



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated August 27, 2020 which reads as follows:

“G.R. No. 217196 (*National Grid Corporation of the Philippines v. The Energy Regulatory Commission*)

Antecedents

Petitioner National Grid Corporation of the Philippines (NGCP) is a private corporation with legislative franchise under Republic Act (RA) 9511 to operate, manage and maintain the nationwide transmission system of the Philippines and engage in other activities necessary thereto.

On December 23, 2010, the NGCP filed an application before respondent Energy Regulatory Commission (ERC) for Certificate of Authority as Wholesale Electricity Spot Market – Metering Service Provider (WESM-MSP).¹

After due proceedings, the ERC granted the application and issued Certificate of Authority No. 11-03-001 valid until March 21, 2014 in favor of NGCP.²

By Letter³ dated December 2, 2013, the NGCP filed an application for renewal of its Certificate of Authority as WESM-MSP.

Through its Letter-Assessment⁴ dated February 25, 2014, the ERC informed NGCP of the assessment fee to be paid in relation to its application, *viz.*:

- over – twelve (12) pages ...

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¹ *Rollo*, pp. 4-5.

² *Id.* at 6.

³ *Id.* at 7.

⁴ *Id.* at 58-67; signed by ERC Chairperson Zenaida G. Cruz-Ducut.

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Please be informed that one of the requirements prior to the issuance of the said [Certificate of Authority] is the remittance of an assessment fee as mandated by ERC Resolution No. 21 Series of 2007: A Resolution Approving the Revised Schedule of ERC Fees and Charges (attached herewith).⁵

No. VII (sic) of the Revised Schedule prescribes that for a WESM Metering Services Provider's CA having a duration of three (3) years, an amount of seventy-five centavos (₱0.75) for each of one hundred pesos (₱100.00) capital stock subscribed and paid up shall be remitted to the ERC as an assessment fee.

NGCP's Paid Up Capital for 2013 as manifested in the submitted Security and Exchange Commission (SEC) General Information Sheet is Two Billion pesos (₱2,000,000,000.00).

In this regard NGCP's assessed fee amounts to ₱15,000,000.00 computed as follows:

$$\begin{aligned} \text{Assessment Fee.} &= \frac{\text{Php}2,000,000,000.00}{\text{Php}100.00} \times 0.75 \\ &= \text{₱}15,000,000.00 \end{aligned}$$

As computed above, NGCP is enjoined to remit the sum of fifteen million pesos (₱15,000,000.00) as assessment fee for the renewal of its CA as WMSP.

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By Letter-Request⁶ dated March 12, 2014, the NGCP paid under protest and sought a reconsideration of the aforesaid computation. Relying on Section 9⁷ of its legislative franchise (RA 9511), the NGCP maintained it was exempt from payment of *any and all fees and charges*, including the assailed assessment fee. More, this

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⁵ *Id.* at 59-67.

⁶ *Id.* at 68-70.

⁷ Section 9. Tax Provisions. - In consideration of the franchise and rights hereby granted, the Grantee, its successors or assigns, shall pay a franchise tax equivalent to three percent (3%) of all gross receipts derived by the Grantee from its operation under this franchise. Said tax shall in lieu of income tax and any and all taxes, duties, fees and charges of any kind, nature or description levied, established or collected by any authority whatsoever, local or national, on its franchise, rights, privileges, receipts, revenues and profits, and on properties used in connection with its franchise, from which taxes, duties and charges, the Grantee is hereby expressly exempted: Provided, That the Grantee, its successors or assigns, shall be liable to pay the same taxes on their real estate, buildings and personal property, exclusive of this franchise, as other corporations are now or hereby may be required by law to pay: Provided, further, That payment by Grantee of the concession fees due to PSALM under the concession agreement shall not be subject to income tax and value-added tax (VAT).

fee allegedly had no basis at all, considering that the initial application fee it was required to pay before was only ₱3,000.00.

