

DAVID AGUILA, EDITA BUENO, EVELITO ELENTO, RESURRECTION INTING, ANTONIO LIM AND WILFREDO CABARDO, PETITIONERS, VS. HON. MELECIO A. GENATO AND DOMINADOR B. BORJE, RESPONDENTS.

G.R. No. L-55151. March 17, 1981

Ponente: MELENCIO-HERRERA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/20b3ac9bd7a8/>

MELENCIO-HERRERA, J.:

The principal issue raised in this Certiorari petition with a prayer for a Writ of Preliminary Injunction is whether or not respondent Judge committed grave abuse of discretion in issuing a Restraining Order, which had the effect of allow-ing private respondent, Dominador B. Borje, to retain his position as member of the Board of Directors of the Misamis Occidental Electric Cooperative, Inc., II (MOELCI II).

Succintly stated, the pertinent facts follow:

Petitioners David Aguila and Edita Bueno are the Deputy Administrator and Director for Cooperative Development, re-spectively, of the National Electrification Administration (NEA).

Petitioner Evelito Elento is the Acting General Manager of MOELCI II, while petitioners Resurrection Inting, Antonio Lim and Wilfredo Cabardo, are members of its Board of Directors.

Private respondent Dominador B. Borje, representing the North District of Ozamiz City, was elected Director of MOELCI II, to hold office as such for three years starting March 25, 1979.

Section 21 of Presidential Decree No. 269 (second paragraph) provides:

"The provision of any law or regulation to the contrary notwithstanding, an officer or employee of the government shall be eligible for membership in any cooperative if he meets the qualifications there-for and he shall not be precluded from being elected to or holding any position therein, or from receiving such compensation or fee in relation thereto as may be authorized by the by-laws; Provided, That elective officers of the government, except barrio captains and councilors, shall be ineligible to become officers and/or directors of any cooperative. x x x" (emphasis supplied)

Section 3, Article IV of the By-laws of MOELCI II also explicitly states:

"Section 3. Qualifications. x x x No person shall be eligible to become or to remain a Board member of the Cooperative who

x x x x x

"(c) holds an elective office in the government above the level of a Barangay Captain

"x x x x" (underscoring ours)

On 4 January 1980, private respondent filed his certificate of candidacy for the position of member of the Sangguniang Panglunsod of Ozamiz City in the 30 January 1980 local elections.

On 7 January 1980, the NEA, through Administrator Pedro G. Dumol, issued Memorandum No. 18 to the effect that all officials and employees of electric cooperatives who run for public office, win and assume office, shall be considered resigned. The Memorandum was issued pursuant to the authority granted under PD No. 1645, amending PD No. 269, reading:

"10. x x x 'the NEA is empowered to issue orders, rules and regulations x x x ' in the exercise of its power of supervision and control over electric cooperatives and other borrower, supervised or controlled entitles (Sec. 5, amending Sec. 10 of-P.D. No. 269)."[1]

On 11 January 1980, the NEA Deputy Administrator sent a telegram to the Acting General Manager of MOELCI II stating that should private respondent Borje be elected to the Sangguniang Bayan, he shall be considered resigned from his position as Director for the North District of Ozamiz City. Private respondent moved for reconsideration and requested that he be allowed to serve the unexpired term of his office in accordance with PD No. 269. Reconsideration was denied by NEA on 7 February 1980.

On 3 March 1980, private respondent filed a Petition for "Prohibition, Mandamus & Construction of Legal Provisions with Preliminary Injunction and Damages" against petitioners before the Court of First Instance of Misamis Occidental, Branch II. (Spec. Case No. 0511), seeking a declaration of entitlement to remain and to serve his unexpired term as Director of MOELCI II until March, 1982.

On 3 March 1980, having won the election, private respondent assumed office and began discharging his functions.

On the same date, 3 March 1980, respondent Judge issued, ex-parte, a temporary Restraining Order commanding petitioners not to enforce the NEA telegraphic instruction of 11 January 1980 considering private respondent as resigned, and, instead, to allow him to retain his position as member of the Board of Directors of MOELCI II pending hearing.[2]

Petitioners moved to dismiss and to dissolve the Restraining Order alleging lack of cause of action and invoking section 21 of PD No. 269 (supra), section 3, Article IV of the By-laws of MOELCI II. (supra), as well as section 24 of PD No. 269 providing that:

"x x x The by-laws shall prescribe the number of directors their qualifications other than those prescribed in this Decree, the manner of holding meetings of the board and of electing successors to directors who shall resign, die or otherwise be incapable of acting. The by-laws may also provide for the removal of directors from office and for the election of their successors. x x x"

On 24 March 1980, respondent Judge lifted and dissolved the Restraining Order,[3] only to restore it the next day, 25 March 1980.[4]

In their Motion seeking reconsideration of the Order of 25 March 1980, petitioners stressed that NEA possessed the power and authority to promulgate Memorandum No. 18, and that, similarly, the Board of Directors of MOELCI II had the power to implement the same under PD No. 269, as amended by PD 1645.

