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**G.R. No. 248061 – MORE ELECTRIC AND POWER CORPORATION,**  
*petitioner, versus PANAY ELECTRIC COMPANY, INC., respondent.*

**G.R. No. 249406 – REPUBLIC OF THE PHILIPPINES,** *petitioner-*  
*oppositor; PANAY ELECTRIC COMPANY, INC., petitioner, versus*  
**MORE ELECTRIC AND POWER CORPORATION,** *respondent.*

Promulgated:

September 15, 2020

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**SEPARATE OPINION**

**CAGUIOA, J.:**

Assailed before the Court are Sections 10 and 17 of Republic Act No. (R.A.) 11212,<sup>1</sup> which provide:

SEC. 10. *Right of Eminent Domain.* – Subject to the limitations and procedures prescribed by law, the grantee is authorized to exercise the power of eminent domain insofar as it may be reasonably necessary for the efficient establishment, improvement, upgrading, rehabilitation, maintenance and operation of its services. The grantee is authorized to install and maintain its poles wires, and other facilities over, under, and across public property, including streets, highways, parks, and other similar property of the Government of the Philippines, its branches, or any of its instrumentalities. The grantee may acquire such private property as is actually necessary for the realization of the purposes for which this franchise is granted, including, but not limited to poles, wires, cables, transformers, switching equipment and stations, buildings, infrastructure, machineries and equipment previously, currently or actually used, or intended to be used, or have been abandoned, unused or underutilized, or which obstructs its facilities, for the operation of a distribution system for the conveyance of electric power to end users in its franchise area: *Provided,* That proper expropriation proceedings shall have been instituted and just compensation paid:

*Provided, further,* That upon the filing of the petition for expropriation, or at any time thereafter, and after due notice to the owner of the property to be expropriated and the deposit in a bank located in the franchise area of the full amount of the assessed value of the property or properties, the grantee shall be entitled to immediate possession, operation, control, use and disposition of the properties sought to be expropriated, including the power of demolition, if necessary, notwithstanding the

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<sup>1</sup> AN ACT GRANTING MORE ELECTRIC AND POWER CORPORATION A FRANCHISE TO ESTABLISH, OPERATE, AND MAINTAIN, FOR COMMERCIAL PURPOSES AND IN THE PUBLIC INTEREST, A DISTRIBUTION SYSTEM FOR THE CONVEYANCE OF ELECTRIC POWER TO THE END USERS IN THE CITY OF ILOILO, PROVINCE OF ILOILO, AND ENSURING THE CONTINUOUS AND UNINTERRUPTED SUPPLY OF ELECTRICITY IN THE FRANCHISE AREA, February 14, 2019.



pendency of other issues before the court, including the final determination of the amount of just compensation to be paid. The court may appoint a representative from the ERC as a trial commissioner in determining the amount of just compensation. The court may consider the tax declarations, current audited financial statements, and rate-setting applications of the owner or owners of the property or properties being expropriated in order to determine their assessed value.

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SEC. 17. *Transition of Operations.* — In the public interest and to ensure uninterrupted supply of electricity, the current operator, Panay Electric Company, Inc. (PECO), shall in the interim be authorized to operate the existing distribution system within the franchise area, as well as implement its existing power supply agreements with generation companies that had been provisionally or finally approved by the ERC until the establishment or acquisition by the grantee of its own distribution system and its complete transition towards full operations as determined by the ERC, which period shall in no case exceed two (2) years from the grant of this legislative franchise.

Upon compliance with its rules, the ERC shall grant PECO the necessary provisional certificate of public convenience and necessity (CPCN) covering such interim period. The applicable generation rate shall be the provisional or final rate approved by the ERC.

This provisional authority to operate during the transition period shall not be construed as extending the franchise of PECO after its expiration on January 18, 2019, and it shall not prevent the grantee from exercising the right of eminent domain over the distribution assets existing at the franchise area as provided in Section 10 of this Act. During such interim period, the ERC shall require PECO to settle the full amount which the ERC has directed to refund to its customers in connection with all the cases filed against it.

To reduce the length of the transition period, the ERC and all agencies issuing the requisite licenses shall prioritize all applications relevant to the establishment and operation of the distribution system under its franchise.

The grantee shall, as far as practicable and subject to required qualifications, accord preference to hiring former employees of PECO upon commencement of business operations.

An information dissemination campaign regarding public services and operations of the grantee shall be made to all end-users in the franchise area.

The grantee and PECO shall jointly ensure that employees not hired by the grantee shall receive all separation and/or retirement benefits they are entitled to in accordance with applicable laws.

The DOE shall, during the transition, ensure that there will be uninterrupted supply of electricity in the existing franchise area.

Panay Electric Company, Inc. (PECO) argues in the main that the power of eminent domain delegated to More Electric and Power Corporation



(MORE) amounts to a confiscatory, ill-disguised takeover of its corporate assets, and is therefore violative of PECO's constitutional rights to due process and equal protection.

I concur with the *ponencia* that this argument does not hold water. I furthermore agree with the *ponencia's* holding that the aforementioned provisions which authorize the grantee, MORE, to expropriate the existing distribution assets of PECO at the franchise area, and provide for transition of operations, respectively, pass constitutional muster.

