

THIRD DIVISION

[G.R. NO. 160174, August 28, 2006]

**FRANCISCO SILVA AS NEA ADMINISTRATOR PETITIONER, VS.
LEOVIGILDO T. MATIONG, RESPONDENT.**

D E C I S I O N

CARPIO, J.:

The Case

Before the Court is a petition for review^[1] assailing the 19 June 2003 Decision^[2] and 26 September 2003 Resolution^[3] of the Court of Appeals in CA-G.R. SP No. 70399. The Court of Appeals granted the petition for certiorari, prohibition and mandamus filed by Leovigildo T. Mationg ("respondent") and nullified the orders of then Administrator Francisco Silva ("petitioner") of the National Electrification Administration (NEA). The Court of Appeals also denied petitioner's Motion for Reconsideration.

The Facts

Aklan Electric Cooperative, Inc. (AKELCO) is an electric cooperative under the supervision and control of the NEA^[4] pursuant to Presidential Decree No. 269 (PD 269),^[5] as amended by Presidential Decree No. 1645 (PD 1645),^[6] and to the Contract of Loan between NEA and AKELCO dated 23 January 1996.^[7] Respondent was the general manager of AKELCO.

The present controversy arose when the National Power Corporation (NAPOCOR) cut-off the electricity in Aklan from 18-20 March 2002 for AKELCO's failure to pay its approximately P25 million obligation.^[8] Edita Bueno ("Bueno"), NEA Officer-in-Charge and Deputy Administrator for Cooperatives Development and Special Projects, formed a team to take-over the management and operations of AKELCO.^[9] On 20 March 2002, NAPOCOR restored the power supply to the area upon learning of the NEA take-over.^[10] However, respondent remained the general manager of AKELCO despite the NEA take-over.^[11]

On the same day, the AKELCO Board of Directors (AKELCO-BOD) received a complaint from the different municipal mayors seeking the dismissal of respondent as AKELCO general manager for gross incompetence and mismanagement.^[12] As early as 25 March 1998, the AKELCO-BOD had already received a letter from the consumer-members of AKELCO expressing their dissatisfaction and frustration over the inefficiency of AKELCO's management.^[13] An open letter dated 20 March 2002 addressed to President Gloria Macapagal-Arroyo requesting for the immediate termination of respondent was published in numerous newspapers.^[14] The

inefficiency of AKELCO's operation also became the subject of the privilege speech delivered by Congressman Gabrielle Calizo on 4 March 2002.^[15]

The AKELCO-BOD issued Resolution No. 18 placing respondent under indefinite preventive suspension to prevent him from exerting undue influence while the audit and investigation were being conducted by the NEA management team.

On 21 March 2002, Bueno wrote a letter to the AKELCO-BOD approving Board Resolution No. 18, however, reducing the preventive suspension of respondent to 30 days.

On 22 March 2002, Bueno issued a Memorandum^[16] stating that the NEA received another AKELCO-BOD resolution, referred to as Board Resolution No. 17, disowning and recalling Board Resolution No. 18 and expressing full trust and confidence in respondent's management.

Based on these conflicting board resolutions, AKELCO obviously had an intra-corporate dispute involving two factions of Board of Directors: one, headed by Chito Peralta ("the Peralta faction"), and the other headed by Melanio Rentillo ("the Rentillo faction"). Due to the complexity of the issue, Bueno revoked the approval of Board Resolution No. 18 and submitted the determination of the validity of the two board resolutions to the NEA Board of Administrators (NEA-BOA). Further, Bueno directed the opposing parties to submit their respective position papers on the matter and enjoined them to cooperate with the NEA management team. The two factions submitted their respective position papers.

On 4 April 2002, Bueno issued Office Order No. 2002-058^[17] creating a Committee^[18] to evaluate the position papers of the two factions of the AKELCO-BOD. The Committee recommended the approval of Board Resolution No. 18 passed by the Peralta faction and the disapproval of Board Resolution No. 17 passed by the Rentillo faction.

