



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **01 March 2021** which reads as follows:*

“G.R. No. 236877 (Manila Electric Company [MERALCO] and Buenaventura S. Floreza v. Engr. Delfin A. Villafuerte, Jr.). –

As a rule, only questions of law are entertained by the Court in petitions for review on *certiorari* under Rule 45. By way of exception though, a review of the factual findings is in order when the factual findings of the Court of Appeals are contrary to those of the trial court,¹ as in this case. Consequently, the Court here is constrained to make its own factual findings based on the cold records of the case for the purpose of resolving the issues raised by the parties.

MERALCO must comply with the requirements of Republic Act No. 7832 (RA 7832) prior to disconnection

Illegal use of electricity is a valid cause for disconnection of electric service subject to compliance with Sections 4 and 6 of RA 7832, *viz.*:

SECTION 4. *Prima Facie Evidence.* — (a) The presence of any of the following circumstances shall constitute prima facie evidence of illegal use of electricity, as defined in this Act, by the person benefitted

¹ See *Manila Electric Co. v. Vda. de Santiago*, 614 Phil. 495, 502 (2009).

thereby, and shall be the basis for: (1) the immediate disconnection by the electric utility to such person after due notice, (2) the holding of a preliminary investigation by the prosecutor and the subsequent filing in court of the pertinent information, and (3) the lifting of any temporary restraining order or injunction which may have been issued against a private electric utility or rural electric cooperative:

(i) The presence of a bored hole on the glass cover of the electric meter, or at the back or any other part of said meter;

(ii) The presence inside the electric meter of salt, sugar and other elements that could result in the inaccurate registration of the meter's internal parts to prevent its accurate registration of consumption of electricity;

(iii) The existence of any wiring connection which affects the normal operation or registration of the electric meter;

(iv) The presence of a tampered, broken, or fake seal on the meter, or mutilated, altered or tampered meter recording chart or graph, or computerized chart, graph, or log;

(v) **The presence** in any part of the building or its premises which is subject to the control of the consumer or **on the electric meter, of a current reversing transformer, jumper, shorting and/or shunting wire, and/or loop connection** or any other similar device;

(vi) The mutilation, alteration, reconnection, disconnection, bypassing or tampering of instruments, transformers, and accessories;

(vii) The destruction of, or attempt to destroy, any integral accessory of the metering device box which encases an electric meter, or its metering accessories; and

(viii) The acceptance of money and/or other valuable consideration by any officer or employee of the electric utility concerned or the making of such an offer to any such officer or employee for not reporting the presence of any of the circumstances enumerated in subparagraphs (i), (ii), (iii), (iv), (v), (vi), or (vii) hereof: **Provided, however, That the discovery of any of the foregoing circumstances, in order to constitute prima facie evidence, must be personally witnessed and attested to by an officer of the law or a duly authorized representative of the Energy Regulatory Board (ERB).**

x x x x

SECTION 6. *Disconnection of Electric Service.* — The private electric utility or rural electric cooperative concerned shall have the right and authority to disconnect immediately the electric service after serving a written notice or warning to that effect, without the need of a court or administrative order, and deny restoration of the same, when the owner of the house or establishment concerned or someone acting in his behalf shall have been caught en flagrante delicto doing any of the acts enumerated in Section 4(a) hereof, or when any of the circumstances so enumerated shall have been discovered for the second time: Provided, That in the second case, a written notice or warning

shall have been issued upon the first discovery: xxx Provided, finally, **That if the court finds the same person guilty of such illegal use of electricity, he shall, upon final judgment, be made to pay the electric utility or rural electric cooperative concerned double the value of the estimated electricity illegally used which is referred to in this section as differential billing.** (Emphases supplied)

In fine, prior to any disconnection of electric services, the electric utility concerned must strictly comply with the following procedure:

- (1) the discovery of illegal use of electricity is personally witnessed and attested to by an officer of the law or a duly authorized representative of the Energy Regulatory Board (ERB)² to create a *prima facie* authority to disconnect;³
- (2) the owner of the house or establishment concerned or someone acting on his behalf:
 - (a) shall have been caught *in flagrante delicto* doing any of the acts enumerated in Section 4(a), or
 - (b) when any of the circumstances shall have been discovered for the second time; and,
- (3) there was prior notice of disconnection.⁴

On the first requisite, both the trial court and Court of Appeals found that MERALCO had sufficiently established a *prima facie* authority to disconnect when, during its ocular inspection of the apartment, it discovered the prohibited loop connection on the two (2) meters. Police Officer 3 Kenneth Loria (PO3 Loria) testified that he was present during the inspection and he saw the loop connection with his own eyes.⁵

