October 11, 2000]

PROVINCE OF ZAMBOANGA DEL NORTE, REPRESENTED BY GOV. ISAGANI S. AMATONG, PETITIONER, VS. COURT OF APPEALS AND ZAMBOANGA DEL NORTE ELECTRIC COOPERATIVE, INC., RESPONDENTS.

D E C I S I O N

PARDO, J.:

Which government agency has jurisdiction over a complaint for illegal collection of power bills by an electric cooperative? Petitioner submits that jurisdiction is vested with the Energy Regulatory Board or the regular trial courts, while respondents position is that jurisdiction lies with the National Electrification Administration.

What is before the Court is a petition for review on *certiorari* assailing the decision of the Court of Appeals,[1] that reversed the orders of the Regional Trial Court, Zamboanga del Norte denying petitioner's motion for dismissal of the complaint.[2]

On July 8, 1991, petitioner Province of Zamboanga del Norte (represented by Gov. Isagani S. Amatong) filed with the Regional Trial Court, Zamboanga del Norte a complaint against Zamboanga del Norte Electric Cooperative (ZANECO) for "Illegal Collection Of Power Bills And Preliminary Injunction With Restraining Order."[3]

Petitioner in its complaint alleged that as per electric bills issued by ZANECO for the month of May 1991, respondent increased the Fuel Compensating Charge (FCC) by P0.29 and Interim Adjustment by P0.02, or a total of P 0.31. This amount is added to the basic charge of P 1.90 per kilowatt.

By June 1991, ZANECO increased the FCC once more to P1.39 instead of only P0.29. The Interim Adjustment also increased to P0.06 instead of only P 0.02.

Petitioner claimed that the increase was arbitrary and illegal, and that the Energy Regulatory Board (ERB) did not sanction the collections.

As a result, the electric bills of the consumers almost doubled in amount.

Further, petitioner alleged that ZANECO cannot increase the bills since the power rate increase from the National Power Corporation (NPC) of P0.17 per kilowatt hour was not implemented yet due to a restraining order issued by the Supreme Court.[4]

On July 22, 1991, ZANECO filed its answer to the complaint. It assailed the jurisdiction of the trial court over the subject of the case.[5]

On July 26, 1991, the trial court issued a writ of preliminary injunction[6] ordering respondent to desist from imposing, charging, billing and collecting the FCC and other additional charges upon its end-users in Zamboanga del Norte and the cities of Dipolog and Dapitan. The court also ordered respondent to refrain from cutting off the electric lines of those who refused to pay the questioned charges, pending determination of the litigation.

On October 8, 1991, respondent ZANECO filed with the trial court a motion requesting the court to set for hearing the affirmative defenses set in its answer, asking for the dismissal of the case.

On March 27, 1992, respondent filed with the trial court a third-party complaint[7] against the National Power Corporation (NPC) praying for the issuance of a writ of preliminary injunction or a restraining order. On the same date, the trial court issued an order restraining respondent to refrain from disconnecting its electric service on March 28, 1992 or any other date, effective until recalled.[8] Respondent ZANECO alleged that despite NPC's knowledge of the restraining order against the collection of the FCC, which later[9] became known as Incremental Cost Charge (ICC), NPC sent a demand letter[10] with notice of disconnection of electric service if ZANECO did not pay the FCC/ICC bills and extra-hydro rates.

On April 14, 1992, the trial court ordered the issuance of a writ of preliminary injunction against NPC.[11]

On March 28, 1992, the trial court denied respondent ZANECO's motion to dismiss. [12] The court ruled that (1) the nullity of the charges imposed are matters not capable of pecuniary estimation and thus fall within the jurisdiction of the regional trial court; and (2) it is futile to file a complaint with the National Electrification Administration (NEA) or the NPC considering that charges imposed by respondent emanated from these agencies.[13]

On April 18, 1992, respondent ZANECO filed with the trial court a motion for reconsideration of the order dated March 28, 1992.[14]

On October 9, 1992 the trial court denied ZANECO's motion for reconsideration.[15]

On appeal to the Court of Appeals, on November 16, 1992, the Court of Appeals issued a temporary restraining order, the dispositive portion of which reads:

> "WHEREFORE, let a temporary restraining order be issued enjoining public respondent, its agents and representative from proceeding with the case and from enforcing all the questioned orders until further notice from this Court.
>
> "In addition, private respondent is hereby given five (5) days from notice to show cause why no writ of preliminary injunction should be issued for the purpose."[16]

On January 28, 1993, the Court of Appeals rendered its decision reversing that of the trial court. The decretal portion reads:

"WHEREFORE, premises considered, the petition is GRANTED, the order dated March 28, 1992 and October 9, 1992 are hereby SET ASIDE and the respondent Court ordered to DISMISS the complaint.

