

**CAMARINES NORTE ELECTRIC COOPERATIVE, INC. (CANORE-CO);
RUBEN N. BARRAMEDA; ELVIS L. ESPIRITU; MERARDO G. ENERO,
JR.; MARCELITO B. ABAS; AND REYNALDO V. ABUNDO,
PETITIONERS, VS....**

G.R. No. 127249. February 27, 1998

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

May the Office of the President validly constitute an ad hoc committee to take over and manage the affairs of an electric cooperative?

This is the key issue in this original action for certiorari and prohibition under Rule 65 of the Rules of Court wherein the petitioners seek to (a) annul and set aside Memorandum Order No. 409 of the Office of the President dated 3 December 1996 constituting an Ad Hoc Committee to take over and manage the affairs of the Camarines Norte Electric Cooperative, Inc., (hereafter CANORECO) “until such time as a general membership meeting can be called to decide the serious issues affecting the said cooperative and normalcy in operations is restored”; and (b) prohibit the respondents from performing acts or continuing proceedings pursuant to the Memorandum Order.

The factual backdrop of this case is not complicated.

Petitioner CANORECO is an electric cooperative organized under the provisions of P.D. No. 269, otherwise known as the National Electrification Administration Decree, as amended by P.D. No. 1645.

On 10 March 1990, then President Corazon C. Aquino signed into law R.A. No. 6938 and R.A. No. 6939. The former is the Cooperative Code of the Philippines, while the latter created the Cooperative Development Authority (CDA) and vested solely upon the CDA the power to register cooperatives.

Article 122 of the Cooperative Code expressly provides that electric cooperatives shall be covered by the Code. Article 128 of the said Code and Section 17 of R.A. No. 6939 similarly provide that cooperatives created under P.D. No. 269, as amended by P.D. No. 1645, shall have three years within which to qualify and register with the CDA and that after they shall have so qualified and registered, the provisions of Sections 3 and 5 of P.D. No. 1645 shall no longer be applicable to them. These Sections 3 and 5 read as follows:

SEC. 3. Section 5(a), Chapter II of Presidential Decree No. 269 is hereby amended by adding sub-paragraph (6) to read as follows:

“(6) To authorize the NEA Administrator to designate, subject to the confirmation of the Board Administrators, an Acting General Manager and/or Project Supervisor for a Cooperative where vacancies in the said positions occur and/or when the interest of the Cooperative and the program so requires, and to prescribe the functions of said Acting General Manager and/or Project Supervisor, which powers shall not be nullified, altered or diminished by any policy or resolution of the Board of Directors of the Cooperative concerned.”

...

SEC. 5. Section 10, Chapter II of Presidential Decree No. 269 is hereby amended to read as follows:

“Section 10. Enforcement Powers and Remedies. -- In the exercise of its power of supervision and control over electric cooperatives and other borrower, supervised or controlled entities, the NEA is empowered to issue orders, rules and regulations and motu proprio or upon petition of third parties, to conduct investigations, referenda and other similar actions in all matters affecting said electric cooperatives and other borrower, or supervised or controlled entities.”

...

Finally, the repealing clause (Article 127) of the Cooperative Code provides:

Provided, however, That nothing in this Code shall be interpreted to mean the amendment or repeal of any provision of Presidential Decree No. 269: Provided, further, That the electric cooperatives which qualify as such under this Code shall fall under the coverage thereof.

CANORECO registered with the CDA pursuant to R.A. No. 6938 and R.A. No. 6939. On 8 March 1993, the CDA issued a Certificate of Provisional Registration (T-003-93) to CANORECO effective for two years.[1] On 1 March 1995, the CDA extended this provisional registration until 4 May 1997.[2] However, on 10 July 1996, CANORECO filed with the CDA its approved amendments to its Articles of Cooperation converting itself from a non-stock to a stock cooperative pursuant to the provisions of R.A. No. 6938 and the Omnibus Implementing Rules and Regulations on Electric Cooperatives. On the same date the CDA issued a Certificate of Registration[3] of the amendments to CANORECO Articles of Cooperation certifying that CANORECO is “registered as a full-[f]ledged cooperative under and by virtue of R.A. 6938.”