In view of NGCP's payment under protest, nonetheless, ERC issued Certificate of Authority No. 14-03-001 in favor of NGCP.⁸

On June 24, 2014, NGCP received copy of ERC's Letter-Resolution⁹ dated June 9, 2014 denying the former's request for exemption from payment of the assessment fee, *viz.*:¹⁰

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Acting on the said request, the Commission hereby DENIES the same considering that NGCP has not been expressly granted exemption from payment of regulatory fees, such as the CA fee, in its legislative franchise. Said amount was assessed on the basis of the Commission's Resolution No. 21, Series of 2007 dated 17 July 2007 "A Resolution Approving the Revised Schedule of ERC Fees and Charges" (Revised Schedule of ERC Fees and Charges)

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The Court of Appeals Ruling

Aggrieved, NGCP went to the Court of Appeals via a petition for certiorari assailing the assailed issuances. By Resolution¹¹ dated September 4, 2014, the Court of Appeals dismissed the petition for being a wrong remedy. The Court of Appeals noted that the assailed Letter-Assessment dated February 25, 2014 and Letter-Resolution dated June 9, 2014 were issued by ERC in the performance of its administrative function, not of its quasi-judicial function. A writ of *certiorari* cannot be utilized to correct a regulatory body's perceived error in the performance of their concomitant executive or administrative duties.¹²

The Court of Appeals denied reconsideration on February 13, 2015.¹³

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⁸ *Rollo*, p. 7.

⁹ *Id.* at 71, signed by ERC Chairperson Zenaida G. Cruz-Ducut.

¹⁰ *Id.* at 7.

¹¹ Penned by Associate Justice Carmelita Salandanan Manahan, and concurred by Associate Justices Japar B. Dimaampao and Elihu A. Ybañez; *rollo*, pp. 83-86.

¹² *Rollo*, p. 85.

¹³ *Id.* at 88-90.

The Present Petition

The NGCP now asks the Court to exercise its discretionary appellate jurisdiction to review and reverse the assailed dispositions of the Court of Appeals.¹⁴ It essentially faults the Court of Appeals for dismissing its petition, insisting that *certiorari* under Rule 65 before the Court of Appeals was the appropriate remedy.¹⁵ Too, the NGCP reiterates its substantive arguments, maintaining it is exempt from payment of assessment fees under its legislative franchise.¹⁶

In its *Comment*¹⁷ dated December 4, 2015, the ERC through the Office of the Solicitor General (OSG) ripostes:

First. NGCP's resort to *certiorari* was improper since it can only be invoked against a government agency or tribunal's exercise of quasi-judicial powers.¹⁸

Here, the issuance of the assailed Letter-Assessment dated February 25, 2014 and Letter-Resolution dated June 9, 2014 did not entail the ERC's quasi-judicial functions. For one, the procedure in the *Guidelines for the Issuance of Certificate of Authority for WESM Metering Service Providers* (CA Guidelines) does not demand adjudication.¹⁹ For another, the issuance of a certificate of authority and the imposition of assessment fee do not require the conduct of hearing and weighing of evidence for adjudication of controversies and determination of rights. It merely involves the evaluation of documentary evidence, limited to the applicant's compliance with the requirements, without a resolution of controversy or any adjudicatory matter.²⁰

At any rate, the ERC did not commit grave abuse of discretion, for clearly, its power and duty to prescribe and impose fees are expressly provided in its guidelines.²¹

Second. The NGCP still had an available remedy to challenge the Letter-Assessment dated February 25, 2014 and Letter-Resolution

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¹⁴ *Id.* at 3-32.

¹⁵ *Id.* at 8-23.

¹⁶ *Id.* at 23-30. ¹⁸ *Id.* at 164.

¹⁷ *Id.* at 161-176.

¹⁸ *Id.* at 164.

¹⁹ *Id.* at 165.

²⁰ *Id.* at 167.

