Republic of the Philippines
Supreme Court
Manila

**FIRST DIVISION**

| | |
|---|---|
| **REPUBLIC OF THE PHILIPPINES,** Petitioner, | **G.R. No. 201715** |
| | Present: |
| *-versus-* | SERENO, *C.J.*, LEONARDO-DE CASTRO, BERSAMIN, VILLARAMA, JR., and REYES, *JJ.* |
| **MANILA ELECTRIC COMPANY (MERALCO), and NATIONAL POWER CORPORATION (NPC),** Respondents. | Promulgated: DEC 11 2013 |

x----------x

**D E C I S I O N**

**BERSAMIN, *J.*:**

The intervening rendition by the trial court of a decision on the merits of the case renders moot and academic the resolution of any issue raised on *certiorari* against interlocutory orders setting the pre-trial and declaring the petitioner to have waived its right to present its evidence. The resolution of the issue, having been pre-empted by the decision in the main action, ceased to have any practical value.

**The Case**

Under appeal via petition for review on *certiorari* is the decision promulgated on October 14, 2011 in C.A.-G.R. SP No. 116863 entitled *Republic of the Philippines, represented by the Office of the Solicitor General v. Hon. Franco T. Falcon, in his capacity as the Presiding Judge of Branch 71, Regional Trial Court, National Capital Region, Pasig City, Manila Electric Company and National Power Corporation*,[1] whereby the Court of Appeals (CA) dismissed the original and the supplemental petitions for *certiorari*, prohibition and *mandamus* of herein petitioner Republic of the

[1] *Rollo*, at pp. 139-170; penned by Associate Justice Jane Aurora C. Lantion, with Presiding Justice Andres B. Reyes, Jr., Associate Justice Michael P. Elbinias and Associate Justice Agnes Reyes-Carpio, concurring, and Associate Justice Japar B. Dimaampao dissenting.

Philippines, and in effect upheld the assailed interlocutory orders of November 3, 2010[2] and November 4, 2010,[3] and the pre-trial order of November 24, 2010,[4] all issued by the Regional Trial Court (RTC), Branch 71, in Pasig City in Special Civil Action No. 3392, an action for declaratory relief entitled *Manila Electric Company v. National Power Corporation, et al*. The CA further ordered the RTC, Branch 71, in Pasig City to proceed with the trial in Special Civil Action No. 3392, and to resolve the case with dispatch.

Additionally, the petitioner prays that respondents Manila Electric Company (MERALCO) and National Power Corporation (NAPOCOR) be directed to resolve their dispute through arbitration pursuant to the arbitration clause of their contract for the sale of electricity (CSE).[5]

## Antecedents

The decision of the CA sums up the following uncontested material antecedents.

MERALCO and NAPOCOR had entered into the CSE on November 21, 1994. The CSE would be effective for 10 years starting from January 1, 1995. Under the CSE, NAPOCOR was obliged to supply and MERALCO was obliged to purchase a minimum volume of electric power and energy from 1995 until 2004 at the rates approved by the Energy Regulatory Board (ERB), now the Energy Regulatory Commission (ERC). A provision of the CSE required MERALCO to pay minimum monthly charges even if the actual volume of the power and energy drawn from NAPOCOR fell below the stated minimum quantities.

In the years 2002, 2003 and 2004, due to circumstances beyond the reasonable control of the parties, MERALCO drew from NAPOCOR electric power and energy less than the minimum quantities stipulated in the CSE for those years. MERALCO did not pay the minimum monthly charges but only the charges for the electric power and energy actually taken. Thus, NAPOCOR served on MERALCO a claim for the contracted but undrawn electric power and energy starting the billing month of January 2002.

