

SECOND DIVISION

[G.R. Nos. 176935-36, March 13, 2009]

ZAMBALES II ELECTRIC COOPERATIVE, INC. (ZAMECO II) BOARD OF DIRECTORS, NAMELY: JOSE S. DOMINGUEZ (PRESIDENT), ISAIAS Q. VIDUA (VICE-PRESIDENT), VICENTE M. BARRETO (SECRETARY), JOSE M. SANTIAGO (TREASURER), JOSE NASERIV C. DOLOJAN, JUAN FERNANDEZ AND HONORIO DILAG, JR. (MEMBERS), PETITIONERS, VS. CASTILLEJOS CONSUMERS ASSOCIATION, INC. (CASCONA), REPRESENTED BY DOMINADOR GALLARDO, DAVID ESPOSO, CRISTITA DORADO, EDWIN CORPUZ, E. ROGER DOROPAN, JOSEFINA RAMIREZ, FERNANDO BOGNOT, JR., CARMELITA DE GUZMAN, MAXIMO DE LOS SANTOS, AURELIO FASTIDIO, BUENAVENTURA CELIS, ROBERTO LADRILLO, CORAZON ACAYAN, CARLITO CARREON, EDUARDO GARCIA, MARCIAL VILORIA, FILETO DE LEON AND MANUEL LEANDER, RESPONDENTS.

ZAMBALES II ELECTRIC COOPERATIVE, INC. (ZAMECO II) BOARD OF DIRECTORS, JOSE S. DOMINGUEZ (PRESIDENT), ISAIAS Q. VIDUA (VICE-PRESIDENT), VICENTE M. BARRETO (SECRETARY), JOSE M. SANTIAGO (TREASURER), JOSE NASERIV C. DOLOJAN, JUAN FERNANDEZ AND HONORIO DILAG, JR. (MEMBERS), PETITIONERS, VS. NATIONAL ELECTRIFICATION ADMINISTRATION (NEA), NEA-OFFICE OF THE ADMINISTRATIVE COMMITTEE, ENGR. PAULINO T. LOPEZ AND CASTILLEJOS CONSUMERS ASSOCIATION, INC. (CASCONA), RESPONDENTS.

DECISION

TINGA, J.:

Petitioners Zambales II Electric Cooperative, Inc. (ZAMECO II) Directors, namely: Jose S. Dominguez, Isaias Q. Vidua, Vicente M. Barreto, Jose M. Santiago, Jose Naseriv C. Dolojan, Juan Fernandez and Honorio Dilag, Jr., assail the Decision^[1] dated October 4, 2006 of the Court of Appeals in CA-G.R. SP No. 88195 and CA-G.R. SP No. 88845, and its Resolution^[2] dated March 13, 2007. The assailed Decision upheld the authority of public respondent National Electrification Administration (NEA) to supervise electric cooperatives such as ZAMECO II and the power of NEA to take preventive and/or disciplinary measures against an electric cooperative's board of directors, officers or employees. The questioned Resolution asserted the continuing regulatory power of NEA over electric cooperatives under Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA).

The following facts are quoted from the assailed Decision:

Jose S. Dominguez, Isaias Q. Vidua, Vicente M. Barretto, Jose M. Santiago, Jose Naseriv C. Dolojan, Juan Fernandez and Honorio Dilag, Jr. (hereafter petitioners) are members of the Board of Directors of the Zambales II Electric Cooperative, Inc. (hereafter ZAMECO II). ZAMECO II is an electric cooperative organized and registered under Presidential Decree No. 269, as amended.

NEA is a government owned and controlled corporation organized under Presidential Decree (PD) No. 269, as amended by PD No. 1645.

Castillejos Consumers Associations, Inc. (hereafter CASCONA) is an organization of electric consumers from the municipality of Castillejos, Zambales under the coverage area of ZAMECO II.

On November 21, 2002, CASCONA, through its Board of Trustees, filed a letter-complaint with NEA seeking the removal of the petitioners for the following alleged offenses:

- a. illegal payment of 13th Month Pay and Excessive Mid-Year and Christmas Bonus to petitioners;
- b. excessive expenses of the Board President, petitioner Mr. Jose S. Dominguez, charged to ZAMECO Power Corporation (ZPC) and Central Luzon Power Transmission Development Corporation (CLPTDC) but advanced by ZAMECO II and treated as receivables by the ZAMECO II from aforesaid corporations;
- c. anomalous contract with Philreca Management Corporation (PMC) for ZAMECO II's Systems Loss Reduction Program; and
- d. overstaying as members of the Board of Directors of ZAMECO II.

