

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

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

Ponente: CARPIO, J.

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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

- 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.

- 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 issues of jurisdiction, forum-shopping, exhaustion of administrative remedies, and amendment of the petition for certiorari. On the issue

of jurisdiction, there is evidently no employment relationship between the parties. Hence, the instant controversy does not involve a labor dispute requiring the expertise of the National Labor Relations Commission. This case involves the exercise of the enforcement power of the NEA under Section 10 of PD 269 as amended.[37]

On the issue of exhaustion of administrative remedies, the Court holds that the main issues for resolution in this case are purely legal. Thus, the instant case falls within the recognized exceptions to the rule of exhaustion of administrative remedies.[38]

On the issue of forum-shopping, the Court sustains the Court of Appeals' ruling that appeal is not a speedy and adequate remedy for respondent. Respondent's "appeal" to the NEA-BOA appears to be a futile exercise because the assailed issuances were subsequently confirmed by the NEA-BOA. Hence, respondent properly filed a petition for certiorari with the Court of Appeals challenging the authority of petitioner to suspend and remove him.

On the issues of collateral attack of various NEA-BOA issuances and exclusion of indispensable parties, the Court notes that petitioner raised them for the first time on appeal. Settled is the rule that issues not raised in the court a quo cannot be raised for the first time on appeal because to do so would be offensive to the basic rules of justice and fair play.[39]

Enforcement Power of the NEA

The NEA, as a public corporation, acts through its Board of Administrators, composed of a Chairman and four members, one of whom is the Administrator as ex-officio member.[40] The NEA exercises supervision and control[41] over electric cooperatives organized and operating under the mandate of PD 269, as amended. The extent of government control over electric cooperatives covered by PD 269, as amended, is largely a function of the NEA as a primary source of funds of these electric cooperatives.[42]

In exercising its power of supervision and control over electric cooperatives, the NEA, through its Board of Administrators, can issue orders, rules and regulations, and motu proprio or upon petition of third parties, can conduct investigations in all matters affecting electric cooperatives pursuant to Section 10 of PD 269, as amended. Further, the NEA-BOA may avail of the remedial measures enumerated in Section 10 of PD 269, as amended, in case of non-compliance by the electric cooperative concerned with NEA orders, rules and regulations, and decisions, or with any of the terms of the Loan Agreement. One of these remedial measures, Section 10(e) of PD 269, as amended, provides for the suspension or removal of members of the Board of Directors, officers or employees of the defiant electric cooperative as the NEA-BOA may deem fit and necessary, thus:

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.

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 avail of any or all of the following remedies:

x x x x

(e) 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. The question is whether the NEA-BOA can delegate to the NEA Administrator its power under Section 10(e) of PD

269, as amended, to take preventive and disciplinary measures against electric cooperative officers.

Petitioner maintains that such power of the NEA-BOA can be lawfully delegated to the NEA Administrator by virtue of Section 5(b)(7) of PD 269, as amended. Section 5(b)(7) refers to the NEA Administrator's other powers and duties which may be vested in him by the NEA-BOA.

On the other hand, respondent contends that the power of the NEA-BOA under Section 10(e) of PD 269, as amended, is reserved solely to the NEA-BOA. In other words, the power of the NEA-BOA under Section 10(e) of PD 269, as amended, cannot be validly delegated to the NEA Administrator.

Under Section 10 of PD 269, as amended, the power to impose preventive and disciplinary measures on erring electric cooperative officers can be exercised by the NEA-BOA as a collegial body to whom all the powers of the NEA had been vested in.[43] Section 10(e) of PD 269, as amended, categorically states that the NEA-BOA may take preventive or disciplinary measures against an erring electric cooperative officer as the NEA-BOA may deem fit and necessary.