MERALCO objected to the claim of NAPOCOR, and served its notice of termination of the CSE. MERALCO submitted its own claim to NAPOCOR for, among others: (*a*) losses suffered due to the delay in the construction of NAPOCOR's transmission lines, which prevented it from

---

2 Id. at 441-445.
3 Id. at 446.
4 Id. at 499-502.
5 Id. at 131.

fully dispatching the electricity contracted with independent power producers (IPPs) at their respective minimum energy quantities; and (*b*) unrealized revenues owing to NAPOCOR's continuing to supply electricity to directly-connected customers within MERALCO's franchise area in violation of the MERALCO franchise and the CSE.

Recognizing that any delays in the resolution of their dispute was inimical to public interest, MERALCO and NAPOCOR agreed to submit their dispute to mediation.[6] They appointed the late Ambassador Sedfrey A. Ordoñez and Antonio V. del Rosario as their mediators, and the mediation required about 20 meetings, during which NAPOCOR and the Government were represented by high-level officials (including then Energy Secretary Vincent S. Perez, Jr. and PSALM President Edgardo M. del Fonso). The mediation resulted in the execution on July 15, 2003 of a settlement (entitled *An Agreement Resolving The Issues In Mediation Between The National Power Corporation And The Manila Electric Company In Regard To The 1994 Contract For The Sale Of Electricity*),[7] hereafter referred to as Settlement Agreement for brevity.

The Settlement Agreement covered the charges being imposed by NAPOCOR and the National Transmission Corporation (TRANSCO) under Section 2.1 (Contract Demand and Contract Energy of MERALCO) in relation to Section 5.2 (Transmission Service) and Section 7 (Direct Connection within MERALCO's franchise area), all of the CSE. MERALCO therein agreed to pay to NAPOCOR ₱27,515,000,000.00 (*i.e.*, the equivalent of 18,222 gigawatt hours valued at ₱1.51 per kilowatt hour), which amount represented the value of the difference between the aggregate contracted energy for the years 2002, 2203 and 2004, on the one hand, and the total amount of energy MERALCO actually purchased from NAPOCOR from January 2002 until April 30, 2003 and the amount of energy MERALCO was scheduled to purchase thereafter and until December 31, 2004, on the other. NAPOCOR reciprocated by agreeing to give credit to MERALCO for the delayed completion of the transmission facilities as well as for the energy corresponding to NAPOCOR's sales to directly-connected customers located within MERALCO's franchise area. The credit, valued at ₱7,465,000,000.00, reduced the net amount payable by MERALCO to NAPOCOR under the Settlement Agreement to ₱20,050,000,000.00.

Mediators Amb. Ordoñez and del Rosario rendered their joint attestation to the Settlement Agreement, as follows:

> We, Ambassador Sedfrey A. Ordoñez and Antonio V. del Rosario, do hereby attest and certify that we have been duly appointed by the Parties and acted as Mediators in the foregoing Settlement and that the

---

6 Id. at 296.

7 Id. at 216-229.

> agreements contained therein are the results of the painstaking efforts exerted by the Parties to resolve the issues and differences between them through reasonable, fair and just solution that places above all considerations the highest concern for the welfare of the consumers. x x x[8]

It is noted that from the time the Settlement Agreement was executed on June 15, 2003 until December 31, 2004, MERALCO took further electricity from NAPOCOR, and made payments toward the total Minimum charge under the CSE that exceeded the parties' estimate. As a result, the net amount due to NAPOCOR under the Settlement Agreement was further reduced to about ₱14,000,000,000.00.

The Settlement Agreement contained a pass-through provision that allowed MERALCO to pay NAPOCOR the net settlement amount from collections recovered from MERALCO's consumers once the ERC approved the pass-through. The net amount due under the Settlement Agreement was to be paid by MERALCO to NAPOCOR over a period of five to six years, starting on the first billing month immediately following the ERC's approval of the pass-through of that amount to MERALCO's consumers, and ending 60 months after the last billing month. Spreading payment to NAPOCOR over a moving five- to six-year period was intended to minimize the impact of the adjustment on the consumers, which was estimated to be about ₱0.12 per kilowatt hour.

The Settlement Agreement was duly approved by the respective Boards of MERALCO and NAPOCOR.