The letter-complaint was essentially based on the "Management and Financial Audit Report of Zambales II Electric Cooperative, Inc. (ZAMECO II) for the period from 01 January 1989 to 30 September 1997" dated June 1998 submitted by the Manager of the Coop Systems Audit Division to the NEA.

After an exchange of pleadings between herein parties, on March 12, 2003, the NEA-Administrative Committee (NEA-ADCOM) issued an Order setting the case for a preliminary mandatory conference.

During the preliminary mandatory conference, the parties agreed that:

- a. ZAMECO II Board shall be given up to November 15, 2003 to deliberate complainant's proposed term of compromise; and
- b. If no compromise agreement is reached until November 15, 2003, the parties shall submit verified/sworn "Position Paper" in lieu of a formal type of hearing.

On November 19, 2003, CASCONA submitted its position paper. For failure of petitioner to file its position paper despite the extended period,

the ADCOM considered the case submitted for resolution.

On November 24, 2004, the NEA issued the assailed Resolution.^[3] Petitioners filed a motion for reconsideration thereto.

Without acting on petitioner's motion for reconsideration, on December 21, 2004, the NEA issued the assailed Office Order^[4] dated December 21, 2004 prompting petitioners to file the present petition for certiorari with this Court docketed as CA-G.R. SP No. 88195.

In a Resolution dated February 7, 2005 in CA-G.R. SP No. 88195, then 7th Division of this Court, issued a Temporary Restraining Order (TRO) valid for sixty (60) days enjoining the NEA, NEA-ADCOM and CASCONA from enforcing or implementing the Resolution dated November 24, 2004, Office Order No. 2005-003, Series of 2004 dated December 21, 2004.

After the issuance of said resolution, the NEA-ADCOM resolved petitioners' motion for reconsideration in the assailed Decision^[5] dated February 15, 2005.

In a Resolution dated April 5, 2005, then 7th Division of this Court granted the preliminary injunction in CA-G.R. SP No. 88195.

On March 29, 2005, petitioners filed the present petition for review docketed as CA-G.R. SP. No. 88845.

In a Resolution, dated August 22, 2005 issued by then 17th Division of this Court, CA-G.R. SP No. 88195 and CA-G.R. SP No. 88845 were ordered consolidated pursuant to section 3(a), Rule III of the 2002 Internal Rules of the Court of Appeals, as amended.^[6]

The appellate court denied the consolidated petitions on the ground that NEA properly exercised its supervisory power over ZAMECO II. Corollary to this ruling is the Court of Appeals' declaration that petitioners have not been deprived of due process in the administrative proceedings. The appellate court denied reconsideration.

In the instant Petition for Review on Certiorari^[7] dated March 22, 2007, petitioners argue that NEA's power to supervise and control electric cooperatives had been abrogated by the EPIRA which decreed that all outstanding financial obligations of electric cooperatives to NEA shall be assumed by the Power Sector Assets and Liabilities Management Corporation (PSALM Corp.). Petitioners theorize that the regulatory authority which NEA exercises over electric cooperatives exists only by virtue of the loans incurred by the latter from NEA. With the condonation of these loans ordained under the EPIRA, NEA's power to supervise and control electric cooperatives had allegedly become defunct.

Petitioners insist that they were denied due process as they were never notified of the charges against them based on the July 24, 2003 Audit Report (2003 Audit

Report). Allegedly, petitioners had been asked to respond only to the charges under the June 25, 1998 Audit Report (1998 Audit Report).

Finally, petitioners argue that NEA's Office of the Administrative Committee (ADCOM) does not have the authority to hear election-related cases. The questions raised by respondent Castillejos Consumers Association, Inc. (CASCONA), such as whether a director of an electric cooperative is already overstaying in office or is qualified to run for re-election, are allegedly election-related cases properly addressed to the Screening Committee in accordance with the Guidelines on the Conduct of Electric Cooperative District Elections (NEA Election Code).

NEA asserts in its Comment^[8] dated June 20, 2007, that the EPIRA did not abrogate its regulatory power over electric cooperatives and that its authority to supervise and control the latter does not emanate solely from the cooperatives' loan agreements with NEA. The EPIRA itself allegedly enhances the powers of the NEA and, together with Executive Order No. 460, Series of 2005 (E.O. No. 460), does not expressly or even impliedly state that the assumption by PSALM Corp. of (electric cooperatives') debts to NEA carries with it the abrogation of the latter's power to impose disciplinary action.

