

NATIONAL ELECTRIFICATION ADMINISTRATION, PETITIONER, VS. CIVIL SERVICE COMMISSION AND PEDRO RAMOS, RESPONDENTS.

G.R. No. 149497. January 25, 2010

Ponente: PERALTA, J.

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PERALTA, J.:

By way of a Petition for Review on Certiorari under Rule 45 of the Rules of Court, petitioner National Electrification Administration (NEA) seeks to annul and set aside the Decision[1] dated May 11, 2000 and the Resolution[2] dated August 2, 2001 of the Court of Appeals (CA) in CA-G.R. SP No. 37692.

The factual antecedents of this case are as follows:

On November 16, 1988, public respondent Civil Service Commission (CSC) passed Resolution No. 88-830[3] regarding the issue raised by its Provincial Extension Office, Naga City, on whether NEA officials and employees were allowed to collect additional compensation or allowances from private entities such as electric cooperatives, disposing as follows:

WHEREFORE, foregoing premises considered, the Commission resolved to rule, as it hereby rules that the practice of designating NEA officials and employees to positions other than Acting General Manager and/or Project Supervisor of electric cooperatives which are private entities under NEA control and supervision, for indefinite period of time is prejudicial to the public interest and, hence, they should be recalled.[4]

On August 10, 1989, the General Manager of Benguet Electric Cooperative, Inc. (BENECO) requested a clarification, since the basic issue raised on whether the NEA officials and employees were allowed to collect additional compensation or allowance from private entities such as electric cooperatives was not squarely resolved in CSC Resolution No. 88-830.

In Resolution No. 89-911[5] dated November 27, 1989, the public respondent CSC held:

WHEREFORE, foregoing premises considered, the Commission has thus clarified CSC Resolution No. 88-830. Further with Republic Act No. 6713 now in effect, it is hereby ruled that the practice of designating NEA officials and employees to positions in the electric cooperatives which are private entities under NEA control and supervision, and allowing these personnel to receive allowances in addition to their regular compensation and allowances from their mother agency (NEA) is not only beyond the import of PD 1645, but also prejudicial to the public interest and violative of RA 6713 and therefore illegal. Accordingly, it is likewise directed that upon receipt of this Resolution, the National Electrification Administration should cease and desist from designating its own officers and employees to positions in the electric cooperatives and charge cooperatives with the allowances of these personnel. However, as to the actual services rendered by these designees prior to the enactment of RA 6713 and promulgation of this Resolution, the same should be paid accordingly. These officers and employees of NEA may now be recalled and their replacement be drawn from competent members of the private sector. However, in the interest of the service and to prevent unnecessary disruption of cooperative services, said NEA officers and employees should be given a chance to exercise an option, either to retain their positions in the cooperatives and relinquish their positions in NEA or vice

versa.[6]

On May 12, 1990, petitioner moved for reconsideration of Resolution No. 89-911 arguing that public respondent had no jurisdiction to determine whether petitioner's designation of its Acting General Manager and Project Supervisor in electric cooperatives was legal or not.

In Resolution No. 90-689[7] dated July 31, 1990, public respondent denied petitioner's motion for reconsideration, thus:

WHEREFORE, foregoing premises considered, the Commission resolved to deny the motion for reconsideration of NEA Administrator. Accordingly, CSC Resolution No. 89-911 dated November 27, 1989 as thus further clarified stands. The case is considered closed and terminated.

Let copies of this resolution be furnished the COA-NEA Resident Auditor and parties to the case.[8]

On February 22, 1991, private respondent Pedro Ramos, a retired employee of Batangas I Electric Cooperative, Inc. (BATELEC I) filed with public respondent a letter-complaint[9] bringing to the latter's attention, in relation to Resolution No. 89-911, the case of two of petitioner's personnel, namely Moreno P. Vista and Regario R. Breta, who since December 1988, had been designated by petitioner to BATELEC I as Project Supervisor and Acting General Manager and Technical Assistant to the Project Supervisor, respectively, and were allegedly receiving allowances from the cooperative in addition to their regular compensation and allowances from petitioner, in violation of Republic Act (RA) No. 6713, or The Code of Conduct and Ethical Standards for Public Officials and Employees. Public respondent referred private respondent Ramos' letter complaint to petitioner for comment.[10]

On August 1, 1991, petitioner then submitted a letter[11] by way of Comment and Motion to Set Aside CSC Resolution No. 89-911 asking the CSC to set aside Resolution Nos. 89-911 and 90-689 and to dismiss Ramos' complaint and consider the case closed.