Contrary to the ruling of the Court of Appeals, there was no undue delegation of power by the NEA-BOA to the NEA Administrator. Resolution No. 22 provides:

WHEREAS, in Section 5(e) of P.D. No. 1645, the NEA Board 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 electric cooperative, other borrowing 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;

RESOLVED TO AUTHORIZE THE ADMINISTRATOR, as he is hereby authorized, to remove the General Manager of Aklan Electric Cooperative, Inc. (AKELCO) as the Administrator may deem fit and necessary, subject to confirmation of the Board of Administrators.[44] (Emphasis supplied)

It is clear from Resolution No. 22 that any action of the NEA Administrator is subject to the confirmation of the NEA-BOA. What is delegated to the NEA Administrator is only the power to investigate and to make a recommendation, not the power to discipline.[45] The disciplining authority is still the NEA-BOA. The authority of the NEA Administrator is only recommendatory. If it were otherwise, there is no need for any confirmation by the NEA-BOA. Thus, any sanction or penalty arising from any investigation by the NEA Administrator takes effect only upon confirmation by the NEA-BOA.

The act of the NEA-BOA in delegating the power to investigate to the NEA Administrator is not without basis. Hence:

The rule that requires an administrative officer to exercise his own judgment and discretion does not preclude him from utilizing, as a matter of practical administrative procedure, the aid of subordinates to investigate and report to him the facts, on the basis of which the officer makes his decisions. It is sufficient that the judgment and discretion finally exercised are those of the officer authorized by law. x x x[46]

Even this Court, in its exercise of its disciplinary authority over lower court justices, judges, judicial employees and lawyers, delegates the power to investigate administrative complaints. Thus:

[T]he Constitution grants the Supreme Court disciplinary authority over all lower court justices and judges, as well as judicial employees and lawyers. While the investigation of administrative complaints is delegated usually to the Office of the Court Administrator (OCA) or the Integrated Bar of the Philippines (IBP), the Court nonetheless makes its own judgments of the cases [where] sanctions are imposed. It does not merely adopt or solely rely on the recommendations of the OCA or the IBP.[47]

In this case, the phrase "subject to confirmation of the Board of Administrators" implies that the final decision rests on the NEA-BOA. The NEA-BOA may confirm, modify or nullify the act of the NEA Administrator.

Further, the delegation of authority by the NEA-BOA was in accordance with Section 5(b)(7) of PD 269, as amended, which grants the NEA Administrator the following powers and duties:

- (1) To execute and administer the policies, plans and program, and the rules and regulations, approved or promulgated by the Board of Administrators;
- (2) To submit for the consideration of the Board of Administrators such policies, plans and programs as he deems necessary to carry out the provisions and purposes of this Decree;
- (3) To direct and supervise the operation and internal administration of the NEA and, for this purpose, to delegate some or any of his powers and duties to subordinate officials of the NEA;
- (4) Subject to the guidelines and policies established by the Board of Administrators, to appoint and fix the number and compensation of subordinate officials and employees of the NEA; Provided, however, [t]he provisions of the Civil Service Law and Position Classification Law shall not apply to the appointment and compensation of any such subordinate official or employee;
- (5) For cause, to remove, suspend, or otherwise discipline any subordinate official or employee;
- (6) To prepare an annual report on the activities of the NEA at the close of each fiscal year and to submit a copy thereof to the President of the Philippines and when it comes into existence, the Prime Minister and the appropriate committee of, and as determined by, the National Assembly; and
- (7) To exercise such other powers and duties as may be vested in him by the Board of Administrators.

x x x x (Emphasis supplied)

The Court notes that petitioner did not *motu proprio* issue the assailed Resolution and Orders suspending and removing respondent as AKELCO general manager. The AKELCO-BOD initiated the suspension and termination of respondent through the issuance of Board Resolutions. The AKELCO-BOD submitted its Board Resolutions suspending and removing respondent to NEA for approval. This procedure is in accordance with Section 24(a) of PD 269, as amended, which states in part that "the management of a cooperative shall be vested in its Board [of Directors], subject to the supervision and control of NEA which shall have the right to x x x approve all policies and resolutions." In approving the AKELCO-BOD resolutions, petitioner was acting pursuant to the authorization^[48] issued by the NEA-BOA. More importantly, the NEA-BOA confirmed petitioner's issuances approving the suspension and removal of respondent.

The Court notes that petitioner's counsel relied on several decisions of the Court of Appeals in addition to Supreme Court cases to buttress his arguments. The Court reminds counsel that decisions of the Court of Appeals are neither controlling nor conclusive on this Court. Moreover, the Court strongly suggests that petitioner's counsel be brief and straightforward in drafting pleadings. He should, as much as possible, refrain from quoting lengthily irrelevant portions of Supreme Court decisions. The Court further advises petitioner's counsel to observe and maintain the respect due to courts at all times. An unfavorable judgment can never justify the use of intemperate language against the courts.