Furthermore, NEA refutes petitioners' allegation that they were denied due process in the administrative proceedings, insisting that they were sent notices of the audit proceedings conducted by NEA.

In its Comment^[9] dated June 22, 2007, CASCONA avers that there is no connection between PSALM Corp.'s assumption of the loan obligations of electric cooperatives and NEA's power to impose disciplinary action against petitioners. It also points out that the Deputy Administrator of NEA furnished a copy of the highlights of the 2003 Audit Report to petitioners in a letter dated August 15, 2003, and required petitioners to submit their explanation thereon on or before September 16, 2003. The audit exceptions in the 2003 Audit Report allegedly pertain to issues which were already raised in CASCONA's complaint filed with NEA and which persisted as found in the 2003 Audit Report. Thus, petitioners cannot claim that the 2003 Audit Report was not made known to them.

CASCONA also argues that the issue pertaining to petitioners' overstaying in office is an administrative and not an election-related matter. The fact that there was no election scheduled at all negates the assertion of petitioners that the issue is a pre-election protest.

Petitioners filed a Consolidated Reply^[10] dated November 15, 2007, tracing the provenance of NEA's supervisory power over electric cooperatives. According to petitioners, with the passing of the EPIRA and E.O. No. 460, the borrower-lender relationship between ZAMECO II and NEA, by virtue of which the latter exercises regulatory powers over ZAMECO II, had been severed as of June 26, 2006. Thus, the Energy Regulatory Commission (ERC) is now the only regulatory agency which has jurisdiction over players in the power industry.

Petitioners insist that they had been deprived of due process as they were never heard on the charges as stated in the 2003 Audit Report cited as the bases for three (3) of the five (5) offenses in the Resolution of the NEA dated November 24, 2004,

which directed, among other things, their removal from office.

In a Supplemental Petition^[11] dated November 3, 2008, petitioners inform the Court that it had registered as a cooperative under the Cooperative Development Authority (CDA) and had been issued a Certificate of Registration dated December 4, 2007. They also inform the Court that CASCONA members had taken over the grounds of ZAMECO II and that NEA, in a letter dated October 30, 2008, designated Engineer Alvin Farrales as Officer-in-Charge of ZAMECO II.

NEA filed a Comment^[12] dated November 18, 2008, asserting that ZAMECO II's registration with the CDA should be revoked since it failed to comply with the requirement under the EPIRA for it to be first convert into a stock cooperative prior to its registration as an electric cooperative with the CDA. With the ineffectivity of ZAMECO II's registration with the CDA, it follows that NEA retains its supervisory and regulatory powers over ZAMECO II.

CASCONA, for its part, also insists on the continuing supervisory power of the NEA over ZAMECO II as the latter did not comply with the pre-conditions for its registration as a cooperative under the CDA.^[13]

Fundamental to the resolution of this case is the determination of the power and authority which NEA can properly exercise in light of the recently passed EPIRA and executive orders bearing on the power industry, particularly E.O. No. 119 series of 2002 and E.O. No. 460 series of 2005.

P.D. No. 269, as amended by P.D. No. 1645, vested NEA with the authority to supervise and control electric cooperatives. In the exercise of its authority, it has the power to conduct investigations and other similar actions in all matters affecting electric cooperatives. The failure of electric cooperatives to comply with NEA orders, rules and regulations and/or decisions authorizes the latter to take preventive and/or disciplinary measures, including suspension and/or removal and replacement of any or all of the members of the Board of Directors, officers or employees of the electric cooperative concerned.

Contrary to petitioners' assertion, NEA's regulatory power over electric cooperatives is not dependent on the existence of a creditor-debtor relationship between the former and the latter. This is clear from the express wording of Sec. 5 of P.D. No. 1645, amending Sec. 10, Chapter II of P.D. No. 269, enumerating the instances when NEA may avail of the remedies outlined in the law, including, as previously mentioned, the removal from office of any or all of the members of the Board of Directors, officers or employees of the electric cooperative. These instances are when the electric cooperative concerned or other similar entity fails after due notice to comply: (1) with NEA orders, rules and regulations and/or decisions; or (2) with any of the terms of the Loan Agreement. Had the existence of a creditor-debtor relationship between the parties been the sole *vinculum* which the law intended as a precondition for NEA's exercise of regulatory powers over electric cooperatives, there would not have been any need for the above distinction.

The passage of the EPIRA and its creation of PSALM Corp. which assumed all outstanding financial obligations of electric cooperatives did not affect the power of the NEA particularly over administrative cases involving the board of directors,