The power of eminent domain, essentially legislative in nature, may be validly delegated to local government units, other public entities, and public utilities, such as MORE, an electric power distribution utility. The scope of this delegated legislative power is narrower than that of the delegating authority and may only be exercised in strict compliance with the terms of the delegating law.<sup>2</sup>

But for all its primacy and urgency, the power of expropriation is by no means absolute.<sup>3</sup> The limitation is found in Section 9, Article III of the 1987 Constitution, which provides that: "Private property shall not be taken for public use without just compensation." Clearly, the two essential limitations on the power of eminent domain are that: (1) the purpose of taking must be for public use; and (2) just compensation must be given to the owner of the private property.<sup>4</sup> These constitutional safeguards serve as a check on the possible abuse of this power and circumscribe the excessive encroachment on the property rights of the individual.

For this purpose, the Court has recognized that the term "public use," which traditionally was limited to actual use by the public, has evolved in this jurisdiction to include "whatever is beneficially employed for the community."<sup>5</sup> Conversely, when the taking is for a *purely* private purpose, such that there is no perceptible benefit flowing to the public, the taking ought to be struck down for being unconstitutional. It is repugnant to our laws to use the power of eminent domain over private property *predominantly* for purposes of another citizen's private gain.<sup>6</sup> The Court has hewed to this principle, which was first enunciated in the old American case of *Charles River Bridge v. Warren Bridge*,<sup>7</sup> that notwithstanding the inherent power of the State to expropriate all property, the Constitution does not sanction the

<sup>2</sup> See *Heirs of Alberto Suguitan v. City of Mandaluyong*, G.R. No. 135087, March 14, 2000, 328 SCRA 137, 145-146.

<sup>3</sup> *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*, G.R. Nos. 78742, 79310, 79744 and 79777, July 14, 1989, 175 SCRA 343, 376.

<sup>4</sup> *Apo Fruits Corporation, Inc. v. Landbank of the Philippines*, G.R. No. 164195, October 12, 2010, 632 SCRA 727, 739.

<sup>5</sup> *Manosca v. Court of Appeals*, G.R. No. 106440, January 29, 1996, 252 SCRA 412, 421, citing *Seña v. Manila Railroad Co.*, 42 Phil. 102, 105 (1921).

<sup>6</sup> See *National Power Corporation v. Posada*, G.R. No. 191945, March 11, 2015, 752 SCRA 550, 579, citing *Vda. de Ouano v. Republic*, G.R. Nos. 168770 & 168812, February 9, 2011, 642 SCRA 384, 409.

<sup>7</sup> 36 US 420 (1837) cited in *Barangay Sindalan, San Fernando, Pampanga v. Court of Appeals*, G.R. No. 150640, March 22, 2007, 518 SCRA 649, 665.



taking of a private party for the *sole purpose* of transferring it to another private party, even when there is payment of just compensation.<sup>8</sup>

At the same time, the right to take private property for public purposes must necessarily originate from “the necessity” and the taking must be limited to such necessity.<sup>9</sup> The burden of proving the necessity is borne by the State, which takes precedence before resolving any issue involving just compensation.<sup>10</sup> The necessity need not be absolute but only a reasonable or practical necessity, such as would combine the greatest benefit to the public with the least inconvenience and expense to the condemning party and the property owner consistent with such benefit.<sup>11</sup> If genuine public necessity is absent or eventually ceases, the expropriation of the private property cannot continue.<sup>12</sup>

In this regard, it is my view that despite the enormous power of eminent domain, the constitutional limitations on its exercise is an explicit recognition of the protection accorded to one’s right to property.<sup>13</sup> The power affects an individual’s right to private property, a constitutionally-protected right necessary for the preservation and enhancement of personal dignity and intimately connected with the rights to life and liberty. As such, the need for a circumspect operation of this exercise cannot be overemphasized.<sup>14</sup> The Court, under its expanded power of judicial review, retains the authority to determine whether there is grave abuse of discretion in the exercise of the power of eminent domain. The Court’s judicial function is not stymied by the expanded definition of public use, especially when the purported public use is merely incidental or pretextual, thereby serving as a guise to favor private interests.<sup>15</sup> In other words, the elements of public purpose and genuine necessity must be clearly shown. A bare invocation that the taking is for a public purpose or is attended with genuine necessity should never serve as an automatic and absolute guarantee to the Court that the taking is legal.

Taking all the foregoing limits on the exercise of the power of eminent domain in consideration, I agree with the *ponencia* that the assailed provisions of R.A. 11212 do not suffer from constitutional infirmities.

*The authority granted to MORE under Sections 10 and 17 of R.A. 11212 is reasonably necessary for the exercise of its franchise*

A careful examination of the limits of the power of eminent domain under the peculiar factual circumstances of this case yields to the conclusion

<sup>8</sup> See *Kelo v. New London*, 545 US 469 (2005).

<sup>9</sup> *Masikip v. City of Pasig*, G.R. No. 136349, January 23, 2006, 479 SCRA 391, 401.

<sup>10</sup> *National Power Corporation v. Posada*, supra note 6, at 579.

<sup>11</sup> *Masikip v. City of Pasig*, supra note 9, at 402.

<sup>12</sup> *National Power Corporation v. Posada*, supra note 6, at 579, citing *Vda. de Ouano v. Republic*, supra note 6, at 409.

<sup>13</sup> See *Masikip v. City of Pasig*, supra note 9, at 403.