Previously, on 11 March 1995, the Board of Directors of CANORECO[4] approved Resolution No. 22 appointing petitioner Reynaldo V. Abundo as permanent General Manager. The Board was composed of

Ruben N. Barrameda -- President

Elvis L. Espiritu -- Vice president

Merardo G. Enero, Jr. -- Secretary

Marcelito B. Abas -- Treasurer

Antonio R. Obias -- Director

Luis A. Pascua -- Director

Norberto Z. Ochoa -- Director

Leonida Z. Manalo -- OIC GM/Ex-Officio

On 28 May 1995, Antonio Obias, Norberto Ochoa, Luis Pascua, and Felicito Ilan held a special meeting of the Board of Directors of CANORECO. The minutes of the meeting[5] showed that President Ruben Barrameda, Vice-President Elvis Espiritu, and Treasurer Marcelito Abas were absent; that Obias acted as temporary chairman; that the latter informed those present that it was the responsibility of the Board after the annual meeting to meet and elect the new set of officers, but that despite the fact that he had called the attention of President Barrameda and Directors Abas and Espiritu for the holding thereof, the three chose not to appear; and that those present in the special meeting declared all positions in the board vacant and thereafter proceeded to hold elections by secret balloting with all the directors present considered candidates for the positions. The following won and were

declared as the newly elected officers of the CANORECO:

President Norberto Ochoa

Vice President Antonio Obias

Secretary Felicito Ilan

Treasurer. Luis Pascua

Thereupon, these newly elected officers approved the following resolutions:

- 1) Resolution No. 27, c.s. -- confirming the election of the new set of officers of the Board of Directors of CANORECO
- 2) Resolution No. 28, c.s. -- recalling Resolution No. 22, c.s. appointing Mr. Reynaldo V. Abundo as permanent General Manager in view of the fact that such appointment was in violation of the provisions of R.A. 6713; declaring the position of General Manager as vacant; and designating Mr. Oscar Acobera as Officer-in-Charge
- 3) Resolution No. 29, c.s. -- authorizing the Board President, or in his absence, the Vice-President, countersigned by the Treasurer, or in his absence, the Secretary, to be the only officers who can transfer funds from savings to current accounts; and authorizing the Officer-in-Charge, Mr. Acobera, to issue checks without countersignature in an amount not to exceed P3,000.00 and in excess thereof, to be countersigned by the President and/or the Treasurer
- 4) Resolution No. 30, c.s. -- hiring the services of Atty. Juanito Subia as retainer-lawyer for CANORECO.[6]

The petitioners challenged the above resolutions and the election of officers by filing with the CDA a Petition for Declaration of Nullity of Board Resolutions and Election of Officers with Prayer for Issuance of Injunction/Temporary Restraining Order, which the CDA docketed as CDA-CO Case No. 95-010.

In its Resolution of 15 February 1996,[7] the CDA resolved the petition in favor of the petitioners and decreed as follows:

WHEREFORE, premises considered, the Board Meeting of May 28, 1995, participated by the respondents, and all the Resolutions issued on such occasion, are hereby declared NULL AND VOID AB INITIO.

Likewise, the election of respondents Norberto Ochoa, Antonio Obias, Felicito Ilan, and Luis Pascua, as President, Vice-President, Secretary, and Treasurer, respectively, of CANORECO is hereby declared NULL AND VOID AB INITIO.

Hence, respondents Norberto Ochoa, Antonio Obias, Felicito Ilan, and Luis Pascua are hereby ordered to refrain from representing themselves as President, Vice-President, Secretary, and Treasurer, respectively, of CANORECO. The same respondents are further ordered to refrain from acting as authorized signatories to the bank accounts of CANORECO.

Further respondent Felicito Ilan is hereby ordered to refrain from exercising the duties and functions of a member of the Board of CANORECO until the election protest is resolved with finality by the proper forum. In the meantime, the incumbency of petitioner Merardo Enero, Jr. as Director of the CANORECO Board is hereby recognized.

A status quo is hereby ordered as regards the position of General Manager, being held by Mr. Reynaldo Abundo, considering that the recall of his appointment was done under a void Resolution, and that the designation of Mr. Oscar Acobera as Officer-in-Charge, under the same void Resolution, has no force and effect.

