



Republic of the Philippines
Supreme Court
Manila

EN BANC

ENRIQUE U. BETOY,
Petitioner,

G.R. Nos. 156556-57

Present:

CORONA, C.J.,
CARPIO,
VELASCO, JR.,
LEONARDO-DE CASTRO,
BRION,
PERALTA,
BERSAMIN,
DEL CASTILLO,
ABAD,
VILLARAMA, JR.,
PEREZ,
MENDOZA,
SERENO,
REYES, and
PERLAS-BERNABE, JJ.

- versus -

THE BOARD OF DIRECTORS,
NATIONAL POWER
CORPORATION,

Respondent.

Promulgated:

OCTOBER 04, 2011

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DECISION

PERALTA, J.:

Before this Court is a special civil action for *certiorari*¹ and supplemental petition for *mandamus*,² specifically assailing National Power Board Resolutions No. 2002-124 and No. 2002-125, as well as Sections 11, 34, 38, 48, 52 and 63 of Republic Act (R.A.) No. 9136, otherwise known as

¹ Rollo, pp. 5-171.

² Id. at 295-333.

the *Electric Power Industry Reform Act of 2001* (EPIRA). Also assailed is Rule 33 of the Implementing Rules and Regulations (IRR) of the EPIRA.

The facts of the case are as follows:

On June 8, 2001, the EPIRA was enacted by Congress with the goal of restructuring the electric power industry and privatization of the assets of the National Power Corporation (NPC).

Pursuant to Section 48³ of the EPIRA, a new National Power Board of Directors (NPB) was created. On February 27, 2002, pursuant to Section 77⁴ of the EPIRA, the Secretary of the Department of Energy promulgated the IRR.

On the other hand, Section 63 of the EPIRA provides for separation benefits to officials and employees who would be affected by the restructuring of the electric power industry and the privatization of the assets of the NPC, to wit:

Section 63. Separation Benefits of Officials and Employees of Affected Agencies. - National Government employees displaced or separated from the service as a result of the restructuring of the electricity industry and privatization of NPC assets pursuant to this Act, shall be entitled to either a separation pay and other benefits in accordance with existing laws, rules or regulations or be entitled to avail of the privileges provided under a separation plan which shall be one and one-half month salary for every year of service in the government: *Provided, however,* That those who avail of such privileges shall start their government service anew if absorbed by any government-owned successor company. In no case shall there be any diminution of benefits under the separation plan until the full implementation of the restructuring and privatization.

³ Sec. 48. *National Power Board of Directors.* - Upon the passage of this Act, Section 6 of Republic Act No. 6395, as amended, and Section 13 of Republic Act No. 7638, as amended, referring to the composition of the National Power Board of Directors, are hereby repealed and a new Board shall be immediately organized. The new Board shall be composed of the Secretary of Finance as Chairman, with the following as members: the Secretary of Energy, the Secretary of Budget and Management, the Secretary of Agriculture, the Director-General of the National Economic and Development Authority, the Secretary of Environment and Natural Resources, the Secretary of the Interior and Local Government, the Secretary of the Department of Trade and Industry, and the President of the National Power Corporation.

⁴ Sec. 77. *Implementing Rules and Regulations.* - The DOE shall, in consultation with relevant government agencies, the electric power industry participants, non-government organizations and end-users, promulgate the Implementing Rules and Regulations (IRR) of this Act within six (6) months from the effectivity of this Act, subject to the approval by the Power Commission.

Displaced or separated personnel as a result of the privatization, if qualified, shall be given preference in the hiring of the manpower requirements of the privatized companies. x x x⁵

Rule 33⁶ of the IRR provided for the coverage and the guidelines for

⁵ Emphasis supplied.

⁶ RULE 33. SEPARATION BENEFITS

Sec. 1. *General Statement on Coverage.*

This Rule shall apply to all employees in the National Government service as of 26 June 2001 regardless of position, designation or status, who are displaced or separated from the service as a result of the Restructuring of the electricity industry and Privatization of NPC assets: Provided, however, That the coverage for casual or contractual employees shall be limited to those whose appointments were approved or attested by the Civil Service Commission (CSC).

Sec. 2. Scope of Application. This Rule shall apply to affected personnel of DOE, ERB, NEA and NPC.

Sec. 3. Separation and Other Benefits.

(a) The separation benefit shall consist of either a separation pay and other benefits granted in accordance with existing laws, rules and regulations or a separation plan equivalent to one and one half (1-½) months' salary for every year of service in the government, whichever is higher: Provided, That the separated or displaced employee has rendered at least one (1) year of service at the time of effectivity of the Act.

(b) The following shall govern the application of Section 3(a) of this Rule:

(i) With respect to NPC officials and employees, they shall be considered legally terminated and shall be entitled to the benefits or separation pay provided in Section 3(a) herein when the restructuring plan as approved by the NPC Board shall have been implemented.

(ii) With respect to NEA officials and employees, they shall be considered legally terminated and shall be entitled to the benefits or separation pay provided in Section 3(a) herein when a restructuring of NEA is implemented pursuant to a law enacted by Congress or pursuant to Section 5(a)(5) of Presidential Decree No. 269.

With respect to the affected Bureaus of the DOE, their officials and employees shall be considered legally terminated and shall be entitled to the benefits or separation pay provided in Section 3(a) herein when the re-organizational plan shall have been implemented as a result of the Restructuring of the electric power industry.

(c) The governing board or authority of the entities enumerated in Section 3(b) hereof shall have the sole prerogative to hire the separated employees as new employees who start their service anew for such positions and for such compensation as may be determined by such board or authority pursuant to its restructuring program. Those who avail of the foregoing privileges shall start their government service anew if absorbed by any government agency or any government-owned successor company.

(d) In no case shall there be any diminution of benefits under the separation plan until the full implementation of the Restructuring of the electric power industry and the Privatization of NPC assets in accordance with the approved Restructuring and Privatization schedule.

(e) For this purpose, "Salary," as a rule, refers to the basic pay including the thirteenth (13th) month pay received by an employee pursuant to his appointment, excluding per diems, bonuses, overtime pay, honoraria, allowances and any other emoluments received in addition to the basic pay under existing laws


(f) Likewise, "Separation" or "Displacement" refers to the severance of employment of any official or employee, who is neither qualified under existing laws, rules and regulations nor has opted to retire under existing laws, as a result of the Restructuring of the electric power industry or Privatization of NPC assets pursuant to the Act.

Sec. 4. Funding.

Funds necessary to cover the separation pay under this Rule shall be provided either by the Government Service Insurance System (GSIS) or from the corporate funds of the NEA or the NPC, as the case may be; and in the case of the DOE and the ERB, by the GSIS or from the general fund, as the case may be. The Buyer or Concessionaire or the successor company shall not be liable for the payment of the separation pay.

Sec. 5. Preferential Rights of Employees.

Displaced or separated personnel as a result of the Restructuring of the electric power industry and Privatization of NPC assets shall be given preference in the hiring of manpower requirements of the newly-created offices or the privatized companies: Provided, That the displaced or separated personnel meet the prescribed qualifications. With respect to employees who are not retained by NPC, the government, through the Department of Labor and Employment (DOLE), shall endeavor to implement re-training, job



the separation benefits to be given to the employees affected.

On November 18, 2002, pursuant to Section 63 of the EPIRA and Rule 33 of the IRR, the NPB passed NPB Resolution No. 2002-124⁷ which, among others, resolved that all NPC personnel shall be legally terminated on January 31, 2003 and shall be entitled to separation benefits. On the same day, the NPB passed NPB Resolution No. 2002-125⁸ which created a transition team to manage and implement the separation program.

As a result of the foregoing NPB Resolutions, petitioner Enrique U. Beto, together with thousands of his co-employees from the NPC were terminated.

Hence, herein petition for *certiorari* with petitioner praying for the grant of the following reliefs from this Court, to wit:

1. Declaring National Power Board Resolution Nos. 2002-124 and 2002-125 and its Annex "B" Null and Void, the fact [that] it was done with extraordinary haste and in secrecy without the able participation of the Napocor Employees Consolidated Union (NECU) to represent all career civil service employees on issues affecting their rights to due process, equity, security of tenure, social benefits accrued to them, and as well as the disclosure of public transaction provisions of the 1987 Constitution because during its proceeding the National Power Board had acted with grave abuse of discretion and disregarding constitutional and statutory injunctions on removal of public servants and non-diminution of social benefits accrued to separated employees, thus, amounting to excess of jurisdiction;
2. Striking down Section 11, Section 48 and Section 52 of RA 9136 (EPIRA) for being violative of Section 13, Article VII of the 1987 Constitution and, therefore, unconstitutional;
3. Striking Section 34 of RA 9136 (EPIRA) for being exorbitant display of State Power and was not premised on the welfare of the FILIPINO PEOPLE or principle of *salus populi est suprema lex*;

counseling, and job placement programs.


Sec. 6. Implementation.

The DOE, NEA, and NPC, shall issue guidelines applicable to their respective employees to implement this Rule within ninety (90) days from effectivity of these Rules: Provided, That in the case of ERC, the independent quasi-judicial body created under the Act, the manner of, and timetable for, implementation of its organization shall be governed by Section 38 and Section 39 of the Act.

⁷ See *rollo*, pp. 198-204. Pertinent portion of which reads:

RESOLVED FURTHER, That pursuant to Section 63 of the EPIRA and Rule 33 of the IRR, all NPC Personnel shall be legally terminated on January 31, 2003 and shall be entitled to separation benefits as provided in the Guidelines hereunder adopted.