<sup>14</sup> See *Heirs of Alberto Suguitan v. City of Mandaluyong*, supra note 2, at 145.

<sup>15</sup> See Concurring Opinion of Justice Kennedy in *Kelo v. New London*, 545 US 469 (2005).



that the grant to MORE of the delegated power was imperative for the urgent and important public purpose that MORE was tasked to undertake under its franchise. Prior to the award of the legislative franchise to MORE, PECO was the lone electric power distribution utility in Iloilo City for 96 years, or close to a century. This rather distinct situation, in my view, was a crucial factor in the legislative decision to craft Sections 10 and 17 of R.A. 11212.

From 1923 until January 18, 2019, PECO was a holder of a franchise to establish, operate, and maintain a distribution system for the conveyance of electric power to end-users in Iloilo City. Since its franchise was granted, PECO established a distribution system consisting of 5 sub-transmission line substations, 450 kilometers of electrical lines, 20,000 poles, 1,300 transformers and 64,000 electrical meters. Personnel under its employ numbered to around 400.<sup>16</sup> For the longest time, the residents of Iloilo City were exclusively<sup>17</sup> serviced by PECO, the sole franchise holder for the operation of an electric power distribution utility.

Its position as the sole operator of the electric power distribution utility in Iloilo City is typical in the industry, as the energy distribution sector has always been a natural monopoly. Since the operation of an electric power distribution utility involves extremely high-fixed costs, it would be more efficient if only one producer services the community.<sup>18</sup> Hence, the assailed

<sup>16</sup> *Rollo* (G.R. No. 248061), pp. 62-63; *rollo* (G.R. No. 249406), pp. 106-107.

<sup>17</sup> R.A. 5360, AN ACT GRANTING A FRANCHISE FOR AN ELECTRIC LIGHT, HEAT AND POWER SYSTEM TO PANAY ELECTRIC CO., INC., IN THE CITY OF ILOILO, AND IN THE MUNICIPALITIES OF SANTA BARBARA AND PAVIA, BOTH IN THE PROVINCE OF ILOILO, June 15, 1968. Section 2 reads: "In the event that the National Power Corporation shall have established its line in the areas adjacent to or over the territory covered by this franchise, the National Power Corporation may make available its power and heat only after negotiations with and through or with the authority and consent of the grantee, which shall be the exclusive distributor of whatever power the aforementioned corporation may make available adjacent to or within the territory covered by this franchise."

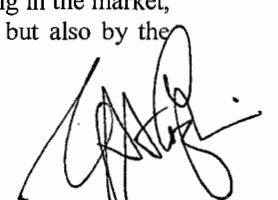
<sup>18</sup> [MR. GREG L. OFALSA (Director, Legal Service, Energy Regulatory Commission):]

We go now to scenario number three where PECO[']s franchise is renewed and [MORE] is granted a franchise covering the same franchise area as that of PECO. A DU is a natural monopoly. Allowing more than one DU within the same geographical area will result to a higher electricity rates (*sic*) for consumers within that geographical area.

A natural monopoly is a monopoly in an industry in which high infrastructural cost and other barriers to entry relative to the size of the market gives the largest suppliers in an industry[,] often the first supplier in the market[,] an overwhelming advantage over potential competitors. x x x

Let's assume that we have two distribution utilities, namely: Blue DU and Red DU. Blue DU is the old distribution utility while Red is the new distribution utility. Both DUs are operating [in] Color Cloud Town[,] Color Cloud Town has 50 electric consumers. All 50 electric consumers are originally consumers of Blue DU. Blue DU has a capital investment of 100. Blue's distribution charge is determined by dividing its capital with the number of its consumers as follows: 100 divided by 50 is equivalent to two. Number two represents the distribution charge for all 50 consumers of Blue at that time [as] the sole DU in Color Cloud Town. After some time, Red entered the electric distribution market and began building [its] own distribution facility. Red's initial capital is 30 and was able to convince 10 electric consumers in Color Cloud Town to change its electric distribution's service [provider]. Similar to Blue, Red[']s distribution [charge] is determined by dividing its capital with the number of its consumers as follows: 30[,] the investment[,] divided by 10[,] the number of consumers[,] is equivalent to three. Three represents the distribution charge for the first 10 electric consumers of Red. On the other hand, as Blue's consumers decrease, its distribution charge is recomputed x x x by dividing its capital with the number of its consumers x x x [which] is equivalent to 2.5, the 2.5 represents the distribution charge for the remaining electric consumers x x x of Blue.

As provided in the above illustration, an increase in the number of DUs operating in the market, will ultimately result to higher distribution rates chargeable not only by the new DU but also by the



provisions, which purportedly granted MORE “unwarranted benefits” and “discriminate” against PECO,<sup>19</sup> should be appreciated in light of these unique factual circumstances. MORE, as a new player in the electric power distribution sector, naturally needs to **establish**, as opposed to merely maintain, its services.