Finally, respondents Antonio Obias, Norberto Ochoa, Luisito Pascua, and petitioners Ruben Barrameda, Elvis Espiritu, Marcelito Abas and Merardo Enero, Jr. are hereby ordered to work together, as Board of Directors, for the common good of CANORECO and its consumer-members, and to maintain an atmosphere of sincere cooperation among the officers and members of CANORECO.

On 28 June 1996, in defiance of the abovementioned Resolution of the CDA and with the active participation of some officials of the National Electrification Administration (NEA), the group of Norberto Ochoa, Antonio Obias, Felicito Ilan, and Luis Pascua forcibly took possession of the offices of CANORECO and assumed the duties as officers thereof.[8]

On 26 September 1996, pursuant to the writ of execution and order to vacate issued by the CDA, the petitioners were able to reassume control of the CANORECO and to perform their respective functions.[9]

On 3 December 1996, the President of the Philippines issued Memorandum Order No. 409[10] constituting an Ad Hoc Committee to temporarily take over and manage the affairs of CANORECO. It reads as follows:

To efficiently and effectively address the worsening problem of the Camarines Norte Electric Cooperative, Inc. (CANORECO) and in order not to prejudice and endanger the interest of the people who rely on the said cooperative for their supply of electricity, an AD HOC Committee is hereby constituted to take over and manage the affairs of CANORECO until such time as a general membership meeting can be called to decide the serious issues affecting the said cooperative and normalcy in operations is restored. Further, if and when warranted, the present Board of Directors may be called upon by the Committee for advisory services without prejudice to the receipt of their per diems as may be authorized by existing rules and regulations.

The AD HOC Committee shall be composed of the following:

REX TANTIONGCO -- Chairman

Presidential Assistant on Energy Affairs

HONESTO DE JESUS -- Member

Cooperative Development Authority Nominee

ANDRES IBASCO -- Member

Cooperative Development Authority Nominee

TEODULO M. MEA -- Member

National Electrification Administration Nominee

VICENTE LUKBAN -- Member

National Electrification Administration Nominee

The said Committee shall have the following functions:

1. Designate the following upon the recommendation of the Chairman:

1.1 an Acting General Manager who shall handle the day-to-day operations of the Cooperative. In the meantime, the General Manager shall be deemed to be on leave without prejudice to the payment of his salaries legally due him; and

1.2 a Comptroller who shall handle the financial affairs of the Cooperative.

2. Ensure that:

...

The AD HOC Committee shall submit a written report to the President, through the Office of the Executive Secretary, every two (2) weeks from the effectivity of this Order.

A General Membership Meeting shall be called by the AD HOC Committee to determine whether or not there is a need to change the composition of the membership of the Cooperative's Board of Directors. If the need exists, the AD HOC Committee shall call for elections. Once the composition of the Board of Directors is finally settled, it shall decide on the appointment of a General Manager in accordance with prescribed laws, rules and regulations. Upon the appointment of a General Manager, the Committee shall become *functus officio*.

This Memorandum Order shall take effect immediately.

On 11 December 1996, the petitioners filed this petition wherein they claim that

I. THE PRESIDENT HAS NO POWER TO TAKE OVER AND MANAGE OR TO ORDER THE TAKE-OVER OR MANAGEMENT OF CANORECO.

II. [THE] TAKE-OVER OF CANORECO BY THE AD HOC COMMITTEE IS UNLAWFUL DESPITE DESIGNATION OF CANORECO CONSUMERS AS MEMBERS OF AD HOC COMMITTEE.

III. [THE] RELEGATION OF PETITIONERS AS MERE ADVISERS TO THE AD HOC COMMITTEE AMOUNTS TO REMOVAL FROM OFFICE WHICH THE PRESIDENT HAS NO POWER TO DO. MOREOVER, PETITIONERS' REMOVAL VIOLATES PETITIONERS' RIGHT TO DUE PROCESS OF LAW.

IV. THE PRESIDENT IS LIKEWISE WITHOUT POWER TO DESIGNATE OR ORDER THE DESIGNATION OF AN ACTING GENERAL MANAGER FOR CANORECO AND TO CONSIDER THE INCUMBENT REYNALDO V. ABUNDO TO BE ON LEAVE.