⁸ *Rollo*, pp. 220-223.



4. Striking down Section 38 for RA 9136 (EPIRA) for being a prelude to Charter Change without a valid referendum for ratification of the entire voter citizens of the Philippine Republic;

5. Striking down all other provisions of RA 9136 (EPIRA) found repugnant to the 1987 Constitution;

6. Striking down all provisions of the Implementing Rules and Regulations (IRR) of the EPIRA found repugnant to the 1987 Constitution;

7. Striking down Section 63 of RA 9136 (EPIRA) for classifying such provisions in the same vein with Proclamation No. 50 used against MWSS employees and its failure to classify which condition comes first whether the restructuring effecting total reorganization of the electric power industry making NPC financially viable or the privatization of NPC assets where manpower reduction or sweeping/lay-off or termination of career civil service employees follows the disposal of NPC assets. This is a clear case of violation of the *EQUAL PROTECTION CLAUSE*, therefore, unconstitutional;

8. Striking down Rule 33 of the Implementing Rules [and] Regulations (IRR) for disregarding the constitutional and statutory injunction on arbitrary removal of career civil service employees; and

9. For such other reliefs deemed equitable with justice and fairness to more than EIGHT THOUSAND (8,000) EMPLOYEES of the National Power Corporation (NPC) whose fate lies in the sound disposition of the Honorable Supreme Court.⁹

In addition, petitioner also filed a supplemental petition for *mandamus* praying for his reinstatement.

The petition is without merit.


Before anything else, this Court shall first tackle whether it was proper for petitioner to directly question the constitutionality of the EPIRA before this Court.

Section 5(1) and (2), Article VIII of the 1987 Constitution provides that:

SECTION 5. The Supreme Court shall have the following powers:

1. Exercise *original jurisdiction over cases* affecting ambassadors, other public ministers and consuls, and over *petitions for certiorari, prohibition, mandamus, quo warranto, and habeas corpus.*

⁹ *Id.* at 170-171. (Emphasis in original.)



2. Review, revise, reverse, modify, or affirm *on appeal or certiorari*, as the law or the rules of court may provide, final judgments and orders of lower courts in:

- (a) All cases in which the *constitutionality or validity* of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.¹⁰

Based on the foregoing, this Court's jurisdiction to issue writs of *certiorari*, prohibition, *mandamus*, *quo warranto*, and *habeas corpus*, while concurrent with that of the Regional Trial Courts and the Court of Appeals, does not give litigants unrestrained freedom of choice of forum from which to seek such relief.¹¹ The determination of whether the assailed law and its implementing rules and regulations contravene the Constitution is within the jurisdiction of regular courts. The Constitution vests the power of judicial review or the power to declare a law, treaty, international or executive agreement, presidential decree, order, instruction, ordinance, or regulation in the courts, including the Regional Trial Courts.¹²

It has long been established that this Court will not entertain direct resort to it unless the redress desired cannot be obtained in the appropriate courts, or where exceptional and compelling circumstances justify availment of a remedy within and call for the exercise of our primary jurisdiction.¹³ Thus, herein petition should already be dismissed at the outset; however, since similar petitions have already been resolved by this Court tackling the validity of NPB Resolutions No. 2002-124 and No. 2002-125, as well as the constitutionality of certain provisions of the EPIRA, this Court shall disregard the procedural defect.

¹⁰ Italics supplied.

¹¹ *Francisco, Jr. v. Fernando*, G.R. No. 166501, November 16, 2006, 507 SCRA 173, 179, citing *People v. Cuaresma*, G.R. No. 67787, April 18, 1989, 172 SCRA 415, 423-424.

¹² *British American Tobacco v. Camacho*, G.R. No. 163583, August 20, 2008, 562 SCRA 511, 534.

¹³ *Lacson Hermanas, Inc. v. Heirs of Cenon Ignacio*, G.R. No. 165973, June 29, 2005, 462 SCRA 290, 294 and *Santiago v. Vasquez*, G.R. Nos. 99289-90, January 27, 1993, 217 SCRA 633, 652.

Validity of NPB Resolutions No. 2002-124 and No. 2002-125

The main issue raised by petitioner deals with the validity of NPB Resolutions No. 2002-124 and No. 2002-125.

In *NPC Drivers and Mechanics Association (NPC DAMA) v. National Power Corporation (NPC)*,¹⁴ this Court had already ruled that NPB Resolutions No. 2002-124 and No. 2002-125 are void and of no legal effect.

NPC Drivers involved a special civil action for Injunction seeking to enjoin the implementation of the same assailed NPB Resolutions. Petitioners therein put in issue the fact that the NPB Resolutions were not concluded by a duly constituted Board of Directors since no quorum in accordance with Section 48 of the EPIRA existed. In addition, petitioners therein argued that the assailed NPB Resolutions cannot be given legal effect as it failed to comply with Section 47 of the EPIRA which required the endorsement of the Joint Congressional Power Commission and the President of the Philippines. Ruling in favor of petitioners therein, this Court ruled that NPB Resolutions No. 2002-124 and No. 2002-125 are void and of no legal effect for failure to comply with Section 48 of the EPIRA, to wit:

We agree with petitioners. In enumerating under Section 48 those who shall compose the National Power Board of Directors, the legislature has vested upon these persons the power to exercise their judgment and discretion in running the affairs of the NPC. Discretion may be defined as "the act or the liberty to decide according to the principles of justice and one's ideas of what is right and proper under the circumstances, without willfulness or favor. Discretion, when applied to public functionaries, means a power or right conferred upon them by law of acting officially in certain circumstances, according to the dictates of their own judgment and conscience, uncontrolled by the judgment or conscience of others. It is to be presumed that in naming the respective department heads as members of the board of directors, the legislature chose these secretaries of the various executive departments on the basis of their personal qualifications and acumen which made them eligible to occupy their present positions as department heads. Thus, the department secretaries cannot delegate their duties as members of the NPB, much less their power to vote and approve board resolutions, because it is their personal judgment that must be exercised in the fulfilment of such responsibility.

¹⁴

G.R. No. 156208, September 26, 2006, 503 SCRA 138.

x x x x

In the case at bar, it is not difficult to comprehend that in approving NPB Resolutions No. 2002-124 and No. 2002-125, it is the representatives of the secretaries of the different executive departments and not the secretaries themselves who exercised judgment in passing the assailed Resolution, as shown by the fact that it is the signatures of the respective representatives that are affixed to the questioned Resolutions. This, to our mind, violates the duty imposed upon the specifically enumerated department heads to employ their own sound discretion in exercising the corporate powers of the NPC. Evidently, the votes cast by these mere representatives in favor of the adoption of the said Resolutions must not be considered in determining whether or not the necessary number of votes was garnered in order that the assailed Resolutions may be validly enacted. Hence, there being only three valid votes cast out of the nine board members, namely those of DOE Secretary Vincent S. Perez, Jr.; Department of Budget and Management Secretary Emilia T. Boncodin; and NPC OIC-President Rolando S. Quilala, **NPB Resolutions No. 2002-124 and No. 2002-125 are void and are of no legal effect.**¹⁵

However, a supervening event occurred in *NPC Drivers* when it was brought to this Court's attention that NPB Resolution No. 2007-55 was promulgated on September 14, 2007 confirming and adopting the principles and guidelines enunciated in NPB Resolutions No. 2002-124 and No. 2002-125.

On December 2, 2009, this Court promulgated a Resolution¹⁶ clarifying the amount due the individual employees of NPC in view of NPB Resolution No. 2007-55. In said Resolution, this Court clarified the exact date of the legal termination of each class of NPC employees, thus:

From all these, it is clear that our ruling, pursuant to NPB Resolution No. 2002-124, covers all employees of the NPC and not only the 16 employees as contended by the NPC. However, as regards their right to reinstatement, or separation pay in lieu of reinstatement, pursuant to a validly approved Separation Program, plus backwages, wage adjustments, and other benefits, the same shall be computed from the date of legal termination as stated in NPC Circular No. 2003-09, to wit:

a) The legal termination of **key officials**, *i.e.*, the Corporate Secretary, Vice-Presidents and Senior Vice-Presidents who were appointed under NP Board Resolution No. 2003-12, shall be at the close of office hours of **January 31, 2003**.

¹⁵ *Id.* at 148-150. (Emphasis Supplied.)

¹⁶ *NPC Drivers and Mechanics Association v. National Power Corporation*, G.R. No. 156208, December 2, 2009, 606 SCRA 409.

b) The legal termination of personnel who availed of the early leavers' scheme shall be on the last day of service in NPC but not beyond January 15, 2003.

c) The legal termination of personnel who were no longer employed in NPC after June 26, 2001 shall be the date of actual separation in NPC.

d) For all other NPC personnel, their legal termination shall be at the close of office hours/shift schedule of February 28, 2003.¹⁷

As to the validity of NPB Resolution No. 2007-55, this Court ruled that the same will have a prospective effect, to wit:

What then is the effect of the approval of NPB Resolution No. 2007-55 on 14 September 2007? The approval of NPB Resolution No. 2007-55, supposedly by a majority of the National Power Board as designated by law, that adopted, confirmed and approved the contents of NPB Resolutions No. 2002-124 and No. 2002-125 will have a **prospective effect**, not a retroactive effect. The approval of NPB Resolution No. 2007-55 cannot ratify and validate NPB Resolutions No. 2002-124 and No. 2002-125 as to make the termination of the services of all NPC personnel/employees on 31 January 2003 valid, because said resolutions were void.