Petitioners filed their Answer on 6 April 1980 reiterating the grounds in their Motion to Dismiss.

On 8 May 1980, vacation Judge Celso Largo reconsidered the Order of respondent Judge, dated 25 March 1980, and dissolved the Restraining Order.[5]

On 10 May 1980, the Board of Directors of MOELCI II held a special meeting and passed Resolution No. 121,

S-80, implementing NEA Circular No. 18 and declaring private respondent's position as member of the Board of Directors of MOELCI II vacant.

On 6 June 1980, upon a Motion for Reconsideration, respondent Judge set aside the Order of the vacation Judge, dated 8 May 1980, in effect reviving the Restraining Order, on the ground that, as "councilor" of Ozamiz City, section 21 of PD No. 269 itself exempts private respondent from the prohibition imposed on elective officials to become Directors of electric cooperatives.[6]

Hence, this Petition filed on 29 September 1980 by petitioners, through the Solicitor General, advancing the view that Courts of First Instance have no jurisdiction to issue a Restraining Order and that respondent Judge had committed grave abuse of discretion in issuing the same.

On 10 October 1980 we required respondents to submit an Answer and issued a Restraining Order enjoining respondents from enforcing the Order of the Court a quo dated 6 June 1980 and from conducting further proceedings in the case below. Private respondent Borje has filed his Answer, petitioners have submitted their Reply, and on 2 February 1981, we resolved to give due course to the Petition and to consider the case submitted for decision.

We find that respondent Judge gravely abused his discretion, amounting to lack of jurisdiction, in issuing the various Restraining Orders, the last of which was dated 6 June 1980.

Private respondent has shown no clear and explicit right to the position of Director of MOELCI II and is, therefore, not entitled to a Restraining Order, which partook of the nature of a mandatory Injunction, commanding as it did that private respondent be retained in his position as such Director. By having been elected member of the Sangguniang Panglunsod of Ozamiz City, private respondent rendered himself ineligible to continue serving as a Director of MOELCI II by virtue of the clear mandate of PD No. 269 providing that except for "barrio captains and councilors", elective officials are ineligible to become officers and/or directors of any cooperative. It is clear to us that the term barrio modifies both captains and councilors. Further, the MOELCI II By-laws explicitly state that no person can remain a member of the Board if he "holds an elective office above the level of barrio captain."

Private respondent's argument that PD 269 (sec. 21) does not prohibit Board members of a cooperative from continuing in their position prior to their election, and that pursuant to section 24 of PD No. 269 he is entitled, as Director, "to hold office for the term for which he is elected and until his successor is elected and qualified," is untenable. Eligibility to an office should be construed as of a continuing nature and must exist at the commencement of the term and during occupancy of the office. The fact that private respondent may have been qualified at the time he assumed the Directorship is not sufficient to entitle him to continue holding office, if during the continuance of his incumbency he ceases to be qualified. Private respondent was qualified to become a director of MOELCI II at the time of the commencement of his term, but his election as member of the Sangguniang Panglunsod of Ozamiz City, and his subsequent assumption of office, disqualified him to continue as such.

Moreover, it should be recalled that when respondent Judge issued the Restraining Order of 6 June 1980, NEA Memorandum Circular No. 18 had already been implemented by the MOELCI Board in the latter's Resolution No. 121, passed on 10 May 1980, declaring the position of private respondent, as Director, vacant. Strictly speaking therefore, there was no longer any position which private respondent could retain.

WHEREFORE, finding that respondent Judge acted with grave abuse of discretion tantamount to lack of jurisdiction in issuing the Restraining Order, dated 6 June 1980, the said Order is hereby annulled and set aside,

and the Petition in Special Civil Case No. 0511 of the Court below hereby ordered dismissed. The temporary Restraining Order heretofore issued by this Court is hereby made permanent.

No pronouncement as to costs.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Fernandez, and Guerrero, JJ., concur.

[1] p. 38, Rollo.

[2] Annex "B", p. 27, *ibid*.

[3] Annex "C", p. 28, *ibid*.

[4] Annex "D", p. 29, *ibid*.

[5] Annex "E", pp. 30-33, *ibid*.

[6] Annex "F", pp. 34-35, *ibid*.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.