The petitioners assert that there is no provision in the Constitution or in a statute expressly, or even impliedly, authorizing the President or his representatives to take over or order the take-over of electric cooperatives. Although conceding that while the State, through its police power, has the right to interfere with private business or commerce, they maintain that the exercise thereof is generally limited to the regulation of the business or commerce and that the power to regulate does not include the power to take over, control, manage, or direct the operation of the business. Accordingly, the creation of the Ad Hoc Committee for the purpose of take-over was illegal and void.

The petitioners further claim that Memorandum Order No. 409 removed them from their positions as members of the Board of Directors of CANORECO. The President does not have the authority to appoint, much less to remove, members of the board of directors of a private enterprise including electric cooperatives. He cannot rely on his power of supervision over the NEA to justify the designation of an acting general manager for CANORECO under P.D. No. 269 as amended by P.D. No. 1645, for CANORECO had already registered with the CDA pursuant to R.A. No. 6938 and R.A. No. 6939; hence, the latter laws now govern the internal affairs of CANORECO.

On 3 January 1997, the petitioners filed an Urgent Motion for Issuance of a Temporary Restraining Order.

On 9 January 1997, the petitioners filed a Manifestation and Motion informing the Court that on 8 January 1997 respondent Rex Tantiongco notified the petitioners that the Ad Hoc Committee was taking over the affairs and management of CANORECO effective as of that date.[11] They reiterated their plea for the issuance of a

temporary restraining order because the Ad Hoc Committee has taken control of CANORECO and usurped the functions of the individual petitioners.

In the Resolution dated 13 January 1997, we required respondents to comment on the petition.

Despite four extensions granted it, the Office of the Solicitor General (OSG) failed to file its Comment. Hence, in the resolution of 16 July 1997 we deemed the OSG to have waived the filing of its Comment and declared this case submitted for decision. The OSG's motion to admit its Comment, as well as the attached Comment, belatedly filed on 24 July 1997 was merely noted without action in the resolution of 13 August 1997. We also subsequently denied for lack of merit its motion for reconsideration.

We find the instant petition impressed with merit.

Having registered itself with the CDA pursuant to Section 128 of R.A. No. 6938 and Section 17 of R.A. No. 6939, CANORECO was brought under the coverage of said laws. Article 38 of R.A. No. 6938 vests upon the board of directors the conduct and management of the affairs of cooperatives, and Article 39 provides for the powers of the board of directors. These sections read:

Article 38. Composition of the Board of Directors. -- The conduct and management of the affairs of a cooperative shall be vested in a board of directors which shall be composed of not less than five (5) nor more than fifteen (15) members elected by the general assembly for a term fixed in the by-laws but not exceeding a term of two (2) years and shall hold office until their successors are duly elected and qualified, or until duly removed. However, no director shall serve for more than three (3) consecutive terms.

Article 39. Powers of the Board of Directors. -- The board of directors shall direct and supervise the business, manage the property of the cooperative and may, by resolution, exercise all such powers of the cooperative as are not reserved for the general assembly under this Code and the by-laws.

As to the officers of cooperatives, Article 43 of the Code provides:

ART. 43. Officers of the Cooperatives. -- The board of directors shall elect from among themselves only the chairman and vice-chairman, and elect or appoint other officers of the cooperative from outside of the board in accordance with their by-laws. All officers shall serve during good behavior and shall not be removed except for cause and after due hearing. Loss of confidence shall not be a valid ground for removal unless evidenced by acts or omissions causing loss of confidence in the honesty and integrity of such officer. No two (2) or more persons with relationship up to the third degree of consanguinity or affinity shall serve as elective or appointive officers in the same board.[12]

Under Article 34 of the Code, the general assembly of cooperatives has the exclusive power, which cannot be delegated, to elect or appoint the members of the board of directors and to remove them for cause. Article 51 thereof provides for removal of directors and officers as follows:

ART. 51. Removal. -- An elective officer, director, or committee member may be removed by a vote of two-thirds (2/3) of the voting members present and constituting a quorum, in a regular or special general assembly meeting called for the purpose. The person involved shall be given an opportunity to be heard at said assembly.