The approval of NPB Resolution No. 2007-55 on 14 September 2007 means that the services of all NPC employees have been legally terminated on this date. All separation pay and other benefits to be received by said employees will be deemed cut on this date. The computation thereof shall, therefore, be from the date of their illegal termination pursuant to NPB Resolutions No. 2002-124 and No. 2002-125 as clarified by NPB Resolution No. 2003-11 and NPC Resolution No. 2003-09 up to 14 September 2007. Although the validity of NPB Resolution No. 2007-55 has not yet been passed upon by the Court, same has to be given effect because NPB Resolution No. 2007-55 enjoys the presumption of regularity of official acts. The presumption of regularity of official acts may be rebutted by affirmative evidence of irregularity or failure to perform a duty. **Thus, until and unless there is clear and convincing evidence that rebuts this presumption, we have no option but to rule that said resolution is valid and effective as of 14 September 2007.**¹⁸

Based on the foregoing, this Court concluded that the computation of the amounts due the employees who were terminated and/or separated as a result of, or pursuant to, the nullified NPB Board Resolutions No. 2002-124

¹⁷ *Id.* at 432-433. (Emphasis in original.)

¹⁸ *Id.* at 434-435. (Emphasis in Original.)

and No. 2002-125 shall be from their date of illegal termination up to September 14, 2007 when NPB Resolution No. 2007-55 was issued.

Thus, the resolution of the validity of NPB Board Resolutions No. 2002-124 and No. 2002-125 is, therefore, moot and academic in view of the Court's pronouncements in *NPC Drivers*.

Anent the question of the constitutionality of Section 63 of RA 9136, as well as Rule 33 of the IRR, this Court finds that the same is without merit.

A reorganization involves the reduction of personnel, consolidation of offices, or abolition thereof by reason of economy or redundancy of functions.¹⁹ It could result in the loss of one's position through removal or abolition of an office. However, for a reorganization for the purpose of economy or to make the bureaucracy more efficient to be valid, it must pass the test of good faith; otherwise, it is void *ab initio*.²⁰


It is undisputed that NPC was in financial distress and the solution found by Congress was to pursue a policy towards its privatization. The privatization of NPC necessarily demanded the restructuring of its operations. To carry out the purpose, there was a need to terminate employees and re-hire some depending on the manpower requirements of the privatized companies. The privatization and restructuring of the NPC was, therefore, done in good faith as its primary purpose was for economy and to make the bureaucracy more efficient.

In *Freedom from Debt Coalition v. Energy Regulatory Commission*,²¹ this Court discussed why there was a need for a shift towards the privatization and restructuring of the electric power industry, to wit:

¹⁹ *Canonizado v. Aguirre*, 380 Phil. 280, 296 (2000).

²⁰ *Dario v. Mison*, G.R. No. 81954, August 8, 1989, 176 SCRA 84; *Vide: Dytiapco v. Civil Service Commission*, G.R. No.92136, July 3, 1992, 211 SCRA 88; *Domingo v. Development Bank of the Philippines*, G.R. No. 93355, April 7, 1992, 207 SCRA 766 and *Pari-an v. Civil Service Commission*, G.R. No. 96535, October 15, 1991, 202 SCRA 772.

²¹ G.R. No. 161113, June 15, 2004, 432 SCRA 157.



One of the landmark pieces of legislation enacted by Congress in recent years is the EPIRA. It established a new policy, legal structure and regulatory framework for the electric power industry.

The new thrust is to tap private capital for the expansion and improvement of the industry as the large government debt and the highly capital-intensive character of the industry itself have long been acknowledged as the critical constraints to the program. To attract private investment, largely foreign, the jaded structure of the industry had to be addressed. While the generation and transmission sectors were centralized and monopolistic, the distribution side was fragmented with over 130 utilities, mostly small and uneconomic. The pervasive flaws have caused a low utilization of existing generation capacity; extremely high and uncompetitive power rates; poor quality of service to consumers; dismal to forgettable performance of the government power sector; high system losses; and an inability to develop a clear strategy for overcoming these shortcomings.

Thus, the EPIRA provides a framework for the restructuring of the industry, including the privatization of the assets of the National Power Corporation (NPC), the transition to a competitive structure, and the delineation of the roles of various government agencies and the private entities. The law ordains the division of the industry into four (4) distinct sectors, namely: generation, transmission, distribution and supply. Corollarily, the NPC generating plants have to be privatized and its transmission business spun off and privatized thereafter.²²

Petitioner argues that bad faith is clearly manifested as the reorganization has an eye to replace current favorite less competent appointees. In addition, petitioner contends that qualifications and behavioral aspect were being set aside.²³

Section 2 of R.A. No. 6656²⁴ cites certain circumstances showing bad faith in the removal of employees as a result of any reorganization, thus:

Sec. 2. No officer or employee in the career service shall be removed except for a valid cause and after due notice and hearing. A valid cause for removal exist when, pursuant to a *bona fide* reorganization, a position has been abolished or rendered redundant or there is a need to merge, divide, or consolidate positions in order to meet the exigencies of the service, or other lawful causes allowed by the Civil Service Law. The existence of any or some of the following circumstances may be considered as evidence of bad faith in the removals made as a result of the reorganization, giving rise to a claim for reinstatement or reappointment by an aggrieved party:

²² *Id.* at 171-172.

²³ *Rollo*, p. 307.

²⁴ AN ACT TO PROTECT THE SECURITY OF TENURE OF CIVIL SERVICE OFFICERS AND EMPLOYEES IN THE IMPLEMENTATION OF GOVERNMENT REORGANIZATION.

- a) Where there is a significant increase in the number of positions in the new staffing pattern of the department or agency concerned;
- b) Where an office is abolished and another performing substantially the same functions is created;
- c) Where incumbents are replaced by those less qualified in terms of status of appointment, performance and merit;
- d) Where there is a reclassification of offices in the department or agency concerned and the reclassified offices perform substantially the same functions as the original offices; and
- e) Where the removal violates the order of separation provided in Section 3 hereof.

The Solicitor General, however, argues that petitioner has not shown any circumstance to prove that the restructuring of NPC was done in bad faith. We agree.

Petitioner's allegation that the reorganization was merely undertaken to accommodate new appointees is at most speculative and bereft of any evidence on record. It is settled that bad faith must be duly proved and not merely presumed. It must be proved by clear and convincing evidence,²⁵ which is absent in the case at bar.

In addition, petitioner has no legal or vested right to be reinstated as Section 63 of the EPIRA as well as Section 5, Rule 33 of the IRR clearly state that the displaced or separated personnel as a result of the privatization, if qualified, shall be given preference in the hiring of the manpower requirements of the privatized companies. Clearly, the law only speaks of preference and by no stretch of the imagination can the same amount to a legal right to the position. Undoubtedly, not all the terminated employees will be re-hired by the selection committee as the manpower requirement of the privatized companies will be different. As correctly observed by the Solicitor General, the selection of employees for purposes of re-hiring them necessarily entails the exercise of discretion or judgment.²⁶ Such being the case, petitioner, cannot, by way of mandamus, compel the selection

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Fernando v. Sto. Tomas, G.R. No. 112309, July 28, 1994, 234 SCRA 546, 552.

²⁶

Rollo, p. 521.

committee to include him in the re-hired employees, more so, since there is no evidence showing that said committee acted with grave abuse of discretion or that the re-hired employees were merely accommodated and not qualified.

Validity of Sections 11, 48, and 52 of RA 9136

Petitioner argues that Sections 11,²⁷ 48,²⁸ and 52²⁹ of the EPIRA are unconstitutional for violating Section 13, Article VII of the 1987 Constitution.

Section 13, Article VII of the 1987 Constitution provides:

Sec. 13. The President, Vice-President, the *Members of the Cabinet*, and their deputies or assistants *shall not*, unless otherwise provided in this Constitution, *hold any other office* or employment during their tenure. They shall not, during said tenure, directly or indirectly practice any other profession, participate in any business, or be financially interested in any contract with, or in any franchise, or special privilege


²⁷ Sec. 11. *TRANSCO Board of Directors*. – All the powers of the TRANSCO shall be vested in and exercised by a Board of Directors. The Board shall be composed of a Chairman and six (6) members. The Secretary of the Department of Finance (DOF) shall be the ex officio Chairman of the Board. The other members of the TRANSCO Board shall include the Secretary of the Department of Energy (DOE), the Secretary of the Department of Environment and Natural Resources (DENR), the President of TRANSCO, and three (3) members to be appointed by the President, each representing Luzon, Visayas and Mindanao.

The members of the Board so appointed by the President of the Philippines shall serve for a term of six (6) years, except that any person appointed to fill-in a vacancy shall serve only the unexpired term of his/her predecessor in office. All members of the Board shall be professionals of recognized competence and expertise in the fields of engineering, finance, economics, law or business management. No member of the Board or any of his relatives within the fourth civil degree of consanguinity or affinity shall have any interest, either as investor, officer or director, in any generation company or distribution utility or other entity engaged in transmitting, generating and supplying electricity specified by ERC

²⁸ SEC. 48. *National Power Board of Directors*. – Upon the passage of this Act, Section 6 of R.A. 6395, as amended, and Section 13 of RA 7638, as amended, referring to the composition of the National Power Board of Directors, are hereby repealed and a new Board shall be immediately organized. The new Board shall be composed of the Secretary of Finance as Chairman, with the following as members: the Secretary of Energy, the Secretary of Budget and Management, the Secretary of Agriculture, the Director-General of the National Economic and Development Authority, the Secretary of Environment and Natural Resources, the Secretary of Interior and Local Government, the Secretary of the Department of Trade and Industry, and the President of the National Power Corporation.