In the assailed Order[12] dated January 16, 1992, public respondent resolved petitioner's Comment and Motion to Set Aside, which the former considered as petitioner's second motion for reconsideration, and which was an offshoot of the letter-complaint of private respondent Ramos, as follows:

It is noted that Resolution No. 89-911 has long become final and executory, for failure of NEA to question the same before the Supreme Court on a petition for certiorari. Hence, at the outset, the motion is denied.

The designation therefore of Vista and Breta to private cooperatives is not in accordance with the decision of the Commission. There is, therefore, merit on the complaint of Ramos. Hence, NEA is directed to recall and desist from issuing designations in favor of its employees.

WHEREFORE, foregoing premises considered, the Commission resolves to deny the instant motion. Further, the Administration of NEA is hereby directed to recall all the designations of NEA employees to the electric cooperatives including that of Moreno Vista and Rogelio (sic) Breta, and to desist from issuing designations of such kind. Failure to comply with this Order shall constrain this Commission to file a contempt proceeding against those concerned.

Let copies of this resolution be furnished the NEA-COA Resident Auditor for appropriate action.[13]

Petitioner then filed with us a petition for certiorari under Rule 65 with an urgent prayer for the issuance of a preliminary injunction, docketed as G.R. No. 104031. It alleged that the public respondent has no jurisdiction to review petitioner's decision of designating its own personnel to the electric cooperatives, and that public respondent's Order dated January 16, 1992 was issued not in accordance with law.

On July 23, 1992, the Court issued a temporary restraining order[14] directing public respondent to cease and

desist from enforcing its Order dated January 16, 1992.

Subsequently, public respondent filed its Comment and petitioner filed its Reply thereto.

On June 13, 1995, the Court issued a Resolution^[15] referring the case to the CA pursuant to Revised Administrative Circular No. 1-95 which took effect on June 1, 1995.

On May 11, 2000, after considering the parties' respective pleadings, the CA rendered its assailed Decision, which denied petitioner's petition for certiorari.

In so ruling, the CA cited Sections 2 (1) and 3, Article IX-B of the Constitution on public respondent's scope of coverage; that with respect to personnel matters like the designation of a government employee to a private cooperative, the CSC has jurisdiction to review the decision of petitioner in designating its own personnel to electric cooperatives. It ruled that the right of petitioner to designate its employees to cooperatives should only be done if certain conditions were present, i.e., in case of default, as provided in the loan contract clause between petitioner and the electric cooperative, when vacancies in said positions occurred and/or when the interest of the cooperative and the program so required as provided under Section 5 (a) of Presidential Decree (PD) No. 259; that there was no evidence on record to show that any of these conditions existed to require the designation of NEA employees. The CA then stated that assuming for the sake of argument that a condition existed that would warrant the designation of petitioner's employees to the cooperative pursuant to the NEA Charter, receiving of additional, double or indirect compensation was in violation of Section 8, Article IX-B of the Constitution.

Petitioner's motion for reconsideration was denied in a Resolution dated August 2, 2001.

Hence, petitioner filed the instant petition for review on certiorari.

In its Memorandum, petitioner raises the following issues, thus:

I

WHETHER OR NOT THE ASSAILED DECISION AND RESOLUTION WHICH UPHELD THE VALIDITY OF THE CSC ORDER DATED JANUARY 16, 1992 DIRECTING NEA TO RECALL ALL NEA EMPLOYEES DESIGNATED TO ELECTRIC COOPERATIVES CONTRAVENE THE LAW AND APPLICABLE DECISIONS OF THIS HONORABLE COURT.