²¹ *Id.* at 168-169.

dated June 9, 2014 before the ERC. Under Section 43 of the Electric Power Industry Reform Act (EPIRA),²² the ERC has exclusive and original jurisdiction over cases contesting fees imposed by the ERC itself. The NGCP failed to invoke this adjudicatory power of the ERC before filing its petition for *certiorari* before the Court of Appeals.²³

Finally. The NGCP is not exempt from payment of the assessment fee. The NGCP's reliance on Section 9 is flawed because the NGCP confuses the nature of a franchise tax with an assessment fee. The NGCP's franchise does not automatically grant it the authority to serve as WESM-MSP; it has to file a separate application to be accredited as a WESM-MSP. Thus, the assessment fee imposed on applicants for WESM-MSP, as here, cannot be subsumed under the exemption clause in the NGCP's franchise.²⁴

In its *Reply*²⁵ dated January 12, 2016, the NGCP essentially maintains that it availed of the correct remedy by filing a petition for *certiorari* under Rule 65. It counters:

First. The ERC exercised its quasi-judicial function when it issued the Certificate of Authority and when it denied the NGCP's exemption from payment of assessment fees.²⁶

The grant of Certificate of Authority is equivalent to a decision or an award that has the same effect as a judgment because the NGCP can effectively enforce its certificate against all other electric energy participants. As the sole regulating body in the electric energy sector, the ERC's resolution that refused to grant the NGCP's exemption is akin to a ruling or adjudication of a court of law.²⁷

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²² Section 43. Functions of the ERC. - The ERC shall promote competition, encourage market development, ensure customer choice and discourage/penalize abuse of market power in the restructured electricity industry. Towards this end, it shall be responsible for the following key functions in the restructured industry:

x x x x

(v) The ERC shall have the original and exclusive jurisdiction over all cases contesting rates, fees, fines and penalties imposed by the ERC in the exercise of the abovementioned powers, functions and responsibilities and over all cases involving disputes between and among participants or players in the energy sector. All notices of hearings to be conducted by the ERC for the purpose of fixing rates or fees shall be published at least twice for two successive weeks in two (2) newspapers of nationwide circulation.

²³ *Rollo*, p. 171.

²⁴ *Id.* at 172.

²⁵ *Id.* at 180-190.

²⁶ *Id.* at 181-184.

²⁷ *Id.* at 184.

Second. The ERC committed grave abuse of discretion when it ruled the NGCP is liable to pay the assessment fee despite its exemption under its legislative franchise.²⁸

Finally. There is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law for NGCP.²⁹ There is nothing in the CA Guidelines and Resolution No. 21, Series of 2007 dated July 17, 2007 that provides the remedy of *appeal* to challenge the assailed Letter-Assessment dated February 25, 2014 and Letter-Resolution dated June 9, 2014.

At any rate, the filing of a new case with the ERC to initiate a proceeding would have been an exercise in futility as the ERC would only end up with the same ruling. Too, filing a new case was not a speedy or adequate remedy since the ERC would merely issue a ruling similar to the LetterResolution³⁰ dated June 9, 2014.

Threshold Issues

1. Was certiorari the proper remedy for the NGCP to assail the Letter-Resolution dated June 9, 2014?
2. Assuming the NGCP followed the proper quasi-judicial procedure, is a petition for *certiorari* before the Court of Appeals the correct remedy to assail the ERC's Letter-Resolution?

The Court's Ruling

We deny the petition.

The NGCP violated the doctrines of primary administrative jurisdiction and exhaustion of administrative remedies

Under the doctrine of primary administrative jurisdiction, if an administrative tribunal has jurisdiction over a controversy, courts should not resolve the issue even if it may be within its proper jurisdiction. This is especially true when the question demands the exercise of sound administrative discretion requiring the special

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²⁸ *Id.* at 184-186.

²⁹ *Id.* at 186-188.

³⁰ *Id.* at 187.

knowledge, experience and services of the administrative tribunal to determine technical and intricate matters of fact.³¹

Corollary to the doctrine of primary administrative jurisdiction is the principle of exhaustion of administrative remedies, thus:

x x x The Court, in a long line of cases,³² 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.**³³ (Emphases supplied)

Pertinently, Section 43 of the Electric Power Industry Reform Act (EPIRA) ordains:

Section 43. x x x

x x x x

(v) The ERC shall have the *original and exclusive jurisdiction over all cases contesting rates, fees, fines and penalties imposed by the ERC* in the exercise of the abovementioned powers, functions and responsibilities and over all cases involving disputes between and among participants or players in the energy sector. (emphasis added)

This is complemented by Section 4(p), Rule 3 of the Implementing Rules and Regulations of the EPIRA which decrees:

Section 4. x x x

x x x x

(p) **All actions taken by the ERC pursuant to the Act are subject to judicial review and the requirements of due process and the cardinal rights and principles applicable to quasi-judicial bodies.** (emphasis added)

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³¹ *Republic v. Gallo*, G.R. No. 207074, January 17, 2018.