²⁹ Sec. 52. *Power Sector Assets and Liabilities Management Corporation, Meetings, Quorum and Voting*. – The Corporation shall be administered, and its powers and functions exercised, by a Board of Directors which shall be composed of the Secretary of Finance as the Chairman, the Secretary of Budget and Management, the Secretary of the Department of Energy, the Director-General of the National Economic and Development Authority, the Secretary of the Department of Justice, the Secretary of the Department of Trade and Industry and the President of the PSALM Corp. as ex officio members thereof.

The Board of Directors shall meet regularly and as frequently as may be necessary to enable it to discharge its functions and responsibilities. The presence at a meeting of four (4) members shall constitute a quorum, and the decision of the majority of three (3) members present at a meeting where there is quorum shall be the decision of the Board of Directors.



granted by the Government or any subdivision, agency, or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries. They shall strictly avoid conflict of interest in the conduct of their office.


x x x x.³⁰

In *Civil Liberties Union v. Executive Secretary*,³¹ this Court explained that the prohibition contained in Section 13, Article VII of the 1987 Constitution does not apply to posts occupied by the Executive officials specified therein without additional compensation in an *ex-officio* capacity as provided by law and as required by the primary function of said official's office, to wit:

The prohibition against holding dual or multiple offices or employment under Section 13, Article VII of the Constitution must not, however, be construed as applying to posts occupied by the Executive officials specified therein without additional compensation in an *ex-officio* capacity as provided by law and as *required* by the primary functions of said officials' office. The reason is that these posts do not comprise "any other office" within the contemplation of the constitutional prohibition but are properly an imposition of additional duties and functions on said officials. To characterize these posts otherwise would lead to absurd consequences, among which are: The President of the Philippines cannot chair the National Security Council reorganized under Executive Order No. 115 (December 24, 1986). Neither can the Vice-President, the Executive Secretary, and the Secretaries of National Defence, Justice, Labor and Employment and Local Government sit in this Council, which would then have no reason to exist for lack of a chairperson and members. The respective undersecretaries and assistant secretaries, would also be prohibited.

x x x x

The term "primary" used to describe "functions" refers to the order of importance and thus means chief or principal function. The term is not restricted to the singular but may refer to the plural. The additional duties must not only be closely related to, but must be required by the official's primary functions. Examples of designations to positions by virtue of one's primary functions are the Secretaries of Finance and Budget, sitting as members of the Monetary Board, and the Secretary of Transportation and Communications, acting as Chairman of the Maritime Industry Authority and the Civil Aeronautics Board.³²



³⁰ Italics supplied

³¹ G.R. No. 83896, February 22, 1991, 194 SCRA 317.


³² *Id.* at 331-334.

The designation of the members of the Cabinet to form the NPB does not violate the prohibition contained in our Constitution as the privatization and restructuring of the electric power industry involves the close coordination and policy determination of various government agencies. Section 2 of the EPIRA clearly shows that the policy toward privatization would involve financial, budgetary and environmental concerns as well as coordination with local government units, to wit:

SECTION 2. *Declaration of Policy.* – It is hereby declared the policy of the State:

- (a) To ensure and accelerate the total electrification of the country;
- (b) To ensure the quality, reliability, security and affordability of the supply of electric power;
- (c) To ensure transparent and reasonable prices of electricity in a regime of free and fair competition and full public accountability to achieve greater operational and economic efficiency and enhance the competitiveness of Philippine products in the global market;
- (d) To enhance the inflow of private capital and broaden the ownership base of the power generation, transmission and distribution sectors;
- (e) To ensure fair and non-discriminatory treatment of public and private sector entities in the process of restructuring the electric power industry;
- (f) To protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power;
- (g) To assure socially and environmentally compatible energy sources and infrastructure;
- (h) To promote the utilization of indigenous and new and renewable energy resources in power generation in order to reduce dependence on imported energy;
- (i) To provide for an orderly and transparent privatization of the assets and liabilities of the National Power Corporation (NPC);
- (j) To establish a strong and purely independent regulatory body and system to ensure consumer protection and enhance the competitive operation of the electricity market; and
- (k) To encourage the efficient use of energy and other modalities of demand side management.

As can be gleaned from the foregoing enumeration, the restructuring of the electric power industry inherently involves the participation of various government agencies. In *Civil Liberties*, this Court explained that mandating additional duties and functions to Cabinet members which are not



inconsistent with those already prescribed by their offices or appointments by virtue of their special knowledge, expertise and skill in their respective executive offices, is a practice long-recognized in many jurisdictions. It is a practice justified by the demands of efficiency, policy direction, continuity and coordination among the different offices in the Executive Branch in the discharge of its multifarious tasks of executing and implementing laws affecting national interest and general welfare and delivering basic services to the people.³³

The production and supply of energy is undoubtedly one of national interest and is a basic commodity expected by the people. This Court, therefore, finds the designation of the respective members of the Cabinet, as *ex-officio* members of the NPB, valid.

This Court is not unmindful, however, that Section 48 of the EPIRA is not categorical in proclaiming that the concerned Cabinet secretaries compose the NPB Board only in an *ex-officio* capacity. It is only in Section 52 creating the Power Sector Assets and Liabilities Management Corporation (PSALM) that they are so designated in an *ex-officio* capacity. Sections 4 and 6 of the EPIRA provides:

Section 4. TRANSCO Board of Directors.

All the powers of the TRANSCO shall be vested in and exercised by a Board of Directors. The Board shall be composed of a Chairman and six (6) members. The Secretary of the DOF shall be the *ex-officio* Chairman of the Board. The other members of the TRANSCO Board shall include the Secretary of the DOE, the Secretary of the DENR, the President of TRANSCO, and three (3) members to be appointed by the President of the Philippines, each representing Luzon, Visayas and Mindanao, one of whom shall be the President of PSALM.

x x x x.

Section 6. PSALM Board of Directors.

PSALM shall be administered, and its powers and functions exercised, by a Board of Directors which shall be composed of the

³³ *Id.* at 334-335.



Secretary of the DOF as the Chairman, and the Secretary of the DOE, the Secretary of the DBM, the Director-General of the NEDA, the Secretary of the DOJ, the Secretary of the DTI and the President of the PSALM as *ex-officio* members thereof.

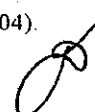
Nonetheless, this Court agrees with the contention of the Solicitor General that the constitutional prohibition was not violated, considering that the concerned Cabinet secretaries were merely imposed additional duties and their posts in the NPB do not constitute "any other office" within the contemplation of the constitutional prohibition.

The delegation of the said official to the respective Board of Directors were designation by Congress of additional functions and duties to the officials concerned, *i.e.*, they were designated as members of the Board of Directors. Designation connotes an imposition of additional duties, usually by law, upon a person already in the public service by virtue of an earlier appointment.³⁴ Designation does not entail payment of additional benefits or grant upon the person so designated the right to claim the salary attached to the position. Without an appointment, a designation does not entitle the officer to receive the salary of the position. The legal basis of an employee's right to claim the salary attached thereto is a duly issued and approved appointment to the position, and not a mere designation.³⁵

Hence, Congress specifically intended that the position of member of the Board of NPB shall be *ex-officio* or automatically attached to the respective offices of the members composing the board. It is clear from the wordings of the law that it was the intention of Congress that the subject posts will be adjunct to the respective offices of the official designated to such posts.

³⁴ *National Amnesty Commission v. Commission on Audit*, 481 Phil. 279, 294 (2004).

³⁵ *Id.* at 294-295.




The foregoing discussion, notwithstanding, the concerned officials should not receive any additional compensation pursuant to their designation as ruled in *Civil Liberties*, thus:

The *ex-officio* position being actually and in legal contemplation part of the principal office, it follows that the official concerned has no right to receive additional compensation for his services in the said position. The reason is that these services are already paid for and covered by the compensation attached to his principal office. It should be obvious that if, say, the Secretary of Finance attends a meeting of the Monetary Board as an *ex-officio* member thereof, he is actually and in legal contemplation performing the primary function of his principal office in defining policy in monetary and banking matters, which come under the jurisdiction of his department. For such attendance, therefore, he is not entitled to collect any extra compensation, whether it be in the form of a per diem or an honorarium or an allowance, or some other such euphemism. By whatever name it is designated, such additional compensation is prohibited by the Constitution.

In relation thereto, Section 14 of the EPIRA provides:

SEC. 14. *Board Per Diems and Allowances.* – The members of the Board shall receive per diem for each regular or special meeting of the board actually attended by them and, upon approval of the Secretary of the Department of Finance, such other allowances as the Board may prescribe.

Section 14 relates to Section 11 which sets the composition of the TRANSCO Board naming the Secretary of the Department of Finance as the *ex officio* Chairman of the Board. The other members of the TRANSCO Board include the Secretary of the Department of Energy and the Secretary of the Department of Environment and Natural Resources. However, considering the constitutional prohibition, it is clear that such emoluments or additional compensation to be received by the members of the NPB do not apply and should not be received by those covered by the constitutional prohibition, *i.e.*, the Cabinet secretaries. It is to be noted that three of the members of the NPB are to be appointed by the President, who would be representing the interests of those in Luzon, Visayas, and Mindanao, who may be entitled to such honorarium or allowance if they do not fall within the constitutional prohibition.