II

WHETHER OR NOT THE SAID CSC ORDER DATED JANUARY 16, 1992 TRANSGRESSED UPON THE LAWFUL PREROGATIVES OF NEA TO DESIGNATE ITS OWN OFFICIALS/EMPLOYEES TO THE ELECTRIC COOPERATIVES AS IT ESSENTIALLY INVOLVES THE WISDOM OF THE APPOINTING AUTHORITY AND WHICH IS BEYOND THE CSC'S POWER TO REVIEW UNDER THE CONSTITUTION AND APPLICABLE LAWS.

III

WHETHER OR NOT THE GROUNDS RELIED UPON BY THE CSC IN THE RECALL ORDER ARE PROPER CONSIDERING THAT THE DESIGNATIONS/APPOINTMENTS OF NEA PERSONNEL TO ELECTRIC COOPERATIVES ARE NEITHER BARRED AS PROHIBITED ACTS NOR COVERED BY LEGAL PROSCRIPTIONS ON CONFLICT OF INTEREST.

IV

WHETHER OR NOT THE RECEIPT BY THE DESIGNEES /APPOINTEES OF ADDITIONAL ALLOWANCES FROM THE ELECTRIC COOPERATIVES JUSTIFIED THE ISSUANCE OF THE

RECALL ORDER.

V

WHETHER OR NOT THE CSC RECALL ORDER EFFECTIVELY INVALIDATED AND NULLIFIED PROVISIONS OF SUBSISTING LAWS AND CONTRACTS. [16]

Petitioner contends that the constitutional provisions cited by the CA refer only to the coverage of the civil service and the establishment of a career service but does not vest upon public respondent the power or authority on personnel actions; that the CSC failed to apply the NEA Charter, including the loan provisions of contracts between petitioner and electric cooperatives; that the CSC encroached upon the exclusive option of petitioner to choose whom to designate or appoint which is lodged with the NEA Administrator. It argues that the designation of NEA personnel is not a simple case of personnel transfer or movement, which must be submitted to the CSC for approval or confirmation, and that the matter of selecting a designee to supervise electric cooperatives falls within the exclusive jurisdiction of petitioner NEA; that under the loan contracts executed between petitioner and the electric cooperatives, petitioner is conferred upon the authority to assign or appoint a Project Manager in the event of default; and that it is not within public respondent's competence to inquire into the existence of the conditions that would warrant petitioner's designation of its employees to electric cooperatives in the exercise of petitioner's power of control and supervision over said cooperatives.

Petitioner claims that public respondent's recall of the NEA personnel as Acting General Manager and/or Project Supervisor was based upon Section 12 (a) of PD No. 269 and Section 7 (a) and (b) of RA No. 6713 which are not applicable as the provisions of these laws referred to the personal interest of the concerned public officer or employee independently of the government office where he is employed; and the designations of petitioner's employees as Acting General Manager and/or Project Supervisor to cooperatives is to resuscitate their financial viability and to protect its loan exposure, and not for the personal pecuniary or other interests of the designated NEA employees.

Petitioner contends that the issue of receipt of additional allowances is separate and independent of the issue of the validity or legality of the designations; thus, the former issue should not affect the later issue and that the CSC, notwithstanding its broad powers under the Constitution, cannot prohibit the designations in controversy, as these are authorized and permitted by law.

In its Memorandum, public respondent argues that being the central personnel agency of the government, it has authority on personnel matter such as designation since it involves the imposition of additional duties on the employee apart from their regular functions; that petitioner's practice of designating its personnel as Acting General Manager of electric cooperatives is definitely a personnel movement which is within the power and authority to determine its legality. Public respondent avers that when a person is both a NEA employee and an Acting General Manager and/or Project Supervisor of an electric cooperative, he is invariably directly or indirectly interested and/or involved in the operation of said cooperative, thus, violating Section 12 of PD 269; and that when NEA approves the loan of an electric cooperative, the designated Project Supervisor or Acting General Manager is

considered directly interested in the approval of such loan thus violating Section 7 (a) of RA No. 6713.

Although the NEA Law does not specify who shall be designated, it shall be interpreted and reconciled with the provisions of RA No. 6713, since the latter law provides for the prohibited acts and transactions of public officials and employees. Petitioner further alleges that payment to NEA personnel designated as Acting General Manager to electric cooperatives of allowances and other benefits on top of their regular salaries is a violation of Section 4 (g) of PD No. 269.

We find partial merit in the petition.