Now whether the violator per second requisite was caught *in flagrante delicto*, the trial court and the Court of Appeals both ruled in the affirmative. They noted that during the ocular inspection, the MERALCO personnel, PO3 Loria, respondent Engr. Delfin A. Villafuerte, Jr. (Villafuerte) himself, and his son (occupant of the apartment) were all present. When the loop connection was discovered and Villafuerte and his son were confronted with it, neither one, nor the other denied his knowledge of, and his responsibility for, its existence. All Villafuerte did was to claim, albeit baselessly, if not untruthfully, that the loop connection was akin to a parallel load purportedly allowed under the Electrical Code. Surely, this is a strong evidence of culpability showing that Villafuerte, and no one else, was the implementor of the illegal loop connection.

² Now, Energy Regulatory Commission (ERC).

³ See *Quisumbing v. MERALCO*, 429 Phil. 727, 742 (2002).

⁴ See Section 4, RA 7832.

⁵ See Judicial Affidavit, record, p. 271.

We now go to the third requisite, a written notice of disconnection must have been served on the owner of the house or establishment prior to any disconnection.⁶ On this score, the Court of Appeals correctly ruled that contrary to the trial court's finding, only the notice of disconnection pertaining to Service Identification No. (SIN) 520679001 was served on Villafuerte, as shown by the Demand Letter/Notice of Disconnection No. 21758-06 dated August 24, 2007 bearing a differential billing in the amount of ₱323,831.45 corresponding to the period from December 26, 2004 to August 24, 2007.

Accordingly, the service disconnection on SIN 520679001 was valid as all the requisites therefor under RA 7832 were duly complied with.

As for SIN 972466301, however, MERALCO improperly disconnected the electrical service thereon. For there was no evidence that MERALCO served a similar demand letter/notice of disconnection on Villafuerte insofar as this electrical meter was concerned. The Court of Appeals aptly ruled, *viz.*:

Be that as it may, We note that the Demand Letter/Notice of Disconnection dated August 24, 2007 adjusting the billings from December 26, 2004 until August 24, 2007 which were affected by the finding of the existence of a loop connection thereby resulting in the differential amount of ₱323,831.45, only involves electric service covered by SIN 520679001 in the name of Domingo, but used by plaintiff-appellant's son. x x x Consequently, the differential billing of ₱122,456.90 on SIN 972466301, registered in plaintiff-appellant's name, is without basis; and the disconnection effected by Meralco on plaintiff-appellant's electric service, is also without basis, both acts having been committed with grave abuse of authority. x x x.⁷

Verily, as the service disconnection on SIN 972466301 was done without prior notice, the order to restore electrical services thereon was proper.

Villafuerte is not entitled to moral and exemplary damages and attorney's fees

Parties who do not come to court with clean hands cannot be allowed to profit from their own wrongdoing. The action (or inaction) of the party seeking equity must be "free from fault, and he must have done nothing to lull his adversary into repose, thereby obstructing and preventing vigilance on the part of the latter."⁸

⁶ See *MERALCO v. Castillo*, 701 Phil. 416, 431 (2013).

⁷ *Rollo*, p. 45.

⁸ *Department of Public Works and Highways v. Quiwa*, 681 Phil. 485, 489-490 (2012).

It was established that Villafuerte was caught *in flagrante delicto* of illegally using electricity. If not for the lack of prior notice, MERALCO would have had the full right to disconnect his electricity. The Court will not allow Villafuerte to profit from his own wrongdoing. He cannot therefore rightfully claim moral damages. In *LBC Express, Inc. v. Court of Appeals*,⁹ we deleted the award of moral damages to private respondent who went to court with unclean hands, thus:

We can neither sustain the award of moral damages in favor of the private respondents. The right to recover moral damages is based on equity. Moral damages are recoverable only if the case falls under Article 2219 of the Civil Code in relation to Article 21. Part of conventional wisdom is that he who comes to court to demand equity, must come with clean hands.

In the case at bench, respondent Carloto is not without fault. He was fully aware that his rural bank's obligation would mature on November 21, 1984 and his bank has set aside cash for these bills payable. He was all set to go to Manila to settle this obligation. He has received the documents necessary for the approval of their rediscounting application with the Central Bank. He has also received the plane ticket to go to Manila. Nevertheless, he did not immediately proceed to Manila but instead tarried for days allegedly claiming his ONE THOUSAND PESOS (P1,000.00) pocket money. Due to his delayed trip, he failed to submit the rediscounting papers to the Central Bank on time and his bank was penalized THIRTY-TWO THOUSAND PESOS (P32,000.00) for failure to pay its obligation on its due date. The undue importance given by respondent Carloto to his ONE THOUSAND PESOS (P1,000.00) pocket money is inexplicable for it was not indispensable for him to follow up his bank's rediscounting application with Central Bank. According to said respondent, he needed the money to "invite people for a snack or dinner." The attitude of said respondent speaks ill of his ways of business dealings and cannot be countenanced by this Court. Verily, it will be revolting to our sense of ethics to use it as basis for awarding damages in favor of private respondent Carloto and the Rural Bank of Labason, Inc.