Hence, the said cabinet officials cannot receive any form of additional compensation by way of per diems and allowances. Moreover, any amount received by them in their capacity as members of the Board of Directors should be reimbursed to the government, since they are prohibited from collecting additional compensation by the Constitution.

These interpretations are consistent with the fundamental rule of statutory construction that a statute is to be read in a manner that would breathe life into it, rather than defeat it,³⁶ and is supported by the criteria in cases of this nature that all reasonable doubts should be resolved in favor of the constitutionality of a statute.³⁷

³⁶ Thus, in *Briad Agro Development Corporation v. Dela Serna*, (G.R. No. 82805, June 29, 1989, 174 SCRA 524) We upheld the grant of concurrent jurisdiction between the Secretary of Labor or its Regional Directors and the Labor Arbiters to pass upon money claims, among other cases, "the provisions of Article 217 of this Code to the contrary notwithstanding," as enunciated in Executive Order No. 111. Holding that E.O. 111 was a curative law intended to widen worker's access to the Government for redress of grievances, we held, "...the Executive Order vests in Regional Directors jurisdiction, '[t]he provisions of Article 217 of this Code to the contrary notwithstanding,' it would have rendered such a proviso - and the amendment itself - useless to say that they (Regional Directors) retained the self-same restricted powers, despite such an amendment. It is fundamental that a statute is to be read in a manner that would breathe life into it, rather than defeat it." (See also *Philthead Workers Union v. Confessor*, G.R. No. 117169, March 12, 1997, 269 SCRA 393.)

³⁷ In *Heirs of Ardon v. Reyes*, (G.R. No. 60549, October 26, 1983, 125 SCRA 221) We upheld the constitutionality of Presidential Decree No. 564, the Revised Charter of the Philippine Tourism Authority, and Proclamation No. 2052 declaring certain municipalities in the province of Cebu as tourist zones. The law granted the Philippine Tourism authority the right to expropriate 282 hectares of land to establish a resort complex notwithstanding the claim that certificates of land transfer and emancipation patents had already been issued to them thereby making the lands expropriated within the coverage of the land reform area under Presidential Decree No. 2, and that the agrarian reform program occupies a higher level in the order of priorities than other State policies like those relating to the health and physical well-being of the people, and that property already taken for public use may not be taken for another public use. We held that, "(t)he petitioners have failed to overcome the burden of anyone trying to strike down a statute or decree whose avowed purpose is the legislative perception of the public good. A statute has in its favor the presumption of validity. All reasonable doubts should be resolved in favor of the constitutionality of a law. The courts will not set aside a law as violative of the Constitution except in a clear case (*People v. Vera*, 65 Phil. 56). And in the absence of factual findings or evidence to rebut the presumption of validity, the presumption prevails (*Ermita-Malate Hotel, etc. v. Mayor of Manila*, 20 SCRA 849; *Morfe v. Mutuc*, 22 SCRA 424)."

In the same manner, we upheld in *Dumlao v. COMELEC* (G.R. No. L-52245, January 22, 1980, 95 SCRA 392) the first paragraph of Section 4 of Batas Pambansa Bilang 52 providing that any retired elective provincial, city or municipal official, who has received payment of the retirement benefits and who shall have been 65 years of age at the commencement of the term of office to which he seeks to be elected is disqualified to run for the same elective local office from which he has retired. Invoking the need for the emergence of younger blood in local politics, we affirmed that the constitutional guarantee is not violated by a reasonable classification based upon substantial distinctions, where the classification is germane to the purpose of the law and applies to all those belonging to the same class. (See also *Tropical Homes, Inc. v. National Housing Authority*, No. L-48672, July 31, 1987, 152 SCRA 540; *Peralta v. COMELEC*, No. L-47791, March 11, 1978, 82 SCRA 55; *People v. Vera*, 65 Phil. 56 [1937].)



Constitutionality of Section 34³⁸ of the EPIRA

The Constitutionality of Section 34 of the EPIRA has already been passed upon by this Court in *Gerochi v. Department of Energy*,³⁹ to wit:

Finally, every law has in its favor the presumption of constitutionality, and to justify its nullification, there must be a clear and unequivocal breach of the Constitution and not one that is doubtful, speculative, or argumentative. Indubitably, petitioners failed to overcome this presumption in favor of the EPIRA. We find no clear violation of the Constitution which would warrant a pronouncement that Sec. 34 of the EPIRA and Rule 18 of its IRR are unconstitutional and void.⁴⁰

In *Gerochi*, this Court ruled that the Universal Charge is not a tax but an exaction in the exercise of the State's police power. The Universal Charge is imposed to ensure the viability of the country's electric power industry.

Petitioner argues that the imposition of a universal charge to address the stranded debts and contract made by the government through the NCC-IPP contracts or Power Utility-IPP contracts or simply the bilateral

³⁸ Sec. 34. *Universal Charge*. — Within one (1) year from the effectivity of this Act, a universal charge to be determined, fixed and approved by the ERC, shall be imposed on all electricity end-users for the following purposes:

(a) Payment for the stranded debts in excess of the amount assumed by the National Government and stranded contract costs of NPC and as well as qualified stranded contract costs of distribution utilities resulting from the restructuring of the industry;

(b) Missionary electrification;

(c) The equalization of the taxes and royalties applied to indigenous or renewable sources of energy vis-a-vis imported energy fuels;

(d) An environmental charge equivalent to one-fourth of one centavo per kilowatt-hour (P0.0025/kWh), which shall accrue to an environmental fund to be used solely for watershed rehabilitation and management. Said fund shall be managed by NPC under existing arrangements; and

(e) A charge to account for all forms of cross-subsidies for a period not exceeding three (3) years.

The universal charge shall be a non-bypassable charge which shall be passed on and collected from all end-users on a monthly basis by the distribution utilities. Collections by the distribution utilities and the TRANSCO in any given month shall be remitted to the PSALM Corp. on or before the fifteenth (15th) of the succeeding month, net of any amount due to the distribution utility. Any end-user or self-generating entity not connected to a distribution utility shall remit its corresponding universal charge directly to the TRANSCO.

The PSALM Corp., as administrator of the fund, shall create a Special Trust Fund which shall be disbursed only for the purposes specified herein in an open and transparent manner. All amount collected for the universal charge shall be distributed to the respective beneficiaries within a reasonable period to be provided by the ERC.

³⁹ G.R. No. 159796, July 17, 2007, 527 SCRA 696.

⁴⁰ *Id.* at 726.

agreements or contracts is an added burden to the electricity-consuming public on their monthly power bills. It would mean that the electricity-consuming public will suffer in carrying this burden for the errors committed by those in power who runs the affairs of the State. This is an exorbitant display of State Power at the expense of its people.⁴¹

It is basic that the determination of whether or not a tax is excessive oppressive or confiscatory is an issue which essentially involves a question of fact and, thus, this Court is precluded from reviewing the same.

Validity of Section 38⁴² of the EPIRA

⁴¹ *Rollo*, p. 159.

⁴² Sec. 38. Creation of the Energy Regulatory Commission. There is hereby created an independent, quasi-judicial regulatory body to be named the Energy Regulatory Commissions (ERC). For this purpose, the existing Energy Regulatory Board (ERB) created under Executive Order No. 172, as amended, is hereby abolished.

The Commission shall be composed of a Chairman and four (4) members to be appointed by the President of the Philippines. The Chairman and the members of the Commission shall be natural-born citizens and residents of the Philippines, persons of good moral character, at least thirty-five (35) years of age, and of recognized competence in any of the following fields: energy, law, economics, finance, commerce, or engineering, with at least three (3) years actual and distinguished experience in their respective fields of expertise: Provided, That out of the four (4) members of the Commission, at least one (1) shall be a member of the Philippine Bar with at least ten (10) years experience in the active practice of law, and one (1) shall be a certified public accountant with at least ten (10) years experience in active practice.

Within three (3) months from the creation of the ERC, the Chairman shall submit for the approval by the President of the Philippines the new organizational structure and plantilla positions necessary to carry out the powers and functions of the ERC.

The Chairman of the Commission, who shall be a member of the Philippine Bar, shall act as the Chief Executive Officer of the Commission.

All members of the Commission shall have a term of seven (7) years: Provided, That for the first appointees, the Chairman shall hold office for seven (7) years, two (2) members shall hold office for five (5) years and the other two (2) members shall hold office for three (3) years; Provided, further, That appointment to any future vacancy shall only be for the unexpired term of the predecessor: Provided, finally, That there shall be no reappointment and in no case shall any member serve for more than seven (7) years in the Commission.

The Chairman and members of the Commission shall assume office of the beginning of their terms: Provided, That, if upon the effectivity of this Act, the Commission has not been constituted and the new staffing pattern and plantilla positions have not been approved and filled-up, the current Board and existing personnel of ERB shall continue to hold office.

The existing personnel of the ERB, if qualified, shall be given preference in the filling up of plantilla positions created in the ERC, subject to existing civil service rules and regulations. Members of the Commission shall enjoy security of tenure and shall not be suspended or removed from office except for just cause as specified by law.