The present controversy stemmed from a letter complaint dated 1991 filed by Ramos with the CSC alleging that since December 1988, NEA personnel Vista and Breta, who have been designated by NEA to BATELEC I as Project Supervisor and Acting General Manager and Technical Assistant to the Project Supervisor, respectively, were receiving allowances from the cooperative in addition to their regular compensation and allowances from NEA, in violation of RA No. 6713. Such complaint was brought about by the issuance of CSC Resolution No. 89-911, which ruled that the practice of designating NEA officials and employees to positions in electric cooperatives, which are private entities under NEA control and supervision, and allowing these personnel to receive allowances in addition to their regular compensation and allowances from their mother agency (NEA) is not only beyond the import of PD No. 1645, but also prejudicial to the public interest and violative of RA No. 6713 and, therefore, illegal. The CSC then directed the NEA to cease and desist from designating its own officers and employees to positions in electric cooperatives and charging cooperatives for the allowances of these personnel.

There is no dispute that NEA is a government-owned and controlled corporation with original charter, since it has been created pursuant to PD No. 269 as amended by PD No. 1645; thus, it is within the ambit of the CSC as provided under Article IX-B of the 1987 Constitution, to wit:

SEC. 2. (1) The civil service embraces all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters.

SEC. 3. The Civil Service Commission, as the central personnel agency of the Government, shall establish a career service and adopt measures to promote morale, efficiency, integrity, responsiveness, progressiveness, and courtesy in the civil service. It shall strengthen the merit and rewards system, integrate all human resources development programs for all levels and ranks, and institutionalize a management climate conducive to public accountability. It shall submit to the President and the Congress an annual report on its personnel programs."

Section 3 is deemed to include the power to "promulgate and enforce policies on personnel actions." [17]

Since petitioner is under public respondent's jurisdiction, the former construed, in relation to the issue raised in CSC Resolution No. 89-911, i.e., whether NEA officials and employees are allowed to collect additional compensation or allowances from private entities such as electric cooperatives, the provisions of PD No. 269 as amended by PD No. 1645. Settled is the rule that when a law confers jurisdiction, all the incidental powers necessary for its effective exercise are included in the conferment. [18]

The issues presented before Us is whether the CA correctly affirmed the CSC's Order recalling NEA's designation of its employees, particularly Vista and Breta, from the electric cooperative and directing NEA to cease and desist from designating its own personnel to the electric cooperative; and declaring the payment of allowances and other money benefits to designated NEA personnel illegal.

To begin with, PD No. 269, as amended by PD No. 1645, vested petitioner with the authority to supervise and control the electric cooperatives. The extent of government control over electric cooperatives covered by PD No. 269, as amended, is largely a function of the role of petitioner as a primary source of funds of these electric cooperatives. Petitioner incurred loans from various sources to finance the development and operations of the electric cooperatives. [19] One of the "whereas" clauses of PD No. 1645 amending PD No. 269 states:

WHEREAS, there is a distinct need to provide NEA with additional authority to take measure that will better safeguard government inputs in electric cooperatives and other entities that are or will be related to the total electrification effort.

Thus, a new paragraph was inserted under Section 5 (a)(6) of PD No. 269 as amended by PD No. 1645, to read:

SEC. 5. National Electrification Administration; Board of Administrators; Administrator. - (a) For the purpose of administering the provisions of this Decree, there is hereby established a public corporation to be known as the National Electrification Administration. All of the powers of the corporation shall be vested in and exercised by a Board of Administrator. x x x

x x x x

The Board shall, without limiting the generality of the foregoing, have the following specific powers and duties.

x x x x

(6) To authorize the NEA Administrator to designate, subject to the confirmation of the Board of 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 or the program so requires, and to prescribe the functions of the 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. (Emphasis supplied).

Notably, Section 5 (a)(6) provides only for a situation in which petitioner can designate an Acting General Manager and/or Project Supervisor in a cooperative, i.e., when vacancies in the said positions occur and/or when the interest of the cooperative or the program so requires. The provision does not state the person to be so designated, i.e., whether he should be a NEA personnel or someone from the private sector. Well-recognized is the rule in statutory construction that where the law does not distinguish, neither should the courts distinguish — ubi lex non distinguit, nec nos distinguere debemus. There should be no distinction in the application of a law where none is indicated. Petitioner then chose to designate its own personnel to the positions of Acting General Manager and/or Project Supervisor of the electric cooperatives, which was within its authority to do under its Charter.