In this regard, it is inaccurate to compare the franchise of MORE with other electric power distribution utilities, as Associate Justice Marvic Leonen would have it,<sup>20</sup> because these comparisons stand on unequal footing. The other electric power distribution utilities cited in the Dissenting Opinion of Justice Leonen have franchises which were renewed, extended, or granted due to their having previously operated in the area covered by their new franchises. Thus:

1. Mactan Electric Company, Inc. started its initial operations in 1967. Per its website, it was issued a franchise to operate an electric light and power for 25 years from 1973 until 1991.<sup>21</sup> It obtained a congressional franchise in 2016 through R.A. 10890.<sup>22</sup>
2. The franchise subject of R.A. 10795<sup>23</sup> clearly states in its title that it is an extension of the franchise of Tarlac Electric, Inc., previously covered by R.A. 7606.<sup>24</sup>
3. R.A. 9381<sup>25</sup> also clearly states in its title that it is an extension of the franchise of Angeles Electric Corporation issued under R.A. 2341.<sup>26</sup>

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previously existing DU because of the reduction in the number of consumers sharing the capital cost.” (House of Representatives, Committee on Legislative Franchises, September 26, 2018 Hearing, pp. 14-15).

<sup>19</sup> Dissenting Opinion of Justice Marvic M.V.F. Leonen, p. 1.

<sup>20</sup> Id. at 5-6.

<sup>21</sup> Mactan Electric Company, Inc. About Us, Historical Profile, at <<http://www.mecomactan.com/about/>> (last accessed on September 25, 2020).

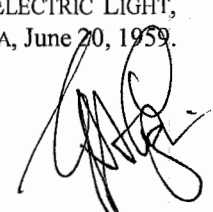
<sup>22</sup> AN ACT GRANTING THE MACTAN ELECTRIC COMPANY, INC. (MECO) A FRANCHISE TO CONSTRUCT, INSTALL, ESTABLISH, OPERATE AND MAINTAIN A DISTRIBUTION SYSTEM FOR THE CONVEYANCE OF ELECTRIC POWER TO THE END USERS IN THE CITY OF LAPU-LAPU AND THE MUNICIPALITY OF CORDOVA, PROVINCE OF CEBU, July 17, 2016.

<sup>23</sup> AN ACT EXTENDING FOR A PERIOD OF TWENTY-FIVE (25) YEARS THE TERM OF THE FRANCHISE GRANTED TO TARLAC ELECTRIC, INC. (FORMERLY KNOWN AS TARLAC ENTERPRISES, INC.) TO CONSTRUCT, OPERATE, AND MAINTAIN AN ELECTRIC LIGHT, HEAT AND POWER SYSTEM IN THE CITY OF TARLAC, PROVINCE OF TARLAC, PROVIDED UNDER REPUBLIC ACT NO. 7606, May 10, 2016.

<sup>24</sup> AN ACT GRANTING TARLAC ENTERPRISES, INC. A FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN AN ELECTRIC LIGHT, HEAT AND POWER SYSTEM IN THE MUNICIPALITY OF TARLAC, PROVINCE OF TARLAC, FOR A PERIOD OF TWENTY-FIVE (25) YEARS, AND FOR OTHER PURPOSES, June 4, 1992.

<sup>25</sup> AN ACT FURTHER AMENDING THE FRANCHISE OF ANGELES ELECTRIC CORPORATION GRANTED UNDER REPUBLIC ACT NO. 2341, AS AMENDED, TO CONSTRUCT, OPERATE AND MAINTAIN A DISTRIBUTION SYSTEM FOR THE CONVEYANCE OF ELECTRIC POWER TO THE END-USERS IN THE CITY OF ANGELES, PROVINCE OF PAMPANGA AND RENEWING/EXTENDING THE TERM OF THE FRANCHISE TO ANOTHER TWENTY-FIVE (25) YEARS FROM THE DATE OF APPROVAL OF THIS ACT, March 9, 2007.

<sup>26</sup> AN ACT GRANTING THE ANGELES ELECTRIC CORPORATION A FRANCHISE FOR AN ELECTRIC LIGHT, HEAT AND POWER SYSTEM IN THE MUNICIPALITY OF ANGELES, PROVINCE OF PAMPANGA, June 20, 1959.



4. While COTELCO-PPALMA operates under a new franchise (*i.e.*, R.A. 11322<sup>27</sup>), it appears from its website that it was operating under COTELCO's franchise even before it was granted its own franchise in 2019.<sup>28</sup>

To be sure, Congress should not be deprived of the authority to grant new franchise holders with the power to expropriate necessary assets. To hold otherwise would effectively constrain Congress to continuously renew the existing franchise of the current operator despite its sub-par service, until another prospective operator has built its own capital assets. However, given the high-fixed costs and other barriers to entry, few players, if any, will even attempt to enter the industry without first securing a franchise.

Neither is MORE given unwarranted benefits when Section 10 of R.A. 11212 granted it the authority to take possession of expropriated properties after the payment of a provisional amount based on their *assessed value*.<sup>29</sup> True, had the government proceeded to expropriate PECO's assets pursuant to its legislative franchise under R.A. 5360, the government is obliged to pay the *fair market value* of PECO's properties.<sup>30</sup> But textually, Section 4 of R.A. 5360 reveals that the provision contemplates a government takeover during the lifetime of PECO's franchise. By virtue of this provision, the government is granted the option to operate the electric power distribution system itself, cutting short PECO's franchise without requiring the prior deposit or payment of any provisional value before the government enters the property expropriated. Thus, the fair market value on which the payment of just compensation is based pertains to the final amount that the government would have paid had it proceeded to take over PECO's operations. In contrast, the assessed value referred to in Section 10 of R.A. 11212 is the provisional amount that MORE should deposit in order to immediately possess the property being expropriated.<sup>31</sup> It is not the final amount of compensation contemplated in Section 4 of R.A. 5360.