Considering that the Settlement Agreement stipulated in its Section 3.1 that it would take effect "upon approval by the ERC of the recovery of the settlement amounts in this Agreement from consumers, for which the parties shall file a joint petition with the [ERC]," NAPOCOR and MERALCO filed on April 15, 2004 their joint application in the ERC,[9] seeking the approval of the pass-through provision of the Settlement Agreement, and a provisional authority to implement the pass-through provision subject to a final decision after hearing on the merits.

The joint application was set for initial hearing, with notice to the Office of the Solicitor General (OSG) with a request for the OSG to send a representative to participate in the proceedings. Hearings were conducted on the application from July 22, 2004 until October 7, 2005, at which NAPOCOR was represented by its OSG-designated counsel.

---

8 Id. at 221.

9 Id. at 230-240.

On July 10, 2006, MERALCO submitted its memorandum, and the case was deemed submitted for resolution.

However, on May 13, 2008, or almost two years after the case was submitted for resolution, the OSG, representing herein petitioner, filed in the ERC a motion for leave to intervene with motion to admit its attached opposition.[10] Considering the opposition by the OSG to the validity of the Settlement Agreement, the ERC suspended the proceedings and deferred the approval of the joint application. This prompted MERALCO to initiate on November 23, 2009 in the RTC in Pasig an action for declaratory relief (Special Civil Action No. 3392).[11]

On August 20, 2010, the petitioner filed its comment on the petition for declaratory relief,[12] praying for the stay of the proceedings and for NAPOCOR and MERALCO to be directed to resort to arbitration.

On September 16, 2010, the representative from the OSG appeared in the RTC and moved to suspend the proceedings, but the RTC denied the motion. Subsequently, on September 30, 2010, the OSG filed a motion to dismiss or to stay the proceedings, and to refer the parties to arbitration.

On October 28, 2010, the OSG presented an urgent supplemental motion to cancel the November 4, 2010 hearing. However, on November 3, 2010, the RTC denied the motion to dismiss or to stay the proceedings and to refer the parties to arbitration through the first assailed order,[13] stating in its pertinent portions as follows:

> The motions filed by the OSG raise a common issue: whether or not the parties, MERALCO and NPC, should be referred to arbitration?
>
> After a judicious evaluation of the arguments by the parties, this Court rules that MERALCO and NPC are not required to undergo arbitration.
>
> An examination of the Settlement Agreement, which is the subject matter of this petition for declaratory relief shows that it does not require the parties therein to resolve their dispute arising from said agreement through arbitration.
>
> The arbitration clause referred to by the OSG is found in the Contract for the Sale of Electricity (CSE). Said contract is not the one being litigated in this proceedings. The instant petition for declaratory

---

10 Id. at 250-291.
11 Id. at 292-308.
12 Id. at 320-349.
13 Id. at 441-445.

relief does not concern the CSE. Besides, there is no unsettled dispute between MERALCO and NPC arising from the CSE that would require resort to arbitration.

Further, the parties to the Settlement Agreement have not requested that any dispute between them should be resolved through arbitration. The OSG, who is not a party to the Settlement Agreement or to the CSE, has no standing to demand that MERALCO and NPC should proceed to arbitration consistent with the Supreme Court's ruling in Ormoc Sugarcane Planter's Association vs. Court of Appeals, G.R. No. 156660, August 24, 2009, were (sic) it ruled that-

> By their own allegation, petitioners are associations duly existing and organized under Philippine law, i.e. they have juridical personalities separate and distinct from that of their member Planters. It is likewise undisputed that the eighty (80) milling contracts that were presented were signed only by the member Planter concerned and one of the Centrals as parties. In other words, none of the petitioners were parties or signatories to the milling contracts. This circumstance is fatal to petitioners' cause since they anchor their right to demand arbitration from the respondent sugar centrals upon the arbitration clause found in the milling contracts. There is no legal basis for petitioners' purported right to demand arbitration when they are not parties to the milling contracts, especially when the language of the arbitration clause expressly grants the right to demand arbitration only to the parties to the contract.