Public respondent, however, found that the designation of NEA personnel to electric cooperatives involved a conflict of interest under Section 12 of the NEA Law itself, which provides:

SEC. 12. Conflict of Interest. - (a) No member, officer, attorney, agent or employee of the NEA shall in any manner directly or indirectly, participate in the determination of any question affecting any public service entity or other entity in which he is directly or indirectly interested or any person to whom he is related within the third degree of affinity or consanguinity. Any person violating the provision of this subsection shall be removed from office and shall upon conviction be punished by a fine not to exceed ten thousand (P10,000.00) pesos or imprisonment not to exceed five years or both.

And the same is an anomalous and illegal practice under Section 7 (a) and (b) of RA No. 6713, thus:

Section 7. Prohibited Acts and Transactions. - x x x

(a) Financial and material interest. - Public Officials and employees shall not, directly or indirectly, have any financial or material interest in any transaction requiring the approval of their office.

(b) Outside employment and other activities related thereto - Public officials and employees during their incumbency shall not

(1) Own, control, manage or accept employment as officer, employee, consultant, counsel, broker, agent, trustee or nominee in any private enterprise regulated, supervised or licensed by their office unless expressly allowed by law.

We do not agree.

The designation of NEA personnel as Acting General Manager and/or Project Supervisor in the cooperatives did not violate the above-mentioned provisions of law.

A reading of the conflict of interest rule reveals that the prohibition against NEA personnel from participating in any question pertaining to a public service entity where he is directly or indirectly interested has the purpose of preventing such personnel from exercising the power of his office for personal pecuniary gain, which may cause grave damage and prejudice to public interest. In the same manner, government officials and employees are prohibited under Section 7 (a) of RA No. 6713 from having direct or indirect financial or material interest in any transaction requiring the approval of their office, since personal interest would be involved.

On the other hand, when the NEA Administrator, subject to the confirmation of the Board, designates a NEA personnel to an electric cooperative where a vacancy in a certain position occurs and/or when the interest of the cooperative or the program so requires, such designation is primarily geared to protect the interest of the government and the loans it extended to the cooperative. Thus, any NEA personnel so designated in the electric cooperative cannot be considered as having direct or indirect

interest in the cooperative for its own personal interest, but only for the purpose of protecting the interest of NEA as the primary source of funds for the electric cooperative.

Notably, the NEA Law is replete with provisions^[20] showing its interest in the electric cooperative which must be protected. Thus, the NEA designation of its own employees as Acting General Manager and/or Project Supervisor to the electric cooperatives is to ensure that the affairs of the cooperatives are being managed properly, so as not to prejudice petitioner's interest therein. Also, in order to ensure that whatever loans were extended by petitioner to the cooperatives would be repaid to the government.

We do not also find the designation of NEA personnel to be violative of Section 7 (b) of RA No. 6713 regarding outside employment by a public officer and employee, considering that the designation of petitioner's personnel as Acting General Manager and Project Supervisor of the electric cooperatives was by virtue of Section 5 (a)(6) of PD No. 269 as amended; thus, such designation was part of petitioner's exercise of its power of supervision and control over the electric cooperatives.

We, therefore, find that the CSC cannot invoke the conflict of interest provision under the NEA Law and Section 7 (a) and (b) of RA No. 6713 as bases for ordering the recall of the NEA personnel assigned to the electric cooperative and for directing the NEA to cease and desist from designating its personnel to the electric cooperative. To reiterate, the authority of the NEA to designate an Acting General Manager and/or Project Supervisor for the electric cooperatives is provided under PD No. 269, as amended by PD No. 1645, and such provision does not make any distinction as to who should be the designee.