The payment of a provisional amount less than the fair market value, in order to possess the property expropriated, is also not a unique requirement applicable to MORE alone. The payment of the assessed value of the property

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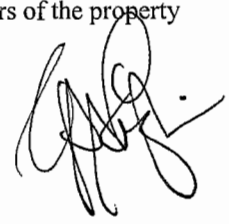
<sup>27</sup> AN ACT GRANTING A LEGISLATIVE FRANCHISE TO COTABATO ELECTRIC COOPERATIVE, INC.-PPALMA (COTELCO-PPALMA) TO CONSTRUCT, INSTALL, ESTABLISH, OPERATE AND MAINTAIN A DISTRIBUTION SYSTEM FOR THE CONVEYANCE OF ELECTRIC POWER TO THE END USERS IN THE MUNICIPALITIES OF PIKIT, PIGCAWAYAN, ALEOSAN, LIBUNGAN, MIDSAYAP AND ALAMADA, PROVINCE OF COTABATO, AND ITS NEIGHBORING SUBURBS, April 17, 2019.

<sup>28</sup> Cotabato Electric Cooperative, Inc.-PPALMA, About, at <<https://www.ppalmacotelco.com>> (last accessed on September 25, 2020).

<sup>29</sup> Dissenting Opinion of Justice Marvic M.V.F. Leonen, pp. 4-5.

<sup>30</sup> R.A. 5360, Sec. 4, reads: "It is expressly provided that in the event the Government should desire to operate and maintain for itself the system and enterprise herein authorized, the grantee shall surrender its franchise and will turn over to the government all equipment therein at fair market value."

<sup>31</sup> In determining the assessed value, Section 10 provides that the court "may consider tax declarations, current audited financial statements, and rate-setting applications of the owner or owners of the property or properties being expropriated."





is likewise provided in Section 2,<sup>32</sup> Rule 67 of the Rules of Court.<sup>33</sup> Upon the deposit of this provisional amount, the issuance of the writ of possession is a ministerial duty on the part of the trial court.<sup>34</sup> Also, under R.A. 7160<sup>35</sup> or the Local Government Code, the LGU may enter the property expropriated upon the deposit of 15% of the fair market value based on the current tax declaration of the property to be expropriated.<sup>36</sup> Clearly, MORE was not granted unwarranted economic benefits by Section 10.

At any rate, Section 10 does not, by any means, foreclose or limit the payment of just compensation on the basis of the assessed value as this is, again, merely a provisional amount. MORE is still liable for the full amount of just compensation to be determined during the expropriation proceedings on the basis of, among other things, the market value of the property.

Certainly, after MORE takes possession of the expropriated property belonging to PECO, PECO is entitled to the payment of the full amount of just compensation, which is the full and fair equivalent of the loss incurred by the affected owner.<sup>37</sup> In determining the amount of just compensation, the trial court is bound to consider the market value of the property and the current value of like property, among other things. In addition, interest would be awarded as an indispensable part of just compensation, in order “to ensure that the owner is fully placed in a position as whole as he was before the taking occurred.”<sup>38</sup> In other words, in compliance with the constitutional mandate on eminent domain and as a basic measure of fairness,<sup>39</sup> the State would be required to pay interest to compensate PECO for the opportunity cost of immediately losing its property without receiving immediate full payment therefor.<sup>40</sup> As such, PECO would be entitled to receive the real, substantial, full and ample equivalent of the properties lost.<sup>41</sup>

In this light, Section 10 of R.A. 11212 does not serve to narrow the court’s parameters in determining just compensation by limiting it to the

<sup>32</sup> SEC. 2. *Entry of plaintiff upon depositing value with authorized government depository.* — Upon the filing of the complaint or at any time thereafter and after due notice to the defendant, the plaintiff shall have the right to take or enter upon the possession of the real property involved if he deposits with the authorized government depository an amount equivalent to the assessed value of the property for purposes of taxation to be held by such bank subject to the orders of the court. Such deposit shall be in money, unless in lieu thereof the court authorizes the deposit of a certificate of deposit of a government bank of the Republic of the Philippines payable on demand to the authorized government depository.

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<sup>33</sup> N.B. For national government infrastructure projects, Section 6 of R.A. 10752 (The Right-of-Way Act [March 7, 2016]) requires the implementing agency to immediately deposit 100% of the zonal value of the property.

<sup>34</sup> *Biglang-Awa v. Bacalla*, G.R. Nos. 139927 and 139936, November 22, 2000, 345 SCRA 562, 577.

<sup>35</sup> AN ACT PROVIDING FOR A LOCAL GOVERNMENT CODE OF 1991, October 10, 1991.

<sup>36</sup> R.A. 7160, Book I, Title I, Chapter I, Sec. 19.

<sup>37</sup> See *Republic v. Spouses Bunsay*, G.R. No. 205473, December 10, 2019, p. 8.

<sup>38</sup> See *J. Caguioa*, Separate Opinion in *National Power Corporation v. Serra Serra*, G.R. No. 224324, January 22, 2020, p. 3, citing *Republic v. Decena*, G.R. No. 212786, July 30, 2018, 874 SCRA 408, 431. Emphasis omitted.