As for OSG's contention that the instant petition should be dismissed because it would not terminate the controversy between the parties due to the existing ERC Proceedings, this Court is mindful of the fact that the ERC itself has ruled in its order of September 14, 2009 that the issues raised by the OSG in the earlier proceedings before it are outside its jurisdiction. This means that these issues may be properly resolved by this Court and is in fact duty-bound to consider and rule the issues presented before it in this case.

This Court therefore holds that there is no impediment for it to continue this proceedings and to determine the validity of the Settlement Agreement.

WHEREFORE, the office (sic) Office of the Solicitor General's Motion to Dismiss or Stay the Proceedings and Refer the Parties to Arbitration and the Motion for Reconsideration (of the Honorable Court's Order dated September 16, 2010) are DENIED.

SO ORDERED.[14]

---

[14] Id. at 443-445.

On November 4, 2010, the pre-trial was held, but the Presiding Judge of Branch 71 of the RTC ultimately reset it through the second assailed order due to the non-appearance of the representative of the OSG,[15] *viz*:

> When this case was called, Atty. Jonas Emmanuel S. Santos, for the petitioner, Atty. Julieta S. Baccutan-Estamo, for defendant PNC, appeared.
>
> Over the vehement objection of Atty. Santos and Atty. Baccutan-Estamo on the Urgent Supplemental Motion to Cancel November 4, 2010 Hearing filed by the Office of the Solicitor General, considering that they were both ready, the pre-trial conference set for today is cancelled and reset to November 24, 2010 at 8:30 A.M., which is an intransferrable date. The manifestation of Atty. Baccutan-Estamo that if in the next hearing the respondent OSG still fails to appear they be declared as in default, is noted.
>
> SO ORDERED.

Upon learning that the next scheduled hearing would be on November 24, 2010, the OSG filed on November 22, 2010 a motion to cancel that pre-trial, and a motion for the inhibition of the RTC Judge. It set both motions for hearing on November 24, 2010.

Also on November 22, 2010, the petitioner brought in the CA a petition for *certiorari*, prohibition and *mandamus* (C.A.-G.R. SP No. 116863), with an application for a temporary restraining order (TRO) and writ of preliminary injunction (WPI), alleging that respondent RTC Judge had committed grave abuse of discretion: (*a*) in refusing to inhibit himself; (*b*) in refusing to order respondents MERALCO and NAPOCOR to resolve their dispute by arbitration; (*c*) in proceeding with the pre-trial of the case; and (*d*) in declaring the petitioner in default and at the same time deeming the petitioner to have waived its right to participate and present evidence.[16]

During the hearing of November 24, 2010, the representatives of the OSG (namely: State Solicitors Catalina A. Catral-Talatala and Donalita R. Lazo) appeared in the RTC to argue for the cancellation of the pre-trial of that date and to have the RTC Judge by reason of his perceived bias in favor of MERALCO. However, the RTC denied the motion to cancel the pre-trial and instead declared the petitioner to have waived the right to participate in the pre-trial and to present evidence.[17]

---

15 Id. at 446.
16 Id. at 454-484.
17 Id. at 499-502.

The CA granted the TRO on December 1, 2010,[18] and the WPI on February 3, 2011,[19] enjoining the RTC Judge from conducting further proceedings in Special Civil Action No. 3392 and from issuing orders and performing other acts that would render the case moot and academic effective during the pendency of C.A.-G.R. SP No. 116863.

On October 14, 2011, the CA promulgated its decision under review,[20] disposing thuswise:

> **IN VIEW OF ALL THE FOREGOING**, the instant Petition including its Supplemental Petition are hereby **DENIED**. The Regional Trial Court, Branch 71 of Pasig City is hereby **ORDERED** to proceed to trial in S.C.A. Case No. 3392, and to immediately resolve the same with dispatch.
>
> **SO ORDERED.**

The CA denied the petitioner's motion for reconsideration through its resolution promulgated on April 25, 2012.[21]

Hence, the petitioner has appealed.