Memorandum Order No. 409 clearly removed from the Board of Directors of CANORECO the power to manage the affairs of CANORECO and transferred such power to the Ad Hoc Committee, albeit temporarily. Considering that (1) the take-over will be "until such time that a general membership meeting can be called to decide the serious issues affecting the said cooperative and normalcy in operations is restored, and (2) the date such meeting shall be called and the determination of whether there is a need to change the composition of the membership of

CANORECO's Board of Directors are exclusively left to the Ad Hoc Committee, it necessarily follows that the incumbent directors were, for all intents and purposes, suspended at the least, and removed, at the most, from their office. The said Memorandum did no less to the lawfully appointed General Manager by directing that upon the settlement of the issue concerning the composition of the board of directors the Committee shall decide on the appointment of a general manager. In the meantime, it authorized the Committee to designate upon the recommendation of the Chairman an Acting Manager, with the lawfully appointed Manager considered on leave, but who is, however, entitled to the payment of his salaries.

Nothing in law supported the take-over of the management of the affairs of CANORECO, and the "suspension," if not "removal," of the Board of Directors and the officers thereof.

It must be pointed out that the controversy which resulted in the issuance of the Memorandum Order stemmed from a struggle between two groups vying for control of the management of CANORECO. One faction was led by the group of Norberto Ochoa, while the other was petitioners' group whose members were, at that time, the incumbent directors and officers. It was the action of Ochoa and his cohorts in holding a special meeting on 28 May 1995 and then declaring vacant the positions of cooperative officers and thereafter electing themselves to the positions of president, vice-president, treasurer, and secretary of CANORECO which compelled the petitioners to file a petition with the CDA. The CDA thereafter came out with a decision favorable to the petitioners.

Obviously there was a clear case of intra-cooperative dispute. Article 121 of the Cooperative Code is explicit on how the dispute should be resolved; thus:

ART. 121. Settlement of Disputes. -- Disputes among members, officers, directors, and committee members, and intra-cooperative disputes shall, as far as practicable, be settled amicably in accordance with the conciliation or mediation mechanisms embodied in the by-laws of the cooperative, and in applicable laws.

Should such a conciliation/mediation proceeding fail, the matter shall be settled in a court of competent jurisdiction.

Complementing this Article is Section 8 of R.A. No. 6939, which provides:

SEC. 8. Mediation and Conciliation. – Upon request of either or both or both parties, the [CDA] shall mediate and conciliate disputes with the cooperative or between cooperatives: Provided, That if no mediation or conciliation succeeds within three (3) months from request thereof, a certificate of non-resolution shall be issued by the commission prior to the filing of appropriate action before the proper courts.

Even granting for the sake of argument that the party aggrieved by a decision of the CDA could pursue an administrative appeal to the Office of the President on the theory that the CDA is an agency under its direct supervision and control, still the Office of the President could not in this case, *motu proprio* or upon request of a party, supplant or overturn the decision of the CDA. The record does not disclose that the group of Norberto Ochoa appealed from the decision of the CDA in CDA-CO Case No. 95-010 to the Office of the President as the head of the Executive Department exercising supervision and control over said agency. In fact the CDA had already issued a Cease and Desist Order dated 14 August 1996 ordering Antonio Obias, Norberto Ochoa, Luis Pascua, Felicito Ilan and their followers "to cease and desist from acting as the Board of Directors and Officers of Camarines Norte Electric Cooperative (CANORECO) and to refrain from implementing their Resolution calling for the District V Election on August 17 and 24, 1996." [13] Consequently, the said decision of the CDA had long become final and executory when Memorandum Order No. 409 was issued on 3 December 1996. That Memorandum cannot then be considered as one reversing the decision of the CDA which had attained finality.

Under Section 15, Chapter III of Book VII of the Administrative Code of 1987 (Executive Order No. 292), decisions of administrative agencies become final and executory fifteen days after receipt of a copy thereof by the

party adversely affected unless within that period an administrative appeal or judicial review, if proper, has been perfected. One motion for reconsideration is allowed. A final resolution or decision of an administrative agency also binds the Office of the President even if such agency is under the administrative supervision and control of the latter.