<sup>39</sup> See *Secretary of the Department of Public Works and Highways v. Spouses Tecson*, G.R. No. 179334, April 21, 2015, 756 SCRA 389, 422.

<sup>40</sup> See *J. Caguioa*, Separate Opinion in *National Power Corporation v. Serra Serra*, supra note 38, at 2.

<sup>41</sup> See *Republic v. Spouses Bunsay*, supra note 37, at 9.



assessed value only. It is therefore erroneous to compare the assessed value in Section 10 of R.A. 11212 on the one hand, and the fair market value in Section 4 of R.A. 5360 on the other, in order to arrive at a conclusion that MORE received an unusual economic benefit by virtue of its franchise.<sup>42</sup> Ultimately, the determination of just compensation in expropriation cases always factors in the fair market value of the property.

Given that proper expropriation proceedings would still be, as they have in fact already been, instituted,<sup>43</sup> as provided for under Section 10, there is likewise no merit to the observation of Associate Justice Amy Lazaro-Javier that the provision has effectively rendered judicial proceedings for the expropriation of PECO's properties as a mere ceremonial procedure.<sup>44</sup> Section 10 is a provision of delegation by Congress to the grantee, which merely gives it the authority to exercise the power of eminent domain. Section 10 relevantly and explicitly provides that the exercise would be subject to the limitations and procedures prescribed by law, that proper expropriation proceedings shall be instituted, and that just compensation shall be paid therefor.

As constructed, nothing in Section 10 shows that judicial proceedings for expropriation would be but an empty exercise. In fact, it sets out a restriction against expropriation to what may be *reasonably* necessary for the general purposes of the services of PECO. This includes the "efficient establishment, improvement, upgrading, rehabilitation, maintenance and operation of its services." For the specific purpose of "*acquiring* private property, such as poles, wires, cables, transformers, and other machinery and equipment," the language of the provision even shifts significantly from a mere reasonable necessity to one of being "*actually* necessary for the realization of the purpose for which [R.A. 11212] is granted." This, to my mind, provides a guide to and a standard for the court to follow during the trial for the expropriation proceedings that have been instituted. With this language, the safeguard afforded by the legislature against any abuse of the delegated right of eminent domain to MORE is, at once, evident.

In sum, while the exercise of the power of eminent domain over the electric power distribution facilities of PECO may garner benefits in favor of MORE, this would be but incidental. Notably, its duties as a public utility would nonetheless remain regulated by the government. At the end of the day, at the proper expropriation proceedings instituted for the purpose, the abiding reality would be for the court to be satisfied with evidence proffered by MORE — that its intended taking would invariably be for the good of the public, is actually necessary, and that there is just compensation therefor.

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<sup>42</sup> Dissenting Opinion of Associate Justice Marvic M.V. F. Leonen, pp. 4-5.

<sup>43</sup> *Rollo* (G.R. No. 248061), pp. 6, 288 and 331.

<sup>44</sup> Dissenting Opinion of Associate Justice Amy C. Lazaro-Javier, p. 19.



*The authority granted to MORE under Sections 10 and 17 is not meant to punish PECO without a judicial trial*

It must be borne in mind that this case involves the expiration of the exclusive franchise of a previous grantee and the subsequent act of Congress of granting a franchise to another applicant which has satisfactorily shown its capacity to carry the work, not only for commercial purposes, but for the public interest of ensuring the continuous and uninterrupted supply of electricity in the franchise area.<sup>45</sup> This is the proper context by which this case should only be viewed. As it stands, as well, the petition itself does not challenge either the legislative act of granting the franchise to MORE or the denial of PECO's application for extension.

Accordingly, R.A. 11212, particularly Sections 10 and 17, cannot be validly characterized as a bill of attainder, as Justice Lazaro-Javier advances in her Dissenting Opinion.<sup>46</sup> A bill of attainder is a legislative act which inflicts punishment on individuals or members of a particular group without judicial trial. For a law to be considered a bill of attainder, it must be shown to contain all of the following: (a) a specification of certain individuals or a group of individuals; (b) the imposition of a punishment, penal or otherwise, and (c) the lack of judicial trial.<sup>47</sup> For the second element, Justice Lazaro-Javier cites American jurisprudence in laying down the three factors in determining whether the statute was punitive: (a) whether it fell within the historical meaning of legislative punishment; (b) whether, viewed in terms of the type and severity of burdens imposed, it could reasonably be said to further non-punitive legislative purposes; and (c) whether it evinced an intent to punish.<sup>48</sup> None of these factors are evident here.

R.A. 11212 cannot be classified as a bill of attainder simply because Sections 10 and 11 do not constitute "punishments" in the sense of the bill of attainder clause as it has been interpreted. To suggest that R.A. 11212 was enacted for the purpose of punishing PECO is, to say the least, an overstretch

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<sup>45</sup> Parenthetically, a new applicant for franchise application has to submit the following documentary requirements to the Committee on Legislative Franchises in Congress:

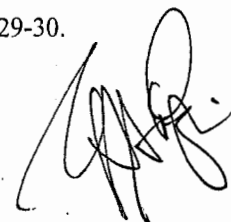
- a. Copy of the House Bill for the grant of franchise.
- b. Certificate of Registration from the Securities and Exchange Commission or Department of Trade and Industry.
- c. Articles of Incorporation and By-Laws of the applicant corporation.
- d. Articles of Incorporation and By-Laws of a holding company which owns the applicant, if any.
- e. Articles of Incorporation and By-Laws of the corporate stockholder of the applicant, if any.
- f. Latest General Information Sheet of the applicant and the corporate stockholder/holding company of the applicant, if any.
- g. Resume of major stockholders/officers of the applicant, including their income tax returns for the last three (3) years.
- h. Market feasibility study, five-year development plan, and plans and designs for the project.