## Issues

The petitioner states as the ground for the allowance of its petition for review on *certiorari* that:

> THE COURT OF APPEALS COMMITTED AN ERROR IN IGNORING FUNDAMENTAL ISSUES AT THE HEART OF THE CONTROVERSY BETWEEN PETITIONER AND RESPONDENTS, AND THEREBY IMPROVIDENTLY ALLOWING THE TRIAL COURT TO PROCEED WITH S.C.A. CASE NO. 3392.[22]

The petitioner submits arguments in support of the foregoing, to wit:

> I
>
> THE DISPUTE BETWEEN MERALCO AND NPC SHOULD BE RESOLVED THROUGH ARBITRATION INSTEAD OF MEDIATION IN ACCORDANCE WITH THEIR ARBITRATION AGREEMENT UNDER THE CSE.

---

18 Id. at 151.
19 Id. at 152.
20 Supra note 1.
21 Id. at 184-186.
22 Id. at 87.

II

RESPONDENT JUDGE HAS NO JURISDICTION OVER THE SUBJECT MATTER RAISED IN S.C. A. CASE NO. 3392.

III

THE COURT OF APPEALS ERRED IN ALLOWING THE TRIAL COURT TO PROCEED WITH THE PRE-TRIAL AND SUBSEQUENT TRIAL IN S.C.A. CASE NO. 3392 IN DISREGARD OF PETITIONER'S RIGHTS. IN PARTICULAR, THE COURT OF APPEALS ERRED IN [i] FAILING TO ACKNOWLEDGE THE CIRCUMSTANCES OF PARTIALITY THAT WARRANTED RESPONDENT JUDGE'S INHIBITION FROM THE CASE; [ii] APPROVING THE TRIAL COURT'S PRECIPITATE ACTION TO PROCEED WITH THE PRE-TRIAL DESPITE INFORMATION THAT A PETITION FOR CERTIORARI HAD BEEN FILED BY PETITIONER, AND THEREUPON DECLARING THE PETITIONER TO HAVE WAIVED THE RIGHT TO PARTICIPATE THEREIN AND TO PRESENT EVIDENCE.

IV

THE SETTLEMENT IS GROSSLY DISADVANTAGEOUS AND PREJUDICIAL TO THE GOVERNMENT.

V.

THE PASS-ON PROVISION IMPOSED UNDER THE SETTLEMENT IS CONTRARY TO LAW, MORALS, PUBLIC INTEREST, AND PUBLIC POLICY.

VI

THE SETTLEMENT AGREEMENT WAS ENTERED INTO WITHOUT THE PARTICIPATION AND LEGAL GUIDANCE OF THE OFFICE OF THE SOLICITOR GENERAL.[23]

## Ruling

We deny the petition for review, and affirm the decision of the CA.

### I
### RTC's intervening rendition of the decision on the merits has rendered this appeal moot

In its assailed decision of October 14, 2011, the CA directed the RTC to proceed to the trial on the merits in Special Civil Action No. 3392, and to resolve the case with dispatch. It is worth mentioning at this juncture, therefore, that, as the petitioner indicated in its petition,[24] the RTC complied and ultimately rendered its decision on the merits in Special Civil Action No. 3392 on May 29, 2012 granting MERALCO's petition for declaratory relief and declaring the Settlement Agreement between NAPOCOR and

---

23 Id. at 87-89.

24 Id. at 956-969.

MERALCO as valid and binding, save for the pass-through provision that was reserved for the consideration and approval of the ERC. The petitioner has probably appealed the decision by now, for its petition for review expressly manifested the intention to appeal to the CA.[25]

With the intervening rendition of the decision on the merits, the challenge against the interlocutory orders of the RTC designed to prevent the RTC from proceeding with the pre-trial and the trial on the merits was rendered moot and academic. In other words, any determination of the issue on the interlocutory orders was left without any practical value.[26] A case that is moot and academic because of supervening events ceases to present any justiciable controversy. The courts of law will not determine moot and academic questions, for they should not engage in academic declarations and determine moot questions.[27]

## II
## CA correctly ruled that RTC Judge did not commit grave abuse of discretion in issuing the assailed orders

Nonetheless, the Court considers it necessary to still deal with the contentions of the petitioner in the interest of upholding the observations of the CA on the propriety of the interlocutory orders of the RTC. Doing so will be instructive for the Bench and the practicing Bar who may find themselves in similar situations.