The Chairman and members of the Commission or any of their relatives within the fourth civil degree of consanguinity or affinity, legitimate or common law, shall be prohibited from holding any interest whatsoever, either as investor, stockholder, officer or director, in any company or entity engaged in the business of transmitting, generating, supplying or distributing any form of energy and must, therefore, divest through sale or legal disposition of any and all interests in the energy sector upon assumption of office.

The presence of at least three (3) members of the Commission shall constitute a quorum and the majority vote of two (2) members in a meeting where a quorum is present shall be necessary for the adoption of any rule, ruling, order, resolution, decision, or other act of the Commission in the exercise of its

Petitioner argues that the abolishment of the ERB and its replacement of a very powerful quasi-judicial body named the Energy Regulatory Commission (ERC), pursuant to Section 38 up to Section 43 of the EPIRA or RA 9136, which is tasked to dictate the day-to-day affairs of the entire electric power industry, seems a prelude to Charter Change. Petitioner submits that under the 1987 Constitution, there are only three constitutionally-recognized Commissions, they are: the Civil Service Commission (CSC), the Commission on Audit (COA) and the Commission on Elections (COMELEC).⁴³

Petitioner's argument that the creation of the ERC seems to be a prelude to charter change is flimsy and finds no support in law. This Court cannot subscribe to petitioner's thesis that "in order for the newly-enacted RA 9136 or EPIRA to become a valid law, we should have to call first a referendum to amend or totally change the People's Charter."⁴⁴

In any case, the constitutionality of the abolition of the ERB and the creation of the ERC has already been settled in *Kapisanan ng mga Kawani ng Energy Regulatory Board v. Commissioner Fe Barin*,⁴⁵ to wit:

All laws enjoy the presumption of constitutionality. To justify the nullification of a law, there must be a clear and unequivocal breach of the Constitution. KERB failed to show any breach of the Constitution.

A public office is created by the Constitution or by law or by an officer or tribunal to which the power to create the office has been delegated by the legislature. The power to create an office carries with it the power to abolish. President Corazon C. Aquino, then exercising her legislative powers, created the ERB by issuing Executive Order No. 172 on 8 May 1987.

The question of whether a law abolishes an office is a question of legislative intent. There should not be any controversy if there is an explicit declaration of abolition in the law itself. Section 38 of RA 9136 explicitly abolished the ERB. x x x⁴⁶

quasi-judicial functions: Provided, That in fixing rates and tariffs, an affirmative vote of three (3) members shall be required.

⁴³ *Rollo*, p. 158.

⁴⁴ *Id.* at 159.

⁴⁵ G.R. No. 150974, June 29, 2007, 526 SCRA 1.

⁴⁶ *Id.* at 8-9.

Moreover, in *Kapisanan*, this Court ruled that because of the expansion of the ERC's functions and concerns, there was a valid abolition of the ERB.⁴⁷

Validity of Section 63⁴⁸

Contrary to petitioner's argument, Section 63 of the EPIRA and Section 33 of the IRR of the EPIRA did not impair the vested rights of NPC personnel to claim benefits under existing laws. Neither does the EPIRA cut short the years of service of the employees concerned. If an employee availed of the separation pay and other benefits in accordance with existing laws or the superior separation pay under the NPC restructuring plan, it is but logical that those who availed of such privilege will start their government service anew if they will later be employed by any government-owned successor company or government instrumentality.

It is to be noted that this Court ruled in the case of *Herrera v. National Power Corporation*,⁴⁹ that Section 63 of the EPIRA precluded the receipt by the terminated employee of both separation and retirement benefits under the Government Service Insurance System (GSIS) organic law, or Commonwealth Act (C.A.) No. 186.⁵⁰

⁴⁷ *Id.* at 25.

⁴⁸ Sec. 63. *Separation Benefits of Officials and Employees of Affected Agencies.* – National government employees displaced or separated from the service as a result of the restructuring of the electricity industry and privatization of NPC assets pursuant to this Act, shall be entitled to either a separation pay and other benefits in accordance with existing laws, rules or regulations or be entitled to avail of the privileges provided under a separation plan which shall be one and one-half month salary for every year of service in the government: Provided, however, That those who avail of such privilege shall start their government service anew if absorbed by any government-owned successor company. In no case shall there be any diminution of benefits under the separation plan until the full implementation of the restructuring and privatization. Displaced or separated personnel as a result of the privatization, if qualified, shall be given preference in the hiring of the manpower requirements of the privatized companies. The salaries of employees of NPC shall continue to be exempt from the coverage of Republic Act No. 6758, otherwise known as "The Salary Standardization Act." With respect to employees who are not retained by NPC, the government, through the Department of Labor and Employment, shall endeavor to implement re-training, job counseling, and job placement programs.

⁴⁹ G.R. No. 166570, December 18, 2009, 608 SCRA 475.

⁵⁰ An Act to Create and Establish a "Government Service Insurance System," To Provide for its Administration and To appropriate the Necessary Funds Therefor.

However, it must be clarified that this Court's pronouncements in *Herrera* that separated and retired employees of the NPC "are not entitled to receive retirement benefits under C.A. No. 186," referred only to the gratuity benefits granted by R.A. No. 1616,⁵¹ which was to be paid by NPC as the last employer. It did not proscribe the payment of retirement benefits to qualified retirees under R.A. No. 660,⁵² Presidential Decree (P.D.) No. 1146,⁵³ R.A. No. 8291,⁵⁴ and other GSIS and social security laws.

The factual and procedural antecedents of *Herrera* reveal that it arose from a case between NPC and several of its separated employees who were asking additional benefits from NPC under R.A. No. 1616 after receiving from the former separation benefits under Section 63 of R.A. No. 9136.

Unable to resolve the issue with its former employees amicably, NPC filed a petition for declaratory relief, docketed as Civil Case SCA No. Q-03-50681,⁵⁵ before the Regional Trial Court of Quezon City, raising the issue of whether or not the employees of NPC are entitled to receive retirement benefits under R.A. No. 1616 over and above the separation benefits granted by R.A. No. 9136.⁵⁶

Under R.A. No. 1616, a gratuity benefit is given to qualified retiring members of the GSIS, which is payable by the last employer. In addition to said gratuity benefits, the qualified employee shall also be entitled to a

⁵¹ An Act Further Amending Section Twelve of Commonwealth Act Numbered One Hundred Eighty-Six, As Amended, By Prescribing Two Other Modes of Retirements and for Other Purposes.


⁵² An Act To Amend Commonwealth Act Numbered One Hundred and Eighty-Six Entitled "An Act to Create and Establish a Government Service Insurance System, To Provide for its Administration and To Appropriate the Necessary Funds Therefor," and to Provide Retirement Insurance and For Other Purposes.

⁵³ Amending, Expanding, Increasing and Integrating the Social Security and Insurance Benefits of Government Employees and Facilitating the Payment Thereof Under Commonwealth Act No. 186, As Amended, and For Other Purposes.

⁵⁴ An Act Amending Presidential Decree No. 1146, As Amended, Expanding and Increasing the Coverage and Benefits of the Government Service Insurance System, Instituting Reforms Therein and For Other Purposes.

⁵⁵ Entitled as *National Power Corporation v. The Napocor Employees and Workers Union (NEWU), NAPOCOR Employees Consolidated Union (NECU), NPC Executive Officers Association, Inc. (NPC-EXA), Esther Galvez and Efren Herrera, for and on their behalf and on behalf of other separated, unrehired, and retired employees of the National Power Corporation, the Department of Budget and Management (DBM), the Office of the Solicitor General (OSG), the Civil Service Commission (CSC), and the Commission on Audit (COA).*

⁵⁶ *Rollo, (Herrera v. NPC, G.R. No. 166570), pp. 40-44.*



refund of retirement premiums paid, consisting of personal contributions of the employee plus interest, and government share without interest, payable by the GSIS. It effectively amended Section 12 (c) of C.A. No. 186, as follows:

(c) Retirement is likewise allowed to any official or employee, appointive or elective, regardless of age and employment status, who has rendered a total of at least twenty years of service, the last three years of which are continuous. The benefit shall, in addition to the return of his personal contributions with interest compounded monthly and the payment of the corresponding employer's premiums described in subsection (a) of Section five hereof, without interest, be only a **gratuity equivalent to one month's salary for every year of the first twenty years of service, plus one and one-half months' salary for every year of service over twenty but below thirty years and two months' salary for every year of service over thirty years in case of employees based on the highest rate received and in case of elected officials on the rates of pay as provided by law. This gratuity is payable on the rates of pay as provided by law. This gratuity is payable by the employer or officer concerned which is hereby authorized to provide the necessary appropriation or pay the same from any unexpended items of appropriations or savings in its appropriations.** Officials and employees retired under this Act shall be entitled to the commutation of the unused vacation and sick leave, based on the highest rate received, which they may have to their credit at the time of retirement. x x x⁵⁷ (Emphasis supplied.)

After trial, the RTC rendered a Decision ruling against the NPC employees, the decretal portion of which reads:

WHEREFORE, premises considered, Republic Act No. 9136 DID NOT SPECIFICALLY AUTHORIZE the National Power Corporation to grant retirement benefits under *Republic Act No. 1616* in addition to separation pay under *Republic Act No. 9136*.