WHEREFORE, the Court GRANTS the petition. The Court SETS ASIDE the 19 June 2003 Decision and 26 September 2003 Resolution of the Court of Appeals in CA-G.R. SP No. 70399. The Court declares VALID the NEA-BOA Resolution No. 37 dated 5 June 2002 confirming NEA Administrator Francisco Silva's Order of 17 May 2002 approving the AKELCO-BOD Resolution No. 2 of 11 May 2002 terminating respondent Leovigildo T.

Mationg as General Manager of Aklan Electric Cooperative, Inc.

SO ORDERED.

Quisumbing, Carpio Morales, Tinga and Velasco, Jr., JJ., concur.

[1] Under Rule 45 of the Rules of Civil Procedure.

[2] Penned by Associate Justice Eubulo G. Verzola, with Associate Justices Martin S. Villarama, Jr. and Mario L. Guariña III, concurring. Rollo, pp. 453-462.

[3] Id. at 525-536.

[4] Rollo, pp. 539-548.

[5] Creating the "National Electrification Administration" as a Corporation, Prescribing its Powers and Activities, Appropriating the Necessary Funds Therefor and Declaring a National Policy Objective for the Total Electrification of the Philippines on an Area Coverage Service Basis, the Organization, Promotion and Development of Electric Cooperatives to Attain the Said Objective, Prescribing Terms and Conditions for their Operations, the Repeal of Republic Act No. 6038, and for Other Purposes.

[6] Dated 8 October 1979.

[7] Rollo, pp. 539-548.

[8] Id. at 454.

[9] Id.

[10] Id.

[11] Id.

[12] Id. at 455.

[13] Id.

[14] Id.

[15] Id.

[16] Id. at 192-194.

[17] Id. at 582.

[18] Composed of Alicia F. Mercado, Benita A. Montilla, and Rodney Z. Magbanua.

[19] Rollo, pp. 588-593.

[20] Id. at 597.

[21] Id. at 594-595.

[22] CA rollo, pp. 2-26.

[23] Rollo, pp. 600-601.

[24] Id. at 604-605.

[25] Id. at 607-609.

[26] Id. at 521-523.

[27] Id. at 142-147.

[28] Id. at 631-632.

[29] Id. at 453-462.

[30] Id. at 462.

[31] Id. at 525-536.

[32] Id. at 459-461.

[33] Id. at 525-536.

[34] Id. at 705-824.

[35] Rollo, pp. 806, 811.

[36] Section 1 of Rule 45 reads:

SECTION 1. Filing of petition with Supreme Court. A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law which must be distinctly set forth. (Emphasis supplied)

[37] 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.

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 avail of any or all of the following remedies:

- (a) Refuse to make or approve any loan to the borrower or to release funds to implement loans that are otherwise already approved;
- (b) Withhold NEA advances, or withhold approval of advances or fund releases in behalf of any other lender with respect to which the NEA has such power relative to loans made;
- (c) Withhold any technical or professional assistance otherwise being furnished or that might be furnished to the borrower;
- (d) Foreclose any mortgage or deed of trust or other security hold by the NEA on the properties of such borrower, in connection with which the NEA may, subject to any superior or co-equal rights in such lien held by any other lender, (1) bid for and purchase or otherwise acquire such properties; (2) pay the purchase price thereof and any costs and expenses incurred in connection therewith out of the revolving fund; (3) accept title to such properties in the name of the Republic of the Philippines; and (4) even prior to the institution of foreclosure proceedings,

operate or lease such properties for such period, and in such manner as may be deemed necessary or advisable to protect the investment therein, including the improvement, maintenance and rehabilitation of systems to be foreclosed, but the NEA may, within five years after acquiring such properties in foreclosure proceedings; sell the same for such consideration as it determines to be reasonable and upon such terms and conditions as it determines most conducive to the achievement of the purposes of this Decree; or

(e) 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.

No Cooperative shall borrow money from any source without the Board of Administrator's prior approval: Provided, That the NEA Board of Administrators, may, by appropriate rule or regulation, grant general permission to Cooperative to secure short-term loans not requiring the encumbrance of their real properties or of a substantial portion of their other properties or assets.

