

## SECOND DIVISION

[ G.R. No. 97903, August 24, 1998 ]

**ELMER F. ESPINA, PETITIONER, VS. COURT OF APPEALS,  
NATIONAL ELECTRIFICATION ADMINISTRATION, ROMMEL L.  
MANIKAN, LEYTE IV ELECTRIC COOPERATIVE, INC., BOARD OF  
DIRECTORS OF LEYTE IV ELECTRIC COOPERATIVE, INC., AND  
MIGUEL COTIAMCO, RESPONDENTS.**

### D E C I S I O N

**MENDOZA, J.:**

This is a petition seeking review of the decision of the Court of Appeals, dated March 15, 1991, which dismissed the petition for certiorari filed by herein petitioner and affirmed the order of the National Electrification Administration (NEA), dated October 1, 1990, declaring private respondent Miguel Cotiamco a bonafide member of the Leyte IV Electric Cooperative (LEYECO IV) and therefore qualified to be a director of said cooperative.

The facts are as follows:

Petitioner Elmer Espina and private respondent Miguel Cotiamco were candidates for director of respondent Leyte IV Electric Cooperative (LEYECO IV), representing the Baybay South District.<sup>[1]</sup>

On May 23, 1990, petitioner Elmer Espina filed with the LEYECO IV District Election Committee (DECOM) a petition to disqualify private respondent Miguel Cotiamco on the ground that respondent was not a bonafide member of the LEYECO IV.<sup>[2]</sup> The DECOM endorsed the petition to the National Electrification Administration on May 26, 1990.<sup>[3]</sup>

On May 27, 1990, the election for the position of director of the LEYECO IV, Baybay South District was held. The results of the election showed that Cotiamco garnered 636 votes against Espina's 599 votes. Accordingly, private respondent Cotiamco was proclaimed winner by the DECOM and sworn in as member of the board on June 6, 1990.<sup>[4]</sup>

On June 27, 1990, the NEA remanded the petition for disqualification filed by petitioner Espina to the DECOM for proper disposition on the ground that the latter had original jurisdiction over the case.<sup>[5]</sup>

After hearing, the DECOM rendered a decision on July 28, 1990 disqualifying private respondent Cotiamco.<sup>[6]</sup> Consequently, petitioner Espina took his oath and assumed office.<sup>[7]</sup>

However, private respondent Cotiamco appealed to the NEA which on October 1, 1990 reversed the DECOM and declared private respondent duly elected director of

LEYECO IV, Baybay South District.<sup>[8]</sup> The NEA found that, contrary to petitioner's claim, private respondent Miguel Cotiamco was a bonafide member of the LEYECO IV.<sup>[9]</sup>

On October 23, 1990, petitioner Espina in turn filed with the Court of Appeals a petition for certiorari and prohibition with an urgent prayer for the issuance of a temporary restraining order and a writ of preliminary and permanent injunction.<sup>[10]</sup>

Private respondent Cotiamco moved to dismiss the petition on the ground of lack of jurisdiction of the Court of Appeals, failure of petitioner to exhaust administrative remedies, and lack of merit of the petition.<sup>[11]</sup>

In a decision rendered on March 15, 1991, the Court of Appeals upheld the order of the NEA.<sup>[12]</sup> It held that the doctrine of exhaustion of administrative remedies was inapplicable to the case at bar; that the NEA did not commit grave abuse of discretion; that the order of the NEA dated October 1, 1990 was issued in the exercise of its power of supervision and control over electric cooperatives; and, that the findings of the NEA were supported by substantial evidence.<sup>[13]</sup>

Hence, this petition. Petitioner contends:<sup>[14]</sup>

I.

RESPONDENT COURT OF APPEALS AND NEA ERRED IN HOLDING AND FINDING THAT MIGUEL COTIAMCO IS A MEMBER OF THE COOPERATIVE AND IS ELIGIBLE FOR CANDIDATE [sic] TO THE POSITION OF MEMBER OF THE BOARD OF DIRECTORS, LEYECO IV.

II.

RESPONDENT COURT OF APPEALS ERRED IN HOLDING AND FINDING THAT RESPONDENT NEA'S LETTER-ORDER (ANNEX "G") WAS ISSUED IN ACCORDANCE WITH LAW, RULES AND REGULATIONS. IN FACT, THE SAID LETTER-ORDER WAS ISSUED IN GROSS VIOLATION OF PETITIONER'S RIGHT TO DUE PROCESS.

Respondents justify the decision of the NEA to take cognizance of the case and dispose of it as a valid exercise of its appellate jurisdiction and power of supervision and control over electric cooperatives. Moreover, they contend that the present petition for review should be dismissed for failure of petitioner Espina to exhaust administrative remedies.

The present petition is well taken. Private respondents' contentions have no merit.

