

SECOND DIVISION

[G.R. No. 103595, April 18, 1997]

**MANILA ELECTRIC COMPANY, PETITIONER, VS. THE COURT OF
APPEALS, CCM GAS CORPORATION, AND TRAVELLERS
INSURANCE & SURETY CORPORATION, RESPONDENTS.**

DECISION

MENDOZA, J.:

This is a petition for review of the decision of the Court of Appeals which reversed the decision of the Regional Trial Court of Malabon, Metro Manila and ordered it to reissue its writ of preliminary injunction, enjoining petitioner from disconnecting its electric supply to private respondent.

The facts are as follows:

Private respondent CCM Gas Corporation (hereafter CCM Gas) is a customer of petitioner Manila Electric Company (hereafter MERALCO). On May 23, 1984, it was billed P272,684.81 for electric consumption for the period April 22, 1984 to May 22, 1984. The amount of the bill is broken down as follows:

Actual electric energy consumed	P 51,383.98
Purchased Power Adjustment	213,696.00
Exchange Rate Adjustment	7,604.83
Total	P272,684.81

The account was due on May 29, 1984, but CCM Gas withheld payment until its question concerning the purchased power adjustment was answered.

On May 31, 1984, MERALCO gave CCM Gas notice of disconnection if its account was not paid on or before June 5, 1984.

CCM Gas protested, although it made partial payment of P52,684.81. It demanded to know how the item for purchased power adjustment in the amount of P213,696.00 had been arrived at.

As no information was forthcoming, CCM Gas brought this case in the Regional Trial Court of Malabon, Metro Manila, praying that: (a) MERALCO be ordered to pay moral damages and attorney's fees; (b) a writ of preliminary injunction be issued enjoining or restraining MERALCO from disconnecting CCM Gas' electric supply; and (c) a temporary restraining order be issued pending hearing on the application for writ of

preliminary injunction.

On June 8, 1984, the trial court issued a temporary restraining order and, on July 21, 1984, a writ of preliminary injunction upon the posting by CCM Gas of a bond in the amount of P1,031,999.69.

CCM Gas having posted the required bond on August 6, 1984, a writ of preliminary injunction was issued by the court on August 13, 1984.

On October 4, 1984, MERALCO filed, by leave of court, an amended answer in which it raised, as special and affirmative defenses, the lack of jurisdiction of the trial court to try the case and lack of valid cause of action of CCM Gas.

On April 30, 1985, the trial court dismissed the case and lifted the injunction it had issued on the ground that the court lacked jurisdiction. As basis for its holding that the matter was cognizable by the Board of Energy, it cited allegations in the complaint that the purchased power adjustment was "arbitrarily and unilaterally imposed without the benefit of any public hearing and therefore the same was not only unconstitutional but also oppressive and excessive." The trial court said:^[1]

This claim of the plaintiff is untenable as the P.D. 1206, as amended by Sec. 3, P.D. 1573 vests upon the BOE supervision, control and jurisdiction to "regulate and fix power rates to be charged by electric companies." The purchased power adjustment was decided by the Board of Energy after prior notice and hearing to the public in Case No. 80-117. The plaintiff's counsel admitted this law and the decision authorizing the BOE to regulate and fix power rate and therefore, the plaintiff's cause of action, that the defendant violated the rights of the plaintiff to be informed of the breakdown and itemization of the defendant's computation of its purchased power adjustment and its refusal, is not supported by any law or jurisprudence on the matter. The court finds it difficult to continue this case on the basis of the citations made by the defendant and admitted by the plaintiff.

On May 29, 1985, MERALCO received a copy of the order. Within the reglementary period, it applied for the payment of damages against the bond.

CCM Gas, which also received its copy of the order on May 29, 1985, filed a motion for an extension of ten (10) days from June 13, 1985 (the end of the reglementary period for appealing or filing a motion for reconsideration) within which to file a motion for reconsideration. Its motion was granted and so on June 24, 1985, CCM Gas filed a motion for reconsideration. MERALCO opposed the motion.

On September 17, 1985, the trial court issued an order, denying CCM Gas' motion for reconsideration as well as MERALCO's claim for damages against the bond. In denying MERALCO's application against the bond, the trial court said that the injunction bond was intended as a security for damages in case it was finally decided that the injunction ought not to have been granted. No such finding was made in this case because the dismissal of the action was for want of jurisdiction. There was no trial; nor was there a final judgment.