On 11 April 2002, petitioner issued a Resolution^[19] approving Board Resolution No. 18 and disapproving Board Resolution No. 17. Petitioner reiterated Bueno's letter of 21 March 2002 placing respondent under a 30-day preventive suspension.

On the same day, the NEA-BOA issued Resolution No. 22^[20] authorizing petitioner to remove respondent as general manager of AKELCO subject to the confirmation of the NEA-BOA, allegedly pursuant to Section 5(e) of PD 269 as amended by PD 1645 ("PD 269 as amended").

On 19 April 2002, petitioner issued an Order for AKELCO's non-payment of its loans and non-compliance with NEA policies, orders and guidelines. The pertinent portions of this order read:

x x x x

3. The AKELCO Board is directed to pursue action per approved Board Resolution 18, as qualifiedly approved by this office, importantly, its resolution placing Atty. Leovigildo T. Mationg under preventive suspension for thirty (30) days and that the investigation be

terminated within the same period.

4. Pursuant to Section 5(a)(6), Chapter II of P.D. 269, as amended by Section 3 of P.D. 1645, Mr. Erico A. Bucoy is hereby designated to manage AKELCO in the meantime that its General Manager is under suspension.'

x x x x^[21] (Emphasis supplied)

On 2 May 2002, respondent filed a petition^[22] with the Court of Appeals to enjoin petitioner from enforcing the 11 April 2002 Resolution and the 19 April 2002 Order.

During the pendency of the petition, the NEA-approved AKELCO BOD, along with the NEA-appointed Executive Officer Erico Bucoy ("Bucoy"), issued Board Resolution No. 32^[23] constituting itself as an investigating committee to look into the complaints against respondent. In an undated letter, Bucoy informed respondent of the investigation of the charges against him and asked him to show why he should not be terminated as general manager of AKELCO.

On 8 May 2002, the NEA-BOA issued Board Resolution No. 26^[24] confirming petitioner's Order dated 19 April 2002 which provided, among others, the preventive suspension of respondent for 30 days.

On 11 May 2002, the AKELCO-BOD terminated its investigation and issued Resolution No. 2, Series of 2002-05-11,^[25] finding respondent guilty of willful breach of trust and confidence to the consumer-members and gross and habitual neglect of his duties as general manager of AKELCO. The AKELCO-BOD terminated respondent's services effective on the same day.

On 17 May 2002, petitioner issued an Order^[26] approving AKELCO-BOD Resolution No. 2, Series of 2002-05-11 terminating respondent as AKELCO general manager for willful breach of trust and confidence.

On 30 May 2002, respondent filed a Manifestation and Supplemental Motion^[27] with the Court of Appeals assailing his removal as AKELCO general manager and praying for the nullification of petitioner's issuances and for reinstatement as AKELCO general manager.

Meanwhile, the NEA-BOA issued Resolution No. 37^[28] on 5 June 2002 confirming petitioner's Order dated 17 May 2002 approving the removal of respondent.

In its Decision of 19 June 2003,^[29] the Court of Appeals granted respondent's petition and nullified the assailed Resolution and Orders. The dispositive portion of the decision reads:

WHEREFORE, the instant petition is hereby **GRANTED**. The Resolution dated 11 April 2002, Order dated 19 April 2002 and Order dated 17 May 2002 are hereby **NULLIFIED AND SET ASIDE**. Respondent is hereby **ORDERED** to reinstate petitioner as general manager of AKELCO without prejudice however to the conduct of proper proceedings for his suspension and termination as stated herein, if warranted.

SO ORDERED.^[30]

The Court of Appeals denied petitioner's motion for reconsideration in its Resolution of 26 September 2003.^[31]

Hence, this petition.