SO ORDERED.⁵⁸

Petitioners therein then sought recourse directly to this Court on a pure question of law. In the preparatory statement of the Petition for Review on *Certiorari*,⁵⁹ it is apparent that the case was limited only to the interpretation of Section 63 of R.A. No. 9136, in relation to R.A. No. 1616,

⁵⁷

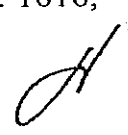
Underscoring ours.

⁵⁸

Rollo, (*Herrera v. NPC*, G.R. No. 166570), p. 44. (Emphasis supplied.)

⁵⁹

Id. at 13.



on the matter of retirement benefits, to wit:

This is a case of first impression *limited* to the interpretation of Section 63, R.A. 9136 (EPIRA), granting separation pay to terminated NAPOCOR employees, in relation to *R.A. 1616*, on the matter of retirement benefits. Respondents NAPOCOR and DEPARTMENT OF BUDGET AND MANAGEMENT erroneously contend that the entitlement to the separation pay under R.A. 9136 forfeits the retirement benefit under *R.A. 1616*. Petitioners most respectfully submit that since R.A. 9136 and *R.A. 1616* are not inconsistent with each other and they have distinct noble purposes, entitlement to separation pay will not disqualify the separated employee who is qualified to retire from receiving retirement benefits allowed under another law. x x x⁶⁰

However, in the Decision dated December 18, 2009, it was held that petitioners therein were not only entitled to receive retirement benefits under R.A. No. 1616 but also were "not entitled to receive retirement benefits under Commonwealth Act No. 186, as amended," which, in effect, might lead to the conclusion that the declaration encompassed all other benefits granted by C.A. No. 186 to its qualified members.

In relation to R.A. No. 1616, *Herrera* should have affected only the payment of gratuity benefits by NPC, being the last employer, to its separated employees. It was even categorically stated that petitioners therein were "entitled to a refund of their contributions to the retirement fund, and the monetary value of any accumulated vacation and sick leaves,"⁶¹ which is clearly congruous to the mandate of R.A. No. 1616. The matter of availment of retirement benefits of qualified employees under any other law to be paid by the GSIS should not and was not covered by the decision. In the first place, it was never an issue.

In the case of *Santos v. Servier Philippines, Inc.*,⁶² citing *Aquino v. National Labor Relations Commission*,⁶³ We declared that the receipt of retirement benefits does not bar the retiree from receiving separation pay.

⁶⁰ *Id.* (Emphasis supplied.)

⁶¹ *Herrera v. NPC*, *supra* note 49, at 495.

⁶² G.R. No. 166377, November 28, 2008, 572 SCRA 487.

⁶³ G.R. No. 87653, February 11, 1992, 206 SCRA 118, 122.

Separation pay is a statutory right designed to provide the employee with the wherewithal during the period that he/she is looking for another employment. On the other hand, *retirement benefits* are intended to help the employee enjoy the remaining years of his life, lessening the burden of worrying about his financial support, and are a form of reward for his loyalty and service to the employer. A separation pay is given during one's *employable years*, while retirement benefits are given during one's *unemployable years*. Hence, they are not mutually exclusive.⁶⁴

Even in the deliberations of Congress during the passage of R.A. No. 9136, it was manifest that it was not the intention of the law to infringe upon the vested rights of NPC personnel to claim benefits under existing laws. To assure the worried and uneasy NPC employees, Congress guaranteed their entitlement to a separation pay to tide them over in the meantime.⁶⁵ More importantly, to further allay the fears of the NPC employees, especially those who were nearing retirement age, Congress repeatedly assured them in several public and congressional hearings that on top of their separation benefits, they would still receive their retirement benefits, as long as they would qualify and meet the requirements for its entitlement.

The transcripts of the Public Consultative Meeting on the Power Bill held on February 16, 2001, disclose the following:

x x x x

THE CHAIRMAN (SEN. J. OSMENA). Well, the other labor representation here is Mr. Anguluan.

MR. ANGULUAN: Yes, Your Honor.

THE CHAIRMAN (SEN. J. OSMENA). Okay. Will you present your paper?

MR. ANGULUAN: We have prepared a paper which we have sent to the honorable members of the Bicam. x x x.

⁶⁴ Santos v. Servier Philippines, Inc., supra note 62, at 496.

⁶⁵ TSN, Joint Congressional Power Commission, January 23, 2002, 11:31 p.m., p. 1.

THE CHAIRMAN (SEN. J. OSMENA). I don't think anyone is going to deprive you of your rights under the law. You will enjoy all your rights. You will receive retirement benefits, separation pay, and all of the rights that are provided to you by law. What we have objected to in the Senate is retirement benefits higher than what everybody else gets, like 150 percent or subject to the approval of the board which means sky is the limit. So, we have objected to that. But what you are entitled to under the law, you will get under the law and nobody will deprive you of that.⁶⁶

A year later, on February 12, 2002, the Joint Congressional Power Commission was held. The transcripts of the hearing bare the following:

x x x x

THE CHAIRMAN (REP. BADELLES). They will still be subject to the same conditions. Meaning, NPC has the discretion whether to reabsorb or hire back those that avail of the separation benefits.

SEN. OSMENA (J). No. But they are not being - - the plants are not being sold, so they are - but what we are giving them is a special concession of retiring early.
No, okay. You consider . . .

THE CHAIRMAN (REP. BADELLES). We are not speaking of retirement here, we are speaking of their separation benefits . . .

SEN. OSMENA (J). Okay, separation benefits.

THE CHAIRMAN (REP. BADELLES). Precisely, if they are considered terminated.

SEN. OSMENA (J). All right. Separation . . .

THE CHAIRMAN (REP. BADELLES). A retirement plan is a different program than separation.


SEN. OSMENA (J). Separation benefits, okay.

THE CHAIRMAN (REP. BADELLES). All right.⁶⁷

Thus, it is clear that a separation pay at the time of the reorganization of the NPC and retirement benefits at the appropriate future time are two separate and distinct entitlements. Stated otherwise, a retirement plan is a

⁶⁶ TSN, Public Consultative Meeting on the Power Bill, February 16, 2001, pp. 114-117. (Emphasis and underscoring supplied.)

⁶⁷ TSN, February 12, 2002, Joint Congressional Power Commission, pp. 1-2. (Emphasis supplied.)



different program from a separation package.

There is a whole of a difference between R.A. No. 1616 and C.A. No. 186, together with its amendatory laws. They have different *legal bases*, different *sources of funds* and different *intents*.

In R.A. No. 1616, which is the subject issue in *Herrera*, the retirees are entitled to *gratuity benefits* to be paid by the last employer and *refund of premiums* to be paid by the GSIS. On the other hand, *retirement benefits* under C.A. No. 186, as amended by R.A. No. 8291, are to be paid by the GSIS. Stated otherwise, under R.A. No. 1616, what would be paid by the last employer, NPC, would be *gratuity benefits*, and GSIS would merely refund the retirement premiums consisting of personal contributions of the employee plus interest, and the employer's share without interest. Under C.A. No. 186, as amended, it is the GSIS who would pay the qualified employees their *retirement benefits*.

Indeed, with several amendments to C.A. No. 186,⁶⁸ the Court finds it necessary to clarify *Herrera* and categorically declare that it affected only those seeking benefits under R.A. No. 1616.⁶⁹ It could not have meant to affect those employees who retired, and who will retire, under the different amendatory laws of C.A. No. 186 like R.A. No. 660,⁷⁰ P.D. No. 1146⁷¹

⁶⁸ R.A. No. 660, R.A. No. 728, R.A. No. 1123, R.A. No. 1573, R.A. No. 1616, R.A. No. 1820, R.A. No. 3096, R.A. No. 3175, R.A. No. 3544, R.A. No. 3593, R.A. No. 4066, R.A. No. 4781, R.A. No. 4847, R.A. No. 4968, P.D. No. 712, P.D. No. 1146, and R.A. No. 8291.

⁶⁹ Under R.A. 1616, any official or employee who has rendered at least 20 years of service, the last three (3) years of which are continuous, and has been in the government service before May 31, 1977, is entitled to gratuity benefits. The benefit shall be computed and paid by the last employer, subject to the availability of funds. In such a case, the GSIS will refund the retiree's personal contributions with interest and the corresponding government contributions without interest. R.A. No. 1616 was eventually phased out impliedly by the fourth whereas clause of P.D. 1146. (Emphasis supplied.)

⁷⁰ R.A. No. 660 refers to the annuity (pension) retirement benefit under a scheme popularly known as Magic 87. Under said law, a member of the GSIS Retirement Insurance Fund may avail of said benefits when his age and years of service has a combined total of 87, as long as his last three years with the government was continuous. The benefits may vary depending on the age of the retiree but all will receive a monthly pension for life after 5-year period after retirement.

⁷¹ A retiring member under P.D. No. 1146 is entitled to either old age pension or cash payment, depending on his age and years in service. Retirement under P.D. No. 1146 can only be availed by those who were in service after May 31, 1977 but prior to June 24, 1997. The Basic Monthly Pension (BMP) is available for retirees who are at least 60 years old and have rendered 15 years of service. Those qualified under this option will receive a Basic Monthly Pension (BMP) guaranteed for five (5) years. After the 5-

and R.A. No. 8291.⁷²

At any rate, entitlement of qualified employees to receive separation pay *and* retirement benefits is not proscribed by the 1987 Constitution. Section 8 of Article IX (B) of the 1987 Constitution reads:

SEC. 8. No elective or appointive public officer or employee shall receive additional, double or indirect compensation, unless specifically authorized by law, nor accept without the consent of the Congress, any present, emolument, office, or title of any kind from any foreign government.