There is no showing, much less any specific allegation, that MORE failed in the fulfillment of these requirements.

<sup>46</sup> Dissenting Opinion of Associate Justice Amy C. Lazaro-Javier, p. 1.

<sup>47</sup> *Fuertes v. The Senate of the Philippines*, G.R. No. 208162, January 7, 2020, pp. 29-30.

<sup>48</sup> Dissenting Opinion of Associate Justice Amy C. Lazaro-Javier, pp. 6-10.



and a diminution of the legitimate purpose and intent of Congress behind the enactment of the law. R.A. 11212 involves a grant of a franchise to MORE and nothing else. It bears stressing that the grant of a franchise is not a right but a mere privilege, and to construe the non-renewal of PECO's franchise as a punishment is wholly baseless and completely unwarranted.

Moreover, a review of the deliberations, as cited by Justice Lazaro-Javier, shows that Congress was not motivated by an intent to punish PECO. The explanatory note of House Bill No. (HB) 8132, the precursor bill to the legislative franchise of MORE, stated that the quality of service of PECO had been wanting over the years. Among the complaints against it were: overbilling or overcharging, poor customer relations, distributor-related power outages, inadequately maintained lines, inadequate investment in distribution facilities, and inordinate delay in the restoration of power services. The explanatory note stated further that PECO's historical abuse and inefficiency pose as obstructions to the economic growth of Iloilo City and to its people's welfare, health, and well-being. These findings were confirmed by a representative from the Energy Regulatory Commission during the legislative hearing for HB 8132, in addition to the findings on the dismal financial condition of PECO.<sup>49</sup> It has been repeatedly stated in these deliberations that the legislature's primary concern has been to secure the continuous and efficient supply of electricity in Iloilo City.

Consequently, the identification of PECO's shortcomings, which eventually led to the non-renewal of its franchise, was not meant to inflict any punishment against PECO so as to consider R.A. 11212 as a bill of attainder. Contrary to Justice Lazaro-Javier's claim, PECO was not being "singled out" for being "expressly identified as the wrongdoer."<sup>50</sup> Rather, it was simply part and parcel of the whole legislative process in the grant or renewal of franchises. Necessarily, as PECO was the previous franchise holder for close to a century and the issue concerned the renewal or grant of said franchise, there was a need to examine the performance of PECO. This was not done to punish PECO but to determine whether its franchise should be renewed. It was but natural and reasonable to expect that an evaluation of PECO's performance as the existing franchise holder would come into play.

Thus, given PECO's track record of inefficiency and shortcomings in providing public service to the residents of Iloilo City, the legislature found it wise to discontinue its franchise and to grant the authority instead to MORE. The expiration then of PECO's franchise, coupled with its distinct position as the only existing electric power distribution utility in Iloilo City, demonstrates that legitimate reasons impelled Congress to bestow on MORE the authority to expropriate distribution facilities existing in the franchise area and to provide for a smooth transition of PECO's operations.

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<sup>49</sup> Congressional Records, Committee on Legislative Franchises, September 18, 2018.

<sup>50</sup> Dissenting Opinion of Associate Justice Amy C. Lazaro-Javier, p. 1.



In the same manner, the fact that MORE is a new player in the industry and that there is no guarantee that it will be able to serve the public better than the former owner is not enough reason to invalidate Section 10.<sup>51</sup> The Constitution does not require, for a valid exercise of the power of eminent domain, that the public is served in an “ideal” way. It suffices that the power is exercised for public use which, to reiterate, covers “whatever is beneficially employed for the community.”

In fine, I remain convinced that Sections 10 and 17, viewed as integral parts of the grant of franchise in R.A. 11212, are constitutional. The rationale of these provisions cannot be overturned by potential unconstitutional effects resulting from a distrustful reading. It must be underscored that the grant of a franchise is constitutionally committed to the Legislative department. This has to be considered with the presumption of constitutionality “rooted in the doctrine of separation of powers which enjoins upon the three coordinate departments of the Government a becoming courtesy for each other’s acts. The theory is that every law, being the joint act of the Legislature and the Executive, has passed careful scrutiny to ensure that it is in accord with the fundamental law.”<sup>52</sup> The Court can go no further than to inquire whether Congress had the power to enact a law. It cannot delve into the wisdom of policies Congress adopts or into the adequacy under existing conditions of measures it enacts. The equal protection clause is not a license for the courts “to judge the wisdom, fairness, or logic of legislative choices.”<sup>53</sup>

Consonant with this principle is another deep-rooted doctrine that on the side of every law lays the presumption of constitutionality.<sup>54</sup> This strong predilection for constitutionality takes its bearings on the idea that it is forbidden for one branch of the government to encroach upon the duties and powers of another. If there is any reasonable basis upon which the legislation may firmly rest, the courts must assume that the legislature is ever conscious of the borders and edges of its plenary powers, and has passed the law with full knowledge of the facts and for the purpose of promoting what is right and advancing the welfare of the majority.<sup>55</sup>

The presumption of constitutionality may, of course, be challenged. Challenges, however, shall only be sustained upon a clear and unequivocal showing of the bases for invalidating a law and not merely a doubtful, speculative, or argumentative one.<sup>56</sup> In other words, the grounds for nullity must be beyond reasonable doubt, for to doubt is to sustain.<sup>57</sup> In this regard, I find no invalidity or unreasonableness that appears on the face of the assailed

<sup>51</sup> Dissenting Opinion of Associate Justice Marvic F. Leonen, p. 11.