[38] *Regino v. Pangasinan Colleges of Science and Technology*, G.R. No. 156109, 18 November 2004, 443 SCRA 56.

[39] *R.P. Dinglasan Construction, Inc. v. Atienza*, G.R. No. 156104, 29 June 2004, 433 SCRA 263.

[40] Section 5(a) of PD 269 as amended.

[41] Section 38(1), Chapter 7, Book IV of the Administrative Code of 1987 defines supervision and control as follows:

Supervision and control shall include authority to act directly whenever a specific function is entrusted by law or regulation to a subordinate; direct the performance of duty; restrain the commission of acts; review, approve, reverse or modify acts and decisions of subordinate officials or units; determine priorities in the execution of plans and programs; and prescribe standards, guidelines, plans and programs. Unless a different meaning is explicitly provided in the specific law governing the relationship of particular agencies, the word "control" shall encompass supervision and control as defined in this paragraph.

[42] *Philippine Rural Electric Cooperatives Association, Inc. (PHILRECA) v. The Secretary, Department of Interior and Local Government*, G.R. No. 143076, 10 June 2003, 403 SCRA 558, 570.

Under Section 60 of Republic Act No. 9136 or the "Electric Power Industry Reform Act of 2001," all outstanding obligations of electric cooperatives to NEA shall be assumed by the Power Sector Assets and Liabilities Management (PSALM) Corporation in accordance with the program approved by the President within one year from effectivity of RA 9136. Section 60 of RA 9136 provides:

Upon the effectivity of this Act, all outstanding financial obligations of electric cooperatives to NEA and other government agencies incurred for the purpose of financing the rural electrification program shall be assumed by the PSALM Corp. The ERC shall ensure a reduction in the rates of electric cooperatives commensurate with the resulting savings due to the removal of the amortization payments of their loans. Within five (5) years from the condonation of debt, any electric cooperative which shall transfer ownership or control of its assets, franchise or operations thereof shall repay PSALM Corp. the total debts including accrued interests thereon.

[43] Section 5 of PD 269 as amended states that "[a]ll of the powers of the corporation (NEA) shall be vested in and exercised by a Board of Administrators x x x."

[44] CA rollo, p. 189.

[45] See *Mollaneda v. Umacob*, 411 Phil. 159 (2001).

[46] *Mollaneda v. Umacob*, supra, citing *American Tobacco Co. v. Director of Patents*, No. L- 26803, 14 October 1975, 67 SCRA 287. (Original text italicized)

[47] See *Department of Health v. Camposano*, G.R. No. 157684, 27 April 2005, 457 SCRA 438.

[48] Per Resolution No. 24-A issued by the NEA-BOA on 21 April 1989 which states:

WHEREAS, the NEA Administrator is often confronted with problems on how to act with dispatch on cases involving disciplinary action against REC officials (Board of Directors and/or General Manager), particularly, enforcement of NEA's authority under Sec. 5(e) of P.D. 1645;

WHEREAS, there have been cases when REC officials have continued to defy NEA's orders, despite repeated reminders to comply with the same, underscoring the need for strict and immediate action by the Administrator, including preventive suspension of said erring REC officials, to ensure the continuous smooth operations of the REC concerned;

WHEREAS, this emergency measure, in most cases, has had to await the decision and action of the NEA Board of Administrators, which normally meets once a month;

RESOLVED THEREFORE, to grant the Administrator, as he is hereby granted, standby authority to exercise the power under Sec. 5(e) of P.D. 1645, particularly, placing REC officials under preventive suspension, PROVIDED that such immediate and strict measure is, in his judgment, necessary to ensure the continuous smooth operations of the REC concerned; and PROVIDED FINALLY, that such emergency measure is submitted to the Board of Administrators for confirmation.

Also per Resolution No. 22 issued by the NEA-BOA on 11 April 2002 which states:

WHEREAS, in Section 5(e) of P.D. No. 1645, the NEA Board 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 electric cooperative, other borrowing 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;

RESOLVED TO AUTHORIZE THE ADMINISTRATOR, as he is hereby authorized, to remove the General Manager of Aklan Electric Cooperative, Inc. (AKELCO) as the Administrator may deem fit and necessary, subject to confirmation of the Board of Administrators.

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