We have stated before, and reiterate it now, that administrative decisions must end sometime, as fully as public policy demands that finality be written on judicial controversies. Public interest requires that proceedings already terminated should not be altered at every step, for the rule of non *quieta movere* prescribes that what had already been terminated should not be disturbed. A disregard of this principle does not commend itself to sound public policy.[14]

Neither can police power be invoked to clothe with validity the assailed Memorandum Order No. 409. Police power is the power inherent in a government to enact laws, within constitutional limits, to promote the order, safety, health, morals, and general welfare of society.[15] It is lodged primarily in the legislature. By virtue of a valid delegation of legislative power, it may also be exercised by the President and administrative boards, as well as the lawmaking bodies on all municipal levels, including the barangay.[16] Delegation of legislative powers to the President is permitted in Sections 23(2) and 28(2) of Article VI of the Constitution.[17] The pertinent laws on cooperatives, namely, R.A. No. 6938, R.A. No. 6939, and P.D. No. 269 as amended by P.D. No. 1645 do not provide for the President or any other administrative body to take over the internal management of a cooperative. Article 98 of R.A. 6938 instead provides:

ART. 98. Regulation of Public Service Cooperatives. -- (1) The internal affairs of public service cooperatives such as the rights and privileges of members, the rules and procedures for meetings of the general assembly, board of directors and committees; for the election and qualification of officers, directors, and committee members; allocation and distribution of surpluses, and all other matters relating to their internal affairs shall be governed by this Code.

...

We do not then hesitate to rule that Memorandum Order No. 409 has no constitutional and statutory basis. It violates the basic underlying principle enshrined in Article 4(2) of R.A. No. 6938 that cooperatives are democratic organizations and that their affairs shall be administered by persons elected or appointed in a manner agreed upon by the members. Likewise, it runs counter to the policy set forth in Section 1 of R.A. No. 6939 that the State shall, except as provided in said Act, maintain a policy of non-interference in the management and operation of cooperatives.

WHEREFORE, the instant petition is GRANTED and Memorandum Order No. 409 of the President is hereby declared INVALID.

SO ORDERED.

Narvasa, Regalado, Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, and Martinez, JJ., concur.

Quisumbing, No part. Involve in O.P. matter.

Purisima, No part. Did not take in the deliberation.

[1] Annex "B" of Petition, Rollo, 34.

[2] Annex "C" of Petition, Id., 35.

[3] Annex “D” of Petition, Id., 36-37.

[4] Annex “E” of Petition, Id., 38-39.

[5] Annex “F” of Petition, Id., 40-43.

[6] Rollo, 41-43.

[7] Annex “G” of Petition, Rollo, 44-52.

[8] Rollo, 8.

[9] Ibid.

[10] Id., 31.

[11] Rollo, 96.

[12] This is a substantial departure from Section 26 of P.D. No. 269 which provided that the officers of a cooperative shall consist of a president, vice-president, secretary and treasurer, who shall be elected annually by and from the board; that when a person holding such office ceases to be a director, he shall ipso facto cease to hold such office; that the offices of secretary and of treasurer may be held by the same person; that the board may also elect or appoint such other officers, agents, or employees as it deems necessary or advisable; and that any officer may be removed from said office and his successor elected in the manner prescribed in the by-laws.

[13] Rollo, 142.

[14] *Antique Sawmills, Inc. v. Zayco*, 17 SCRA 316, 320-321 [1966].

[15] 16 C.J.S. Constitutional Law § 195 (1956).

[16] Isagani A. Cruz, *Constitutional Law* 44 (1995).

[17] These sections read as follows:

Sec. 23.

...

(2) times of war or other national emergency, the Congress may, by law, authorize the President, for a limited period and subject to such restrictions as it may prescribe, to exercise powers necessary and proper to carry out a declared national policy. Unless sooner withdrawn by resolution of the Congress, such powers shall cease upon the next adjournment thereof.

Sec. 28.

...

(2) The Congress may, by law, authorize the president to fix within specified limits, and subject to such limitations and restrictions as it may impose, tariff rates, import and export quotas, tonnage and wharfage dues, and other duties or imposts within the framework of the national development program of the Government.

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