<sup>52</sup> *Cawaling, Jr. v. Commission on Elections*, G.R. Nos. 146319 & 146342, October 26, 2001, 368 SCRA 453, 456-457.

<sup>53</sup> *J. Panganiban*, Dissenting Opinion in *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas*, G.R. No. 148208, December 15, 2004, 446 SCRA 299, 445.

<sup>54</sup> *Alvarez v. Guingona, Jr.*, G.R. No. 118303, January 31, 1996, 252 SCRA 695, 706.

<sup>55</sup> *Estrada v. Sandiganbayan*, G.R. No. 148560, November 19, 2001, 369 SCRA 394, 430-431.

<sup>56</sup> See *Barangay Association for National Advancement and Transparency (BANAT) Party-List v. COMELEC*, G.R. No. 177508, August 7, 2009, 595 SCRA 477, 487.

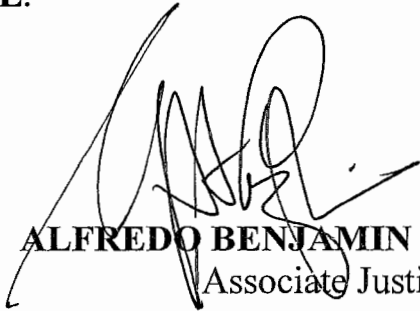
<sup>57</sup> *Cawaling, Jr. v. Commission on Elections*, supra note 52, at 457.



provisions, or is established by proper evidence which could rebut the presumption.

Finally, the wisdom of the grant of franchise to MORE should not be determinative of the constitutionality of Sections 10 and 17.<sup>58</sup> The Court cannot look into allegations that R.A. 11212, specifically its Sections 10 and 17, was enacted solely to benefit MORE to the prejudice of PECO. The delegated power of eminent domain under Section 10 is authorized by Section 23<sup>59</sup> of the EPIRA.<sup>60</sup> It is also not limited for the sole purpose of expropriating PECO's properties, and like any other franchise holder delegated with the power of eminent domain, its exercise is subject to constitutional and statutory requirements. On the other hand, Section 17 on the transition of operations between MORE and PECO can reasonably be read as impelled by public interest in preventing interruptions in the distribution of electric power in Iloilo City, and as a measure of social justice in favor of the displaced PECO employees. Both of these reasons are within the Legislative department's power to provide. Beyond these expressed purposes are speculations that the Court should not consider.

**WHEREFORE**, I concur with the majority decision to **GRANT** the petitions and to declare Sections 10 and 17 of Republic Act No. 11212 as **NOT UNCONSTITUTIONAL**.

  
**ALFREDO BENJAMIN S. CAGUIOA**  
 Associate Justice

<sup>58</sup> See *Lim v. Pacquing*, G.R. Nos. 115044 & 117263, January 27, 1995, 240 SCRA 649. The Court held in this case:

ADC questions the motive for the issuance of PD No. 771. Clearly, however, this Court cannot look into allegations that PD No. 771 was enacted to benefit a select group which was later given authority to operate the jai-alai under PD No. 810. The examination of legislative motivation is generally prohibited. (*Palmer v. Thompson*, 403 U.S. 217, 29 L. Ed. 2d 438 [1971], per Black, J.) *There is, in the first place, absolute lack of evidence to support ADC's allegation of improper motivation in the issuance of PD No. 771. In the second place, as already averred, this Court cannot go behind the expressed and proclaimed purposes of PD No. 771, which are reasonable and even laudable.*

It should also be remembered that PD No. 771 provides that the *national government* can subsequently grant franchises "upon proper application and verification of the qualifications of the applicant." ADC has not alleged that it filed an application for a franchise with the national government subsequent to the enactment of PD No. 771; thus, the allegations abovementioned (of preference to a select group) are based on conjectures, speculations and imagined biases which do not warrant the consideration of this Court. (*Id.* at 677-678.)

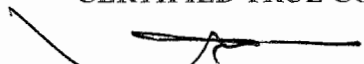
<sup>59</sup> SEC. 23. *Functions of Distribution Utilities*. - x x x

x x x x

Distribution utilities may exercise the power of eminent domain subject to the requirements of the Constitution and existing laws.

<sup>60</sup> R.A. 9136, AN ACT ORDAINING REFORMS IN THE ELECTRIC POWER INDUSTRY, AMENDING FOR THE PURPOSE CERTAIN LAWS AND FOR OTHER PURPOSES or the "Electric Power Industry Reform Act of 2001," June 8, 2001.

CERTIFIED TRUE COPY

  
**EDGAR O. ARICHETA**  
 Clerk of Court En Banc  
 Supreme Court