The petitioner assails the order of the RTC dated November 3, 2010 for denying its motion to dismiss or to stay proceedings and to refer the parties to arbitration, and the pre-trial order dated November 24, 2010 for declaring that the petitioner was being deemed to have waived the right to participate in the pre-trial and to present evidence in its behalf. It argues that the CA thereby erred, firstly, in ruling that the assailed orders of the RTC were not tainted with grave abuse of discretion, and, secondly, in ordering the RTC to proceed to the trial of Special Civil Action No. 3392, and to resolve the case with dispatch.

The Court cannot sustain the arguments of the petitioner.

The RTC's proceeding with the pre-trial set on November 24, 2010 was entirely in accord with the *Rules of Court*. While it is true that the OSG

---

[25] Id. at 86.

[26] *Banco Filipino Savings and Mortgage Bank v. Tuazon, Jr.*, G.R. No. 132795, March 10, 2004, 425 SCRA 129, 134; *Desaville, Jr. v. Court of Appeals*, G.R. No. 128310, August 13, 2004, 436 SCRA 387, 391; *Malaluan v. Commission on Elections*, G.R. No. 120193, March 6, 1996, 254 SCRA 397, 403-404.

[27] *Barayuga v. Adventist University of the Philippines*, G.R. No. 168008, August 17, 2011, 655 SCRA 640, 654-655.

had filed on November 22, 2010 the petition for *certiorari*, prohibition and *mandamus*, the CA did not restrain the RTC from thus proceeding. Absent any TRO or WPI stopping the RTC from proceeding, the mere filing or pendency of the special civil actions for *certiorari*, *mandamus* and prohibition did not interrupt the due course of the proceedings in the main case. This is quite clear from the revised Section 7, Rule 65 of the *Rules of Court*,[28] which mandated that the petition shall not interrupt the course of the principal case, *viz*:

> Section 7. *Expediting proceedings; injunctive relief*. – The court in which the petition is filed may issue orders expediting the proceedings, and it may also grant a temporary restraining order or a writ of preliminary injunction for the preservation of the rights of the parties pending such proceedings. **The petition shall not interrupt the course of the principal case, unless a temporary restraining order or a writ of preliminary injunction has been issued, enjoining the public respondent from further proceeding with the case**.
>
> **The public respondent shall proceed with the principal case within ten (10) days from the filing of a petition for *certiorari* with a higher court or tribunal, absent a temporary restraining order or a preliminary injunction, or upon its expiration. Failure of the public respondent to proceed with the principal case may be a ground for an administrative charge.** (Emphasis supplied)

As the foregoing rule also indicates, for the RTC not to proceed with the pre-trial on its scheduled date of November 24, 2010 despite the absence of any TRO or WPI enjoining it from doing so could have subjected its Presiding Judge to an administrative charge.

We further concur with the holding of the CA that the RTC did not commit any grave abuse of discretion amounting to lack or excess of jurisdiction in deeming the petitioner's right to participate in the pre-trial and its right to present evidence as waived through the third assailed pre-trial order dated November 24, 2010. The waiver appears to have been caused by the deliberate refusal of the petitioner's counsel to participate in the proceedings.

