

EN BANC

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

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

Promulgated:

March 9, 2021

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DISSENTING OPINION

LEONEN, J.:

I reiterate the statements I made in my September 15, 2020 Dissent.¹ Sections 10² and 17³ of Republic Act No. 11212 are unconstitutional. They

¹ Dissenting Opinion of J. Leonen in *MORE v. PECO*, G.R. No. 248061, September 15, 2020, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66554>> [Per J. Reyes, Jr., En Banc].

² Republic Act No. 11212 (2019), sec. 10 provides:

SECTION 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 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.

³ Republic Act No. 11212 (2019), sec. 17 provides:

SECTION 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.

violate the equal protection clause, granting electricity franchise to a corporation strikingly inexperienced in supplying electricity. The provisions unduly discriminate against other public utilities, especially the former electric utility operating in Iloilo City, as well as those similarly situated to the new franchisee but, for reasons unclear, were not given the same concessions.

Worse, the private property taken is not for public use. All that Sections 10 and 17 allow is a transfer of property from one private corporation to another for the same public purpose to which it was originally devoted. The inefficient monopolistic operation of the electric utility in Iloilo city remains, with no real improvement. In reality, the taking here only serves private interests, and whatever benefit the public gets is only incidental.

The Motion for Reconsideration should therefore be granted and the Decision of the Mandaluyong trial court affirmed.

I

While broad and plenary,⁴ as the majority states, the power of Congress to grant franchises for the operation of a public utility is always subject to the provisions of the Constitution. The foremost limitation is provided in Section 1 of the Bill of Rights: “no person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.”

In my September 15, 2020 Dissent, I outlined how Section 10 of Republic Act No. 11212 violates the equal protection clause. The right of eminent domain delegated to More Electric Power Corporation (More

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.

⁴ *Ponencia*, p. 11.

Electric) constitutes class legislation—a law that discriminates against some but favors others.⁵ Reading Section 10 in isolation will not lead to this conclusion. However, when read in conjunction with the eminent domain provisions of other electricity franchises, the unwarranted benefits granted to More Electric becomes apparent.

Section 10 of Republic Act No. 11212 provides:

SECTION 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 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. (Emphasis supplied)

On the other hand, the eminent domain provision in Panay Electric Company, Inc.'s (Panay Electric) expired franchise states:

SECTION 4. 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.

⁵ *People v. Chan*, 65 Phil. 611, 613 (1938) [Per J. Concepcion, En Banc].

As can be gleaned from the provisions, More Electric may exercise its delegated power of eminent domain over properties “previously, currently or actually used . . . for the operation of a distribution system for the conveyance of electric power to end users” in Iloilo City. These properties are no other than those used by the former electric utility, Panay Electric. Further, Section 10 allows More Electric to expropriate the properties of Panay Electric by mere payment of the full amount of their assessed value.

This is in contrast to Section 4 of Republic Act No. 5360, Panay Electric’s expired franchise, which allows the government itself, not a mere delegate like More Electric, to exercise its power of eminent domain upon payment of fair market value. Assessed value being a mere percentage of the fair market value,⁶ it is clear that Section 10 allows More Electric to exercise its delegated eminent domain powers by paying a significantly lower amount compared to what the government would have paid had it expropriated the properties of Panay Electric. This difference in the payable amount is a clear benefit to More Electric.

This difference is highlighted further by comparing Section 10 of Republic Act No. 11212 with the eminent domain provisions found in the legislative franchises of other electric utilities.

More Electric and Power Corporation [Republic Act No. 11212 (2018)]	Mactan Electric Company, Inc. [Republic Act No. 10890 (2016)]	Tarlac Electric, Inc. [Republic Act No. 10795 (2016)]	Angeles Electric Corporation [Republic Act No. 9381 (2007)]
SECTION 10. <i>Right of Eminent Domain.</i> — 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	SECTION 9. <i>Right of Eminent Domain.</i> — Subject to the limitations and procedures prescribed by law, the grantee is authorized to exercise the right of eminent domain insofar as it may be reasonably necessary for the efficient maintenance and operation of services. The	SECTION 9. <i>Right of Eminent Domain.</i> — Subject to the limitations and procedures prescribed by law, the grantee is authorized to exercise the right of eminent domain insofar as it may be reasonably necessary for the efficient maintenance and operation of	SEC. 10. <i>Right of Eminent Domain.</i> — Subject to the limitations and procedures prescribed by law, the grantee is authorized to exercise the right of eminent domain insofar as it may be reasonably necessary for the efficient maintenance and operation of

⁶ LOC. GOV. CODE., sec. 199 (h) provides:
 SECTION 199. Definition of Terms. – When used in this Title, the term:

(h) “Assessed Value” is the fair market value of the real property multiplied by the assessment level. It is synonymous to taxable value[.]