*Pensions or gratuities shall not be considered as additional, double, or indirect compensation.*⁷³

Moreover, retirement benefits under C.A. No. 186 are not even considered as compensation. Section 2 (e) of C.A. No. 186 categorically states that —

Benefits granted by this Act by virtue of such life or retirement insurance shall not be considered as compensation or emolument.⁷⁴

Under the GSIS law, the retired employees earned their *vested right* under their contract of insurance after they religiously paid premiums to GSIS. Under the contract, GSIS is bound to pay the retirement benefits as it

year guaranteed period, he/she will receive a basic monthly pension for life. A retiree may also request to convert his/her five-year guaranteed BMP into a lump sum subject to a six (6) percent discount rate.

⁷² R.A. No. 8291, which took effect on June 24, 1997, increased the benefits under PD 1146. Under R.A. No. 8291, a government employee who has rendered at least 15 years of service and who has reached the age of 60 is entitled to a retirement benefit. Under Section 13 of R.A. No. 8291, the "Retirement benefit shall be:

(1) the lump sum payment as defined in this Act payable at the time of retirement plus an old-age pension benefit equal to the basic monthly pension payable monthly for life, starting upon expiration of the five-year (5) guaranteed period covered by the lump sum; or "(2) cash payment equivalent to eighteen (18) months of his basic monthly pension plus monthly pension for life payable immediately with no five-year (5) guarantee.


(b) Unless the service is extended by appropriate authorities, retirement shall be compulsory for an employee at sixty-five (65) years of age with at least fifteen (15) years of service: Provided, That if he has less than fifteen (15) years of service, he may be allowed to continue in the service in accordance with existing civil service rules and regulations. (Emphasis supplied.)

⁷³

Emphasis supplied.

⁷⁴

Emphasis supplied.



received the premiums from the employees and NPC.

In *Marasigan v. Cruz*,⁷⁵ this Court ratiocinated that:

A retirement law such as C.A. 186 and amendatory laws is in the nature of a contract between the government and its employees. When an employee joins the government service, he has a right to expect that after rendering the required length of service and fulfilled the conditions stated in the laws on retirement, he would be able to enjoy the benefits provided in said laws. He regularly pays the dues prescribed therefore. It would be cruel to deny him the benefits he had been expecting at the end of his service by imposing conditions for his retirement, which are not found in the law. It is believed to be a legal duty as well as a moral obligation on the part of the government to honor its commitments to its employees when as in this case, they have met all the conditions prescribed by law and are therefore entitled to receive their retirement benefits.⁷⁶

Thus, where the employee retires and meets the eligibility requirements, he acquires a vested right to benefits that is protected by the due process clause. Retirees enjoy a protected property interest whenever they acquire a right to immediate payment under pre-existing law. Thus, a pensioner acquires a vested right to benefits that have become due as provided under the terms of the public employees' pension statute. No law can deprive such person of his pension rights without due process of law, that is, without notice and opportunity to be heard.⁷⁷ Verily, when an employee has complied with the statutory requirements to be entitled to receive his retirement benefits, his right to retire and receive what is due him by virtue thereof becomes vested and may not thereafter be revoked or impaired.

Moreover, Section 63 of the EPIRA law, if misinterpreted as proscribing payment of retirement benefits under the GSIS law, would be unconstitutional as it would be violative of Section 10, Article III of the 1987 Constitution⁷⁸ or the provision on non-impairment of contracts.

⁷⁵ G.R. No. L-40648, May 20, 1987, 150 SCRA 1.

⁷⁶ *Id.* at 7; see also *Bengzon v. Drilon*, G.R. No. 103524 and A.M. No. 91-8-225-CA, April 15, 1992, 208 SCRA 133, 152. (Emphasis and underscoring supplied.)

⁷⁷ *GSIS v. Montesclaros*, G.R. No. 146494, July 14, 2004, 434 SCRA 441, 449.

⁷⁸ Section 10. No law impairing the obligation of contracts shall be passed.

In view of the fact that separation pay and retirement benefits are different entitlements, as they have different *legal bases*, different *sources of funds*, and different *intents*, the "exclusiveness of benefits" rule provided under R.A. No. 8291 is not applicable. Section 55 of R.A. No. 8291 states: "Whenever other laws provide *similar benefits* for the same contingencies covered by this Act, the member who qualifies to the benefits shall have the option to choose which benefits will be paid to him."

Accordingly, the Court declares that separated, displaced, retiring, and retired employees of NPC are legally entitled to the retirement benefits pursuant to the intent of Congress and as guaranteed by the GSIS laws. Thus, the Court reiterates:

1] that the dispositive portion in *Herrera* holding that separated and retired employees "are not entitled to receive retirement benefits under Commonwealth Act No. 186," referred only to the gratuity benefits under R.A. No. 1616, which was to be paid by NPC, being the last employer;

2] that it did not proscribe the payment of the retirement benefits to qualified retirees under R.A. No. 660, P.D. No. 1146, R.A. No. 8291, and other GSIS and social security laws; and

3] that separated, rehired, retiring, and retired employees should receive, and continue to receive, the retirement benefits to which they are legally entitled.

Petition for Mandamus

As for petitioner's prayer that he be reinstated, suffice it to state that the issue has been rendered moot by the Decision and Resolutions of this Court in the case of *NPC Drivers and Mechanics Association (NPC DAMA)*

v. *National Power Corporation (NPC)*⁷⁹ and by the above disquisitions.

In Conclusion

While we commend petitioner's attempt to argue against the privatization of the NPC, it is not the proper subject of herein petition. Petitioner belabored on alleging facts to prove his point which, however, go into policy decisions which this Court must not delve into lest we violate separation of powers. The wisdom of the privatization of the NPC cannot be looked into by this Court as it would certainly violate this guarded principle. The wisdom and propriety of legislation is not for this Court to pass upon.⁸⁰ Every law has in its favor the presumption of constitutionality, and to justify its nullification, there must be a clear and unequivocal breach of the Constitution, and not one that is doubtful, speculative or argumentative.⁸¹

As in *National Power Corporation Employees Consolidated Union (NECU) v. National Power Corporation (NPC)*,⁸² this Court held:

Whether the State's policy of privatizing the electric power industry is wise, just, or expedient is not for this Court to decide. The formulation of State policy is a legislative concern. Hence, the primary judge of the necessity, adequacy, wisdom, reasonableness and expediency of any law is primarily the function of the legislature.⁸³

WHEREFORE, premises considered and subject to the above disquisitions, the Petition for *Certiorari* and the Supplemental Petition for Mandamus are **DISMISSED** for lack of merit.

⁷⁹ *Supra* note 14.

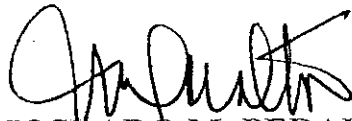
⁸⁰ *People v. Vera*, 65 Phil. 56, 135 (1937).

⁸¹ *Lacson v. The Executive Secretary*, 361 Phil. 251, 263 (1999).

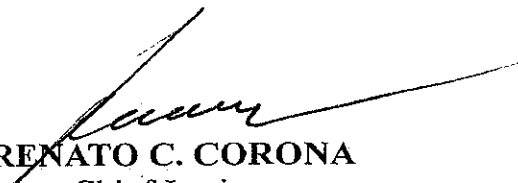
⁸² G.R. No. 144158, April 24, 2007, 522 SCRA 12.

⁸³ *Id.* at 21-22.

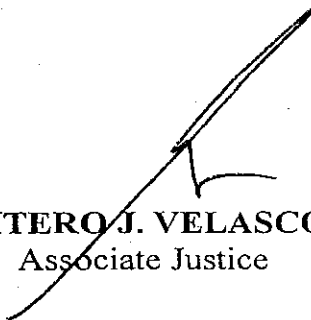
SO ORDERED.


DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:



RENATO C. CORONA
Chief Justice


ANTONIO T. CARPIO
Associate Justice



PRESBITERO J. VELASCO, JR.
Associate Justice



TERESITA J. LEONARDO-DE CASTRO
Associate Justice

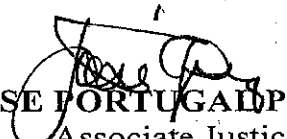

ARTURO D. BRION
Associate Justice



LUCAS P. BERSAMIN
Associate Justice

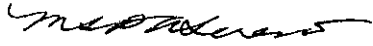

MARIANO C. DEL CASTILLO
Associate Justice

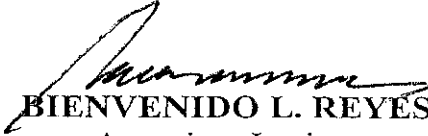

ROBERTO A. ABAD
Associate Justice

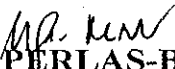

MARTIN S. VILLARAMA, JR.
Associate Justice


JOSE PORTUGAL PEREZ
Associate Justice


JOSE CATRAL MENDOZA
Associate Justice

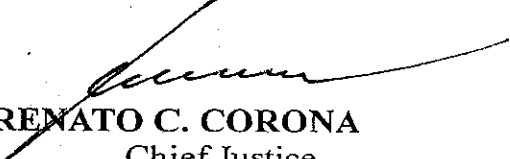

MARIA LOURDES P. A. SERENO
Associate Justice


BIENVENIDO L. REYES
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.


RENATO C. CORONA
Chief Justice