SO ORDERED."[17]

Hence, this petition.[18]

Petitioner assails the imposition of the FCC and Incremental Costs Charge (ICC) as void, illegal, and unconstitutional for lack of notice, hearing and consultation of the parties affected, and without prior authority from the Energy Regulatory Board. Petitioner finally prays that the case be remanded to the trial court for trial on the merits.[19]

Petitioner rationalized that the Energy Regulatory Board (ERB) has jurisdiction by virtue of Executive Order 172, Section 3 (a) in that ERB is empowered to fix and regulate the prices of petroleum products. It argued that diesel fuel is embraced within the term petroleum products. Since the Fuel Compensation Charge was imposed to compensate the cost of diesel fuel, then such imposition must be approved by the ERB.[20]

We disagree.

The real issue is not the compensation of the cost of diesel fuel used to feed the generating set in Mindanao.[21] Precisely, the complaint was for "Illegal Collection of Power Bills."[22]

Since the complaint is one questioning the increase in the power rates, the proper body to investigate the case is the NEA.

The regulation and fixing of power rates to be charged by electric cooperatives remain within the jurisdiction of the National Electrification Administration,[23] despite the enactment of Executive Order No. 172,[24] creating the Energy Regulatory Board.[25] The issue raised in the complaint is the legality of the imposition of the FCC or ICC. Despite the fact that diesel fuel was used to run its machinery, the fact is that respondent charged its consumers to compensate for the increase in the price of fuel. Petitioner did not question the price of diesel fuel. Rather, it questioned the charges passed on to its end users as a result of increase in the price of fuel. And the body with the technical expertise to determine whether or not the charges are legal is the NEA.

Electric cooperatives, such as the respondent, are vested under Presidential Decree No. 269[26] with the power to fix, maintain, implement and collect rates, fees, rents, tolls, and other charges and terms and conditions for service. However, the NEA requires that such must be in furtherance of the purposes and in conformity with the provisions of Presidential Decree No. 269.[27]

NEA, in the exercise of its power of supervision and control over electric cooperatives and other borrowers, supervised or controlled entities, is empowered to issue orders, rules and regulations. It may also, *motu proprio* or upon petition of

third parties, conduct investigations, referenda and other similar actions in all matters, affecting electric cooperatives and other borrower, or supervised or controlled entities.[28]

Thus, a party questioning the rates imposed by an electric cooperative may file a complaint with the NEA as it is empowered to conduct hearings and investigations and issue such orders on the rates that may be charged.[29] Consequently, the case does not fall within the jurisdiction of the ERB.

In case a party feels aggrieved by any order, ruling or decision of the NEA, he may file a petition for review before the Court of Appeals.[30]

Petitioner next maintains that the case qualifies as an exception to the rule on exhaustion of administrative remedies, basing its argument on the unconstitutionality and arbitrariness of the imposition of the charges.

We are not persuaded.

The Court in a long line of cases has held that before a party is allowed to seek the intervention of the courts, it is a pre-condition that he avail himself of all administrative processes afforded him. Hence, if a remedy within the administrative machinery can be resorted to by giving the administrative officer every opportunity to decide on a matter that comes within his jurisdiction, then such remedy must be exhausted first before the court's power of judicial review can be sought. The premature resort to the court is fatal to one's cause of action.[31] Accordingly, absent any finding of waiver or estoppel, the case may be dismissed for lack of cause of action.[32]

The doctrine of exhaustion of administrative remedies is not without its practical and legal reasons. Indeed, resort to administrative remedies entails lesser expenses and provides for speedier disposition of controversies. Our courts of justice for reason of comity and convenience will shy away from a dispute until the system of administrative redress has been completed and complied with so as to give the administrative agency every opportunity to correct its error and to dispose of the case.[33]

True, the principle of exhaustion of administrative remedies has certain exceptions as embodied in various cases. This doctrine is a relative one and is flexible depending on the peculiarity and uniqueness of the factual and circumstantial settings of a case. It is disregarded: (1) when there is a violation of due process;[34] (2) when the issue involved is purely a legal question;[35] (3) when the administrative action is patently illegal and amounts to lack or excess of jurisdiction;[36] (4) when there is estoppel on the part of the administrative agency concerned;[37] (5) when there is irreparable injury;[38] (6) when the respondent is a department secretary whose acts, as an alter ego of the President, bears the implied and assumed approval of the latter;[39] (7) when to require exhaustion of administrative remedies would be unreasonable;[40] (8) when it would amount to a nullification of a claim;[41] (9) when the subject matter is a private land in land case proceedings;[42] (10) when the rule does not provide a plain, speedy and adequate