<p>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: <i>Provided</i>, That proper expropriation proceedings shall have been instituted and just compensation paid:</p> <p style="text-align: center;"><i>Provided, further,</i></p> <p>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 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</p>	<p>grantee is authorized to install and maintain its poles, wires, and other facilities over and across public property, including streets, highways, forest reserves, 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: <i>Provided</i>, That proper expropriation proceedings shall have been instituted and just compensation paid.</p>	<p>services. The grantee is authorized to install and maintain its poles, wires, and other facilities over and across public property, including streets, highways, forest reserves, 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: <i>Provided</i>, That proper expropriation proceedings shall have been instituted and just compensation paid.</p>	<p>services. The grantee is authorized to install and maintain its poles, wires and other facilities over and across public property, including streets, highways, forest reserves 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: <i>Provided</i>, That proper condemnation proceedings shall have been instituted and just compensation paid.</p>
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<p>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.</p>			
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Apart from having a more detailed eminent domain provision, Republic Act No. 11212, in Section 17,⁷ even allows More Electric to acquire the workforce of Panay Electric. No provisions similar to Section 17 can be found in the legislative franchises of other electric utilities.

These differences matter because More Electric has no experience in the business of supplying electricity. To be an allowable discrimination under the equal protection clause, the discrimination must, at the very least, be reasonable.⁸ Indulging a corporation with all of these benefits, when it has no expertise in the business it seeks to operate, cannot be reasonable. This unreasonableness is more glaring considering that the supply of electricity is a business imbued with public interest.

⁷ Republic Act No. 11212, sec. 17 provides:
 SECTION 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.
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 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.
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 The DOE shall, during the transition, ensure that there will be uninterrupted supply of electricity in the existing franchise area.

⁸ *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*, 256 Phil. 777, 808 (1989) [Per J. Cruz, En Banc].

II

Moreover, Section 10 of Republic Act No. 11212 violates Article III, Section 9 of the Constitution as it allows the taking of private property not for public use.

The definition of “public use” has evolved from the literal “actual use by the public” to “public purpose,”⁹ “public advantage or benefit,”¹⁰ and “public welfare.”¹¹ Admittedly, the supply of electricity is one for public advantage and benefit.

Nevertheless, if property is taken for the same public use to which it was originally devoted, there is no true expropriation. As early as 1921, this Court in *Seña v. Manila Railroad Co. and Insular Government*¹² noted how “the meaning of the term ‘public use’ [is] one of constant growth”¹³ and that “[a]s society advances, its demands upon the individual increase and *each demand is a new use to which the resources of the individual may be devoted.*”¹⁴ This implies that a true expropriation requires a *new* a public use.

Thus, if property is taken then subsequently devoted to the same public use, there is only a transfer of property from one entity to another. All the exercise of eminent domain results in is a change as to who gets the profits.¹⁵ Therefore, the taking primarily serves proprietary interests, with little to no regard to the interests of the public. Any public interest is only a pretense or incidental at best.

More Electric seeks to expropriate the properties of Panay Electric for the continued and uninterrupted supply of electricity in Iloilo City. This is the exact same public use to which Panay Electric devoted its properties.

It must be emphasized that More Electric *has no experience in electricity distribution and has no assets of its own to distribute electricity in Iloilo City.* The electricity distribution system, even the workforce that would be operating the system, will be the same. All this case involves is a forced transfer of properties from Panay Electric to More Electric. The taking is not for public use but in the service of proprietary interests.

⁹ *Republic v. Court of Appeals and the Heirs of Luis Santos*, 433 Phil. 106, 119 (2002) [Per J. Vitug, First Division].

¹⁰ *Id.*

¹¹ *See Manosca v. Court of Appeals*, 322 Phil. 442 (1996) [Per J. Vitug, First Division].

¹² 42 Phil. 102 (1921) [Per J. Johnson, En Banc].

¹³ *Id.* at 103.

¹⁴ *Id.*

¹⁵ *See J. McLean, Concurring Opinion in The West River Bridge Company v. Dix, et al.*, 47 U.S. 507, 537 (1848) [Per J. Daniel, Supreme Court of the United States].

The majority concludes with this: “in granting MORE the right to exercise eminent domain, the primordial concern of the Congress is the welfare of the residents of Iloilo City.”¹⁶ I cannot see this. All I see is a law giving a semblance of legitimacy to what actually is an abuse of the expropriation powers of the State.

I therefore dissent.

IN VIEW OF THE FOREGOING, I vote to **GRANT** the Motion for Reconsideration and **AFFIRM** the July 1, 2019 Judgment of the Regional Trial Court, Branch 209, Mandaluyong City in Civil Case No. R-MND-1900571.


MARVIC M.V.F. LEONEN
Associate Justice

Certified True Copy

¹⁶ *Ponencia*, p. 21.

ANNA-LI R. PAPA-GOMBIO
Deputy Clerk of Court En Banc
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