The Ruling of the Court of Appeals

In nullifying petitioner's issuances and reinstating respondent as general manager of AKELCO, the Court of Appeals ruled as follows:

At the outset, We shall first tackle respondent's assertion that the instant case does not fall within our jurisdiction. In essence, respondent argues that the foregoing acts establish a labor dispute cognizable only by the Labor Arbiter. We disagree.

x x x What is at issue is whether or not respondent is vested with the authority to issue the assailed resolutions and orders.

x x x x

Furthermore, under Section 5 of the same law which amended Section 10 of PD No. 269, if the electric cooperative concerned or other similar entity fails after due notice to comply with NEA orders, rules and regulations and/or decisions, or with any of the terms of the Loan Agreement, the NEA Board of Administrators may 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 Cooperative, other borrower institutions or supervised or controlled entities as the NEA Board of Administrators may deem fit and necessary and to take any other remedial measures as the law or the Loan Agreement may provide.

x x x It is the Board of Administrators and not the Administrator himself who is empowered to suspend and/or terminate the incumbent general manager and appoint an acting general manager of an erring electric cooperative. The Administrator cannot arrogate unto himself a power that is not given to him by the statute. It is a well-established rule of law that a public official must trace his powers from the statute that created the office or position. The power, however, need not be express but may be implied from the wording of the law. In the absence of such conferment, the public official cannot validly exercise the power. If executed and properly challenged, the unauthorized exercise of such power may be set aside. x x x

x x x x

x x x whether or not the Board of Administrators may validly delegate the foregoing powers to the NEA Administrator. We hold that it cannot. To sanction this delegation would violate the maxim:

potestas delegata non delegari potest (what has been delegated cannot be delegated).

x x x x^[32] (Emphasis supplied)

In its Resolution dated 26 September 2003 denying petitioner's motion for reconsideration,^[33] the Court of Appeals passed upon the "allegedly undiscussed issues" petitioner raised. The Court of Appeals reiterated that it has jurisdiction over the case. The Court of Appeals also held that this case is an exception to the principle of exhaustion of administrative remedies since petitioner's issuances were patently illegal and this case involved purely legal issues. The Court of Appeals rejected petitioner's allegation of respondent's forum-shopping. Despite petitioner's opposition, the Court of Appeals allowed respondent's Manifestation and Supplemental Motion to resolve this case on the merits instead of dismissing it on pure technicality.

The Issues

While petitioner raised numerous issues in his 121-page Memorandum,^[34] the crucial issue in this case is whether petitioner's approval of the AKELCO-BOD's resolutions suspending and terminating respondent as AKELCO general manger is valid. Inextricably related to this issue is the question of whether the NEA-BOA's authorization for and confirmation of respondent's suspension and removal as AKELCO general manager by petitioner as then NEA Administrator are legal.

The Ruling of the Court

The petition is meritorious.

Procedural Matters

At the outset, the Court declares that its resolution of the present case is confined to determining the validity of petitioner's Resolution and Orders insofar as the preventive suspension and dismissal of respondent are concerned. The Court will refrain from discussing other matters raised by petitioner immaterial to the resolution of this main issue, such as the transfer of the AKELCO office to Lezo, Aklan, which is allegedly pending before the Court of Appeals,^[35] the management take-over of AKELCO, and the composition of the AKELCO-BOD. The Court is not a trier of facts. These incidental matters which definitely require an examination of facts and evidence are not proper in a petition for review which should only raise questions of law.^[36]

Concerning the procedural issues raised by petitioner, suffice it to state that substantial justice and the public interest involved in this case far outweigh any procedural lapses committed by respondent. Justice dictates that this Court resolve the instant controversy on the merits than dismiss it on the grounds of forum-shopping, non-amendment of the petition before the Court of Appeals, collateral attack of various issuances of the NEA-BOA, exclusion of indispensable parties, and non-exhaustion of administrative remedies.

Moreover, the Court finds no reversible error in the Court of Appeals' findings on the