The rule of exhaustion of administrative remedies is not absolute but admits of exceptions. One of these exceptions is when only a question of law is involved and nothing of an administrative nature is to be done or can be done.<sup>[15]</sup> In this case, the issue whether private respondent Cotiamco is a member of the cooperative is one which calls for the interpretation and application of both the law creating the NEA and the by-laws of the LEYECO IV. Consequently, the Court of Appeals correctly assumed jurisdiction over the case.

However, we hold that the appellate court erred in upholding the NEA's decision and ruling that the said agency did not commit grave abuse of discretion in declaring

private respondent Cotiamco a bonafide member of the LEYECO IV and therefore qualified to run for a seat in the board of directors on the basis of the following facts:<sup>[16]</sup>

- a) That membership No. 166 had long been approved by the LEYECO IV Board of Directors on October 30, 1977;
- b) That the LEYECO IV Consumer's Index bears the entry Carmen-Miguel Cotiamco using the same membership number;
- c) That Miguel Cotiamco had been using the aforementioned membership number in all his dealings/transactions with the electric cooperative;
- d) That the LEYECO IV Board and Management allowed him to use the same membership number when he availed of separate metering on November 16, 1987 per Meter No. 65026129 and which fact can be gleaned from the entries of the Consumer's Index thereafter separately issued in his favor;
- e) That it was he who used the said membership number and not Carmen Cotiamco in the District Elections for Baybay South District in 1987 per ballot No. 000219 - entry No. 951 of the Voters' Masterlist;
- f) That his name as bonafide member of the electric cooperative appeared in both the 1987 and 1990 Masterlist of Voters for Baybay South District.

and on the principle of estoppel:<sup>[17]</sup>

Furthermore, the principle of estoppel now lies as against the LEYECO IV Board and Management with respect to the issue of his [Miguel Cotiamco's] membership with the electric cooperative.

Section 21 of P.D. No. 269 (Charter of the NEA) provides:

SEC. 21. *Members.* - Each incorporator of a cooperative shall be a member thereof, but no other person may become a member thereof unless such other person agrees to use services furnished by the cooperative when made available by it. Membership in a cooperative shall not be transferable, except as provided in the by-laws. The by-laws may prescribe additional qualifications and limitations with respect to membership. (underlining ours)

Thus, the law clearly requires that for a person other than an incorporator to be a member of the cooperative, he must agree to use the services furnished by the cooperative and he must have such other qualifications as may be prescribed by the by-laws of the cooperative. In this case, the by-laws of the LEYECO IV requires not only that one agrees to purchase electric energy but that one must apply for membership in the cooperative. Thus, the by-laws states:<sup>[18]</sup>

SECTION 1. Requirements for membership. Any person, firm, association, corporation or body politic or subdivision thereof will become member of LEYTE IV ELECTRIC COOPERATIVE, INC. hereinafter called the "Cooperative"), provided that he or it has first:

- (a) Made a written application for membership therein;
- (b) Agreed to purchase from the Cooperative electric energy as hereinafter specified;
- (c) Agreed to comply with and be bound by the articles of incorporation and by laws of the Cooperative and any rules and regulations adopted by the board; and
- (d) Paid the Membership fee hereinafter specified.

Provided, however, that no person, firm, corporation or body politic shall become a member unless and until he or it has been accepted for membership by the board.

No membership in the Cooperative shall be transferable, except as provided in these bylaws.

The word "board" is used herein to refer to the board of directors.

SECTION 2. Membership Certificates. Membership in the Cooperative shall be evidenced by a membership certificate which shall be in such form and shall contain such provisions as shall be determined by the board. Such certificate shall be signed by the President and by the Secretary of the Cooperative and the corporate seal shall be affixed thereto. No membership certificate shall be issued for less than the membership fee fixed in these bylaws, nor until such membership fee has been fully paid for. In case a certificate is lost, destroyed or mutilated a new certificate may be issued therefor upon such uniform terms and indemnity to the Cooperative as the board may prescribe.

Private respondent Cotiamco did not meet these requirements. In fact, he has no certificate to show as evidence of membership in the cooperative. The fact that he purchased electric energy using Membership Certificate No. 166 does not prove he is a member of the cooperative. The membership certificate in question is not his but that of his sister-in-law Carmen Cotiamco. The Manager of the Member Service Department of LEYECO IV certified that Miguel Cotiamco is not a member of the cooperative. His certification states:<sup>[19]</sup>

LEYTE IV ELECTRIC COOPERATIVE, INC.

Hilongos, Leyte

C E R T I F I C A T I O N

TO WHOM IT MAY CONCERN:

This is to certify that one Miguel Cotiamco of 30 de Diciembre St., Baybay, Leyte is an "industrial consumer of the Cooperative as of November 11, 1987.

It is certified further that nothing on record showed the membership of Miguel Cotiamco to (sic) the Cooperative.

Issued this 3rd day of July, 1990 at Hilongos, Leyte.

(SGD.) ROMULO L. LACERNA