Notably, the CA Decision even said that the right of petitioner to designate its employees to private electric cooperatives, like in this case, should only be done if certain conditions are present, i.e., in case of default as provided for under the loan contract clause between petitioner and the electric cooperatives, where vacancies in said positions occur and/or when the interest of the cooperatives and the program so requires. However, public respondent totally prohibited petitioner from designating or appointing its personnel to electric cooperatives even in the above-mentioned conditions. The CA's finding that there was no showing of any of these conditions to warrant the designation of petitioner's personnel has no basis, since the validity of the designations was assailed only on the grounds of double compensation, conflict of interest and prohibited acts under RA No. 6713; and neither public respondent nor private complainant Ramos questioned the existence of the conditions to warrant the

designation of NEA personnel.

Finally, we agree with the CA when it affirmed public respondent's finding that payment to NEA personnel designated to cooperatives of allowances and other benefits on top of their regular salaries from petitioner becomes violative of their own charter which does not provide for such payment and, thus, inimical to the best interest of public service. It also violates the first paragraph of Section 8, Article IX-B of the Constitution, which proscribes additional, double, or indirect compensation, to wit:

No elective or appointive public officer or employee shall receive additional, double, or indirect compensation, unless specifically authorized by law. x x x

WHEREFORE, the petition is PARTIALLY GRANTED. The Decision of the Court of Appeals, insofar as it AFFIRMED the Order dated January 16, 1992 of the Civil Service Commission, directing the National Electrification Administration to recall all the designations of its employees to the electric cooperatives, including those of Moreno P. Vista and Regario R. Breta, and to desist from issuing designations of such kind, is hereby REVERSED and SET ASIDE.

SO ORDERED.

Puno, C.J., Carpio, Corona, Carpio Morales, Velasco, Jr., Nachura, Leonardo-De Castro, Brion, Bersamin, Del Castillo, Abad, Villarama, Jr., and Perez, JJ., concur.
Mendoza, J., on leave.

[1] Penned by Associate Justice Andres B. Reyes, Jr., with Associate Justices Fermin A. Martin, Jr. and Romeo A. Brawner, concurring; rollo, pp. 51-61.

[2] Penned by Associate Justice Andres B. Reyes, Jr., with Associate Justices Romeo A. Brawner and Eliezer R. delos Santos, concurring; rollo, p. 63.

[3] CA rollo, pp. 41-44

[4] Id. at 44.

[5] Id. at 37-40.

[6] Id. at 40.

[7] Id. at 56-61.

[8] Id. at 61.

[9] Id. at 36.

[10] Id. at 35.

[11] Id. at 62-73.

[12] Id. at 33-34. Signed by Chairman Patricia A. Sto. Tomas, with Commissioners Samilo N. Barlongay and Ramon P. Ereneta, Jr. concurring.

[13] Id.

[14] Id. at 123.

[15]Id. at 236.

[16] Rollo, pp. 153-154.

[17] De Jesus v. Civil Service Commission, G.R. No. 156559, September 30, 2005, 471 SCRA 624, 636.

[18] Id.

[19] See Philippine Rural Electric Cooperatives Association, Inc. (PHILRECA) v. The Secretary, Department of the Interior and Local Government, 451 Phil. 683, 695-696 (2003).

[20] SEC. 4 NEA Authorities, Powers and Directives. -

x x x x

(f) To make loans to public service entities, with preference to cooperatives, for the construction or acquisition, operation and maintenance of generation, transmission and distribution facilities and all related properties, equipment, machinery, fixtures and materials for the purpose of supplying area coverage service, and thereafter to make loans for the restoration, improvement and enlargement of such facilities. x x x

x x x x

(h) To approve or disapprove any loan from other lenders to public service entities which at the time are borrowers from NEA under sub-paragraphs (f) or (I) of this section, and thereafter, pursuant to section 10 (b) to disapprove advances of loans from the other lenders.

x x x x

(k) To borrow funds from any source, private or government, foreign or domestic, and, not inconsistently with section 8, to issue bonds or other evidences of indebtedness therefor and to secure the lenders thereof by pledging, sharing or subordinating one or more of the NEA's own loan securities.

x x x x

(p) To invest and/or grant loans for the development of power generation industries or companies, including dendro-thermal and mini hydro-power plants and associated facilities such as alcogas and tree plantations, water impounding reservoirs and feeder roads: Provided, that such investments and loans shall be limited to a specific percentage of total requirements as may be determined by the NEA Board of Administrators.

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