The pre-trial, initially set on September 16, 2010,[29] was reset by the RTC on October 7, 2010 upon the motion of the OSG itself notwithstanding that both MERALCO and NAPOCOR had already submitted their pre-trial briefs and had manifested their readiness to proceed to the pre-trial. Yet, on October 7, 2010, the representative of the OSG again requested a resetting of the pre-trial. MERALCO expressed its strong opposition to the request, but the RTC granted the request and moved the pre-trial to November 4, 2010.[30]

---

28 The revision was effective on December 4, 2007 (A.M. No. 07-7-12-SC).
29 *Rollo*, p. 921.
30 Id. at 925.

Prior to November 4, 2010, the OSG filed an omnibus motion, again requesting the RTC to cancel the pre-trial. On the scheduled pre-trial of November 4, 2010, the representative of the OSG did not appear for the petitioner, subsequently admitting that the non-appearance had been intentional. Nonetheless, the RTC reset the pre-trial on November 24, 2010 over the "vehement objection" of MERALCO's counsel, but the RTC expressly conditioned the new date as "intransferable."[31]

On November 24, 2010, however, the representative of the OSG appeared in court but only to move for the cancellation of the hearing. The recorded proceedings of that date were recounted in the assailed decision of the CA, which also rendered its cogent observations on the consequences of the actuations of the representative of the OSG, as follows:

> x x x While petitioner was initially present during the scheduled pre-trial conference on 24 November 2011, State Solicitor Lazo (one of petitioner's counsels) asked to be excused from participating thereat. Excerpts of the stenographic notes taken during the hearing a *quo* on 24 November 2010 reveals:
>
> "xxx
>
> COURT:
>
> Now, on the matter regarding the pre-trial conference which has been set today, the Court believes that in the absence of a TRO, we will proceed with the pre-trial conference as scheduled.
>
> ATTY. LAZO:
>
> Your Honor, may we ask for a written order resolving our motion to cancel hearing today and our motion for inhibition.
>
> COURT:
>
> The court has already made oral order. In the meantime, you be ready for the conduct of the pre-trial.
>
> ATTY. LAZO:
>
> Your Honor, may we be excused from participating with the pre-trial.
>
> COURT:
>
> **It was your first stand during the first day when the pre-trial was set. In fact, one of the lawyers of OSG likewise stated that he will not participate. In the interest of substantial justice let us be more fair in the conduct of**

---

[31] Id. at 499-502.

**this proceedings, we (sic) all officers of the court, we are guided by the rules, we have to comply, we will proceed.** The order will be made after the hearing, unless that we will suspend the hearing now then the stenographer will prepare the order so that you'll have a copy, what do you want, are we going to suspend the proceedings so that the written order will be given to you. Is that what you want? We will proceed.

This is one request which has never been done by the Court. An oral order of the Court is only released after the hearing, because it will be prepared by the stenographer. Are you agreeable to that statement of the Court or you want to suspend all proceedings of today so that you will be given a chance that your request will be granted. Are you not changing your motion?

ATTY. LAZO:

Your Honor, I submit to the discretion of this Court.

COURT:

When you submit then you wait, we will proceed. Second call.

ATTY. LAZO:

**Can we have a copy of the same by registered mail because we have some urgent matters to attend to your Honor.**

COURT:

**Okay**.

ATTY. LAZO:

**May we be excused, your Honor.**

COURT:

**Okay**.

What are we going to do?

ATTY. SANTOS:

**Your Honor, we are ready to proceed with the pre-trial. We have our Pre-Trial Brief filed and so with the NPC, your Honor.**

COURT:

Now, in the conduct of the pre-trial, you have to reiterate what you already mentioned in your Pre-Trial Briefs

> for purposes of this Court to come out with the pre-trial order based on the stipulations made by the parties.
>
> xxx" (Emphasis supplied)

The above-quoted TSN belies petitioner's claim that despite its State Solicitor's appearance and objection to the holding of the said hearing of 24 November 2010, public respondent proceeded to declare petitioner in default. A *quo*, public respondent did not categorically declare petitioner in default, but instead, decreed petitioner to have waived its right to participate in the pre-trial and present evidence in its behalf which is in accordance with Section 5, Rule 18 of the Rules of Court for the apparent reason that State Solicitor Lazo himself **asked to be excused** from participating in the pre-trial conference. The case of *Development Bank of the Philippines vs. Court of Appeals, et al.* is enlightening on this point where the Supreme Court had the occasion to state therein that:

> "Consistently with the mandatory character of the pre-trial, the Rules oblige not only the lawyers but the parties as well to appear for this purpose before the Court, and when a party "fails to appear at a pre-trial conference (be) may be non-suited or considered as in default. **The obligation in** (sic) **appear denotes not simply the personal appearance, or the mere physical presentation by a party of one's self, but connotes as importantly, preparedness to go into the different subject assigned by law to a pre-trial**. (Emphasis supplied)

Petitioner's State Solicitors' initial attendance during the pre-trial conference could not be equated to the personal appearance mandated by Section 4, Rule 18 of the Rules of Court. The duty to appear during the pre-trial conference is not by mere initial attendance, but taking an active role during the said proceedings. Petitioner (as defendant a *quo*) has no valid reason to complain for its predicament now as it chose to withhold its participation during the pre-trial conference.[32]

From an objective view of the proceedings, the RTC's deeming of the petitioner's right to participate in the pre-trial and its right to present evidence as waived was reasonable under the circumstances. Thus, it did not act arbitrarily, whimsically, or capriciously. The dismissal of the petition for *certiorari*, prohibition and *mandamus* was correct and justified, for grave abuse of discretion on the part of the RTC was not persuasively demonstrated by the petitioner. *Grave abuse of discretion* means either that the judicial or quasi-judicial power was exercised in an arbitrary or despotic manner by reason of passion or personal hostility, or that the respondent judge, tribunal or board evaded a positive duty, or virtually refused to perform the duty enjoined or to act in contemplation of law, such as when such judge, tribunal or board exercising judicial or quasi-judicial powers acted in a capricious or whimsical manner as to be equivalent to lack of jurisdiction.[33]

---

[32] Id. at 36-38 (bold underscoring is part of the original text).

[33] *De los Santos v. Metropolitan Bank and Trust Company*, G.R. No. 153852, October 24, 2012, 684 SCRA 410, 422-423.

## III
## Validity of the Settlement Agreement is not an issue in this appeal

In hereby assailing the decision of the CA to uphold the challenged orders of the RTC, the OSG raises various arguments against the validity of the Settlement Agreement.

The Court believes and holds that it cannot address such arguments simply because the issue in this appeal concerns only the upholding by the CA of the propriety of the assailed interlocutory orders of the RTC. The validity of the Settlement Agreement is not an issue.

Moreover, the validity of the Settlement Agreement is properly within the competence of the RTC, the proper court for that purpose (except the matter of the pass-through provision, which was within the jurisdiction of the ERC).

## IV
## Mediation v. Arbitration

The petitioner requests the Court's intervention to direct MERALCO and NAPOCOR to resolve their dispute through arbitration pursuant to the arbitration clause of the CSE.

The Court declines the request, considering that the primary competence to determine the enforceability of the arbitration clause of the CSE pertained to the RTC in Special Civil Action No. 3392. Yielding to the request would have the Court usurping the jurisdiction of the RTC. Moreover, with the RTC having meanwhile rendered its decision declaring the Settlement Agreement valid, the recourse of the petitioner as to its request is probably an appeal in due course.

**WHEREFORE**, we **DENY** the petition for review on *certiorari*, and **AFFIRM** the decision promulgated by the Court of Appeals on October 14, 2011 in C.A.-G.R. SP No. 116863.

**SO ORDERED.**

**LUCAS P. BERSAMIN**
Associate Justice

**WE CONCUR:**

**MARIA LOURDES P. A. SERENO**
Chief Justice

**TERESITA J. LEONARDO-DE CASTRO**
Associate Justice

**MARTIN S. VILLARAMA, JR.**
Associate Justice

**BIENVENIDO L. REYES**
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's Division.

**MARIA LOURDES P. A. SERENO**
Chief Justice