³² Citing *City Engineer of Baguio v. Baniqued*, 592 Phil. 348, 357 (2008); *Buston-Arendain v. Gil*, 578 Phil. 519, 529-530 (2008); *Province of Zamboanga del Norte v. Court of Appeals*, 396 Phil. 709, 717 (2000).

³³ *Samar II Electric Cooperative, Inc. v. Seludo, Jr.*, 686 Phil. 786, 796 (2012). [Per Third Division, Peralta (Now CJ)].

Verily, the ERC has primary administrative over cases contesting the fees assessed and imposed by the agency itself. Judicial remedies may be availed of only after the jurisdiction by the ERC has already been invoked.

By Resolution³⁴ No. 38, Series of 2006, the ERC promulgated its Rules of Practice and Procedure specifying the formal requirements for invoking the jurisdiction of the ERC, *viz.*:

Rule 1. General Provisions.

Section I. Purpose. - It is the purpose of these rules to aid anyone who wishes to appear before the Energy Regulatory Commission and participate in any proceeding before it. It is the Commission's intention to be accessible and to make its Rules of Practice and Procedure clear and understandable for the parties, their attorneys, and the general public. (Emphasis supplied)

x x x x

Rule 2. Definitions

Section 1. Definitions. - As used in these rules, except as otherwise required by the context:

“Applicant” means, in proceedings involving filings for permission or authorization which the Commission may give under the statutory authority delegated to it, the party on whose behalf the filings are made.

x x x x

“Complainant” means a person who files a complaint intended to initiate a proceeding with the Commission regarding any act or omission by any person subject to the Commission's jurisdiction.

x x x x

“Docket” means a file maintained by the Commission as the record for matters filed and proceedings heard by the Commission.

“Filing” means written pleadings, applications, comments, petitions, protests, motions, notices, compliance, and other papers submitted to the Commission.

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³⁴ Available electronically at <https://www.erc.gov.ph/ContentPage/115>.

“Hearing” means any proceeding at which evidence is taken on the merits of the matters at issue or comments received with respect to a proposed rule for adoption by the Commission.

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“Matter” or “proceeding” means the docket initiated by a filing or submittal or a Commission notice or order.

“Party” means each person named or admitted as a party to a proceeding before the Commission.

“Petitioner” means a person other than a complainant or an applicant, seeking affirmative relief from the Commission.

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“Pleading” means a written document submitted by a party, or a person seeking to participate in a proceeding before the Commission, setting forth allegations of fact, claims, defenses, requests for relief, and/or other matters relevant to the issues raised and/or the relief sought in a proceeding and is used herein to refer to an application, petition, complaint, or answer as provided for in Rule 5.

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Rule 3 – Formal Requirements

Section 1. Caption. - All initial applications, petitions, complaints, and other papers filed with the Commission in any proceeding shall clearly show, in the caption, the names of all persons in whose behalf the filing is made. If more than one person is involved, a single name only need be included in the title of subsequent papers filed. All subsequent filings shall show the docket designation assigned by the Docket Section of the Commission.

Section 2. Form and Size. - All pleadings and other papers filed with the Commission shall be typed or printed on paper 8.5” wide and 14” long. The impression may be on both sides of the paper and shall be double-spaced. Footnotes and quotations may be single-spaced. Pleadings and other papers, together with the annexes thereto, shall be fastened only on the left side. Unless otherwise directed, an original and two (2) copies of any pleading and other papers shall be filed. Reproductions may be made by any process provided that all copies are clear and permanently legible.