Both parties appealed. On November 21, 1991, the Court of Appeals rendered judgment —

- (a) setting aside the order of the trial court dismissing the complaint;
- (b) ordering the trial court to re-issue the writ of preliminary injunction enjoining MERALCO from disconnecting its electric supply to CCM Gas until it furnishes CCM Gas with a statement showing the basis for computing the purchased power adjustment applicable to CCM Gas;
- (c) ordering the trial court to require the parties to reconcile the credits and debits they may have for or against each other; and
- (d) ordering the trial court to hear the case with dispatch.^[2]

CCM Gas contended that the trial court erred in ruling (1) that it had no jurisdiction, (2) that CCM Gas had no right to inquire into MERALCO's electric billings, and (3) that MERALCO had the absolute power to disconnect the electric supply to its consumers like CCM Gas.^[3]

With respect to the first ground, the Court of Appeals ruled that the trial court had jurisdiction to hear the case because what CCM Gas was seeking was for MERALCO to show how it arrived at the purchased power adjustment. This does not involve an exercise of the Board of Energy's power to "regulate and fix power rates imposed by electric companies."

With respect to the second contention, the appellate court sustained the right of CCM Gas to inquire into MERALCO's electric billing. Any customer has a right to know the basis for the charges he is being made to pay. MERALCO should have no difficulty complying with its duty because it is presumed to have the figures in computing the purchased power adjustment in accordance with the formula approved by the BOE, to wit:^[4]

Adjustment A - $P0.1433 \times B$

per KWH = $C \times D$

Where:

- A - Billing of National Power Corp. (NPC) to MERALCO during the supply month
- B - Total kilowatt hour of Electric Power purchased by MERALCO from NPC during the supply month
- C - 1 - Franchise tax rates
- D - Kilowatt hours sales affected by the purchased power adjustment during the supply month.

Finally, the Court of Appeals held that the question whether the trial court erred in dismissing MERALCO's application for damages had become moot by virtue of its reversal of the trial court's decision dismissing the case for lack of jurisdiction. The appellate court upheld the issuance by the trial court of the writ of preliminary injunction in favor of CCM Gas.

MERALCO filed a motion for reconsideration, but its motion was denied by the appellate court in its resolution of December 17, 1991. Hence, this petition for review on certiorari. MERALCO's petition presents the following issues: (1) whether the appeal of CCM Gas should not have been dismissed by the Court of Appeals considering that, as the trial court found, its "order dated April 30, 1985 is final and executory" because the motion for reconsideration was filed one day late, and (2) whether the trial court has jurisdiction over the case.

With respect to the first issue, we hold that the order of April 30, 1985 did not become final because, although the motion seeking its reconsideration was filed a day after the expiration of the extension, the last day, June 23, 1985, fell on a Sunday. Accordingly, the motion for reconsideration could be filed the next day.^[5]

Nonetheless, it is argued that the trial court's finding that its order dismissing the complaint of CCM Gas had become final and executory was not assigned by CCM Gas as error in its brief before the Court of Appeals, with the result that such finding is itself now final. The point raised has no merit. A judgment becomes final and executory by operation of law, not by judicial declaration.^[6] The September 17, 1985 order of the trial court, declaring its April 30, 1985 decision final and executory, has no effect because in fact CCM Gas filed a timely motion for reconsideration. The timely filing of the motion for reconsideration prevented the decision of the trial court from attaining finality.

It is noteworthy that MERALCO's contention in the Court of Appeals was that the April 30, 1985 order of the trial court became final on June 13, 1985, i.e., 15 days after CCM Gas received a copy because, as held in *Habaluyas Enterprises, Inc. v. Japson*,^[7] "the fifteen-day period for appealing or for filing a motion for reconsideration cannot be extended."^[8] What MERALCO is now saying is an entirely different theory. The change in MERALCO's theory is obviously prompted by the fact that the ruling it cited was not final and was in fact qualified in the Court's resolution of the motion for reconsideration which made the ruling effective only on June 30, 1986.^[9] As the trial court's order in this case granting extension for the filing of a motion for reconsideration was granted before June 30, 1986, it is clear that it was not interdicted by the *Habaluyas* rule.

The petitioner contends that the trial court was right in holding itself to be without jurisdiction because the complaint alleges that CCM Gas did not only demand a breakdown of MERALCO's bill with respect to the item on purchased power adjustment but questioned as well the imposition of the purchased power adjustment which is a matter already decided by the Board of Energy in Case No. 80-117.

This contention is also without merit. It is almost trite to say that what determines the nature of the action, as well as the court which has jurisdiction over the case, are the allegations in the complaint.^[10] In this case the pertinent allegations in the complaint read:^[11]

6. The due date of the aforesaid statement of account was May 29, 1984 but plaintiff had to withhold its payment of the same because it did not