Without moral damages, Villafuerte is also not entitled to exemplary damages. Exemplary damages are allowed only in addition to moral damages such that no exemplary damage can be awarded when the right to moral damages is not established.¹⁰ Further, with the deletion of exemplary damages, there is no basis to award attorney's fees, either.¹¹

As for Villafuerte's claim for lost income, suffice it to state that since he did not appeal its denial by the Court of Appeals, such denial had already lapsed into finality.

⁹ 306 Phil. 624, 628-629 (1994).

¹⁰ *Pen Development Corp. v. Martinez Leyba, Inc.*, 816 Phil. 554, 572 (2017).

¹¹ See Article 2208(1), Civil Code of the Philippines.

MERALCO is entitled to claim differential billing of SIN 972466301

MERALCO had sufficiently established the proper computation of its differential billing for SIN 972466301 in accordance with RA 7832. Its Billing Support Staff Michael Roland B. Arbues testified on how he arrived at the billing differential in the amount of ₱122,456.90 for SIN 972466301. He produced and identified in evidence the billing history for SIN 972466301 for the period from December 26, 2004, when the meter was first installed, until August 24, 2007, when the loop connection was discovered, including the computation sheet and power billing routing slips.¹² To these, Villafuerte offered no countervailing evidence at all. Clearly, therefore, MERALCO is entitled to collect from Villafuerte the differential billing for SIN 972466301.

In *Spouses Miano v. MERALCO*¹³ and *Quisumbing v. MERALCO*,¹⁴ the Court allowed the collection of differential billing despite MERALCO's failure to follow the proper procedure prior to power disconnection since its documentary and testimonial evidence sufficiently proved the amount of differential. So must it be.

Finally, the legal rate of six percent (6%) *per annum* is imposed on the total money award reckoned from finality of this Resolution until fully paid consistent with *Nacar v. Gallery Frames*.¹⁵

WHEREFORE, the petition is **PARTIALLY GRANTED**. The Decision dated August 16, 2017 and Resolution dated January 8, 2018 of the Court of Appeals in CA-G.R. CV No. 103922 are **AFFIRMED** with **MODIFICATION**.

The award of ₱100,000.00 as moral damages, ₱50,000.00 as exemplary damages and ₱50,000.00 as attorney's fees is **DELETED** for lack of basis.

MERALCO is **ORDERED** to restore Engr. Delfin A. Villafuerte, Jr.'s electric power connection and/or service covered by Service Identification No. 972466301.

On the other hand, Engr. Delfin A. Villafuerte, Jr. is **DIRECTED** to pay MERALCO ₱323,831.45 representing the differential billing for Service Identification No. 520679001 and ₱122,456.90 representing the differential billing for Service Identification No. 972466301, plus legal interest of six percent (6%) *per annum* from finality of this Resolution until fully paid.

¹² Record, pp. 282-294.

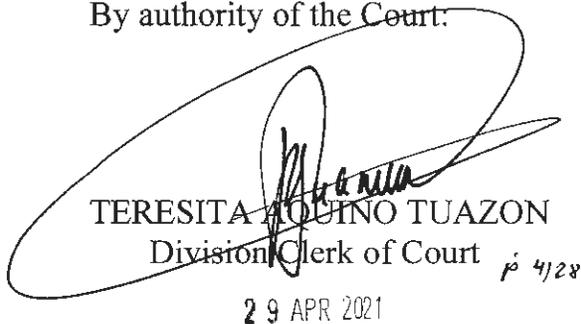
¹³ 800 Phil. 118 (2016).

¹⁴ *Supra* note 3.

¹⁵ 716 Phil. 267 (2013).

SO ORDERED.” (Rosario, J., on leave)

By authority of the Court:



TERESITA AQUINO TUAZON
Division Clerk of Court p 4/28

29 APR 2021

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HON. PRESIDING JUDGE (reg)
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(Civil Case No. Q-11-69565)

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*with copies of CA Decision dated 16 August 2017
& Resolution dated 8 January 2018.
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GR236877. 3/01/2021B(141)URES