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Rule 5 – Pleadings

Section 1. In General. - Pleadings shall be written in any of the official languages, typewritten or printed, and filed with the

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Docket Section of the Commission. It shall state clearly and concisely the ultimate facts and legal authority upon which the pleader relies for the grant of authorization or any other relief.

Section 2. Supporting Documents. - All pleadings shall be accompanied by such documents which substantially establish the truth of the factual allegations contained therein.

x x x x

As it was though, the NGCP merely filed a Letter-Request³⁵ dated March 12, 2014 seeking reconsideration of the imposed fee, a far cry from the abovementioned procedural and formal requirements for quasi-judicial cognizance of the case. Among the defects are:

First, the NGCP itself refers to its documents as *Letter* and *Letter-Request*³⁶ for renewal application and reconsideration, respectively. Under the ERC's Rules of Practice and Procedure, the NGCP is considered an *applicant* that is asking for permission or authorization, as opposed to a *complainant* intending to initiate a proceeding or a *petitioner* seeking affirmative relief from the Commission.

Second, such *Letter* and *Letter-Request* are hardly **pleadings** under the definition, or one which sets forth allegations of fact, claims, defenses, requests for relief, and/or other matters relevant to the issues raised and/or the relief sought in a proceeding.

Third, the NGCP did not pay docket fees when it filed its Letter-Request.

Finally, the captions of the letters do not indicate or even hint any element of quasi-judicial judicial proceeding, such as a docket number, designation of the parties, or type of pleading, if at all.

Thus, NGCP failed to invoke the jurisdiction of the ERC before obtaining judicial relief. Consequently, judicial recourse was premature.

Certiorari was an improper remedy to assail the ERC's Letter-Resolution

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³⁵ *Rollo*, pp. 68-70.

³⁶ *Id.* at 7, Petition for Review.

The NGCP unilaterally assumed that it had already engaged the ERC's quasi-judicial function by filing its Letter dated March 12, 2014. Granting for the sake of argument that the NGCP had complied with procedure and initiated the appeal process of the ERC, and that the ERC issued Letter-Resolution³⁷ dated June 9, 2014 in the exercise of its quasi-judicial functions, *certiorari* was still unavailing.

A petition for *certiorari* may only be resorted to in the absence of an appeal or any plain, speedy and adequate remedy in the ordinary course of law as the two remedies are mutually exclusive.³⁸

Here, the Rules of Court specifically provides a plain, speedy, and adequate remedy from judgments or resolutions of the ERC – appeal via Rule 43 of the 1997 Rules of Civil Procedure, *viz.*:

Section 1. Scope. This Rule shall apply to appeals from judgments or final orders of the Court of Tax Appeals and from **awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions.** Among these agencies are x x x, **Energy Regulatory Board,**³⁹ x x x. (Emphases supplied)

Indubitably, the NGCP availed of the wrong remedy.

In *Mercado v. Valley Mountain Mines Exploration, Inc.*,⁴⁰ the Court held that a special civil action under Rule 65 is an independent action based on the specific grounds therein provided and, as a general rule, cannot be availed of as a substitute for the lost remedy of an ordinary appeal. Accordingly, when a party adopts an improper remedy, his petition may be dismissed outright.

So must it be.

WHEREFORE, the petition is **DENIED.** The Resolutions dated September 4, 2014 and February 13, 2015 of the Court of Appeals in CA-G.R. S.P. No. 136510 are **AFFIRMED.**

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³⁷ *Id.* at 71, signed by ERC Chairperson Zenaida G. Cruz-Ducut.

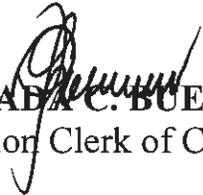
³⁸ *Cunanan v. Court of Appeals*, 793 Phil. 400, 408 (2016).

³⁹ EPIRA, Section 38. Creation of the Energy Regulatory Commission - There is hereby created an independent, quasi-judicial regulatory body to be **named the Energy Regulatory Commission (ERC).** For this purpose, the existing **Energy Regulatory Board (ERB) created under Executive Order No. 172, as amended, is hereby abolished.** (Emphasis supplied)

⁴⁰ 677 Phil. 13, 51 (2011).

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court *1114*

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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