

SALVIO B. FORTUNO AND CAMARINES SUR II ELECTRIC COOPERATIVE (CASURECO II), PETITIONERS, VS. HONORABLE MERICIA B. PALMA, IN HER CAPACITY AS PRESIDING JUDGE OF BRANCH XXI, REGIONA...

G.R. No. 70203. December 18, 1987

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

The issue posed in this petition for certiorari and prohibition with prayer for preliminary injunction and temporary restraining order is whether the Regional Trial Court (RTC) has jurisdiction over quo warranto proceedings involving the qualification for membership of the Board of Directors of an electric cooperative.

Petitioner Salvio B. Fortuno and respondent Joel David S. Abante were candidates for the position of director to represent District V of the Camarines Sur II Electric Cooperative, Inc. (CASURECO II) at the elections of February 9, 1985. On January 30, 1985, Abante filed with the National Electrification Administration (NEA) a petition to disqualify Fortuno as candidate alleging that he is not a resident of the area coverage of District V as required by the by laws of the corporation. The NEA directed the CASURECO Board of Directors to take appropriate action on the petition in accordance with the By-laws and Election Code. The Board indorsed the petition to the District Election Committee (DEC) which is the body charged with the duty of deciding all election matters, including protests, queries, referrals, postponement and nullification.[1] In another letter of February 4, 1985 addressed to DEC, Abante likewise sought the disqualification of Fortuno on the same ground of non-residence.

The DEC directed Fortuno to submit his comment thereto within 48 hours which was duly complied with. After a hearing on February 8, 1985, the DEC denied Abante's petition to disqualify Fortuno finding that he is a resident of the area coverage of District V.

On February 9, 1985, the election was held as a result of which Fortuno obtained 1,429 votes while Abante received 637 votes. Accordingly, the DEC proclaimed Fortuno as the duly elected director for District V.

On February 18, 1985, a quo warranto petition with prayer for preliminary injunction and temporary restraining order was filed by Abante in the Regional Trial Court of Naga City docketed as No. RTC-85-607 entitled "Joel David S. Abante vs. Salvio B. Fortuno, and CASURECO II". On the day of the hearing of the preliminary injunction the issue of jurisdiction of the trial court over the case was raised by said defendants. On March 13, 1985, an order was issued by the trial court upholding its jurisdiction over the subject matter. A motion for reconsideration of said order was filed by defendants but this was denied in an order of March 16, 1985.

On March 18, 1985, the trial court issued an order resetting the hearing for preliminary injunction on March 25, 1985 to enable defendants to elevate the matter to the appellate court and issued the restraining order enjoining Fortunato from assuming or otherwise performing the functions of a member of the Board of Directors of

CASURECO II until further orders of the Court and the respondent CASURECO II to observe and implement the said restraining order.

Hence, the herein petition for certiorari and prohibition with prayer for preliminary injunction or temporary restraining order filed on March 18, 1985 with this Court wherein petitioners seek to set aside said orders of March 16 and 18, both of 1985 of the trial court and that a restraining order be issued against the trial court taking further action on the case until further orders.

On March 19, 1985, a supplemental petition was filed by petitioners informing the Court of the restraining order the respondent court issued on March 18, 1985 which in effect restrains the continuance in the performance of the duties of Fortunato as an incumbent member of the Board of Directors who was elected in 1981 whose term of office will end on March 30, 1985 and that assuming that he was not a resident of the area of coverage he represents he cannot be arbitrarily suspended or removed from office so that petitioners pray for a restraining order against the enforcement of said order and for the respondent Judge from taking further proceedings in the case.

On March 25, 1985, without giving due course to the petition the respondents were required to comment thereon.

The comment thereon having been filed by the respondents, on October 9, 1985 the Court gave due course to the petition and required the parties to submit their simultaneous memoranda. Only petitioners submitted their memoranda. The case is now submitted for deliberation.

The main thrust of the petition is that the respondent court has no jurisdiction over the case citing Section 24 of P.D. 269 as amended, which vests in the National Electrification Administration (NEA) the power of supervision and control over all electric cooperatives as follows:

"Section 24. Board of Directors. (a) The Management of a Cooperative shall be vested in its Board, subject to the supervision and control of NEA which shall have the right to be represented and to participate in all Board meetings and deliberations and to approve all policies and resolutions.

"The composition, qualifications, the manner of elections and filling of vacancies, the procedures for holding meetings and other similar provisions shall be defined in the By-laws of the Cooperative subject to NEA policies, rules and regulations..." [2]

Thus petitioners argue that:

"Pursuant to the authority granted it by law, the NEA promulgated a standard Electric Cooperative Election Code which the CASURECO II Board of Directors adopted under its Board Resolution No. 108, s. 1982, as amended by Board Resolution No. 84-141 (Exh. 2). This Election Cooperative Election Code provides for the creation of a District Election Committee (DEC) which shall, among other things, 'decide on all election matters including protests, queries, referrals, postponement and nullification' (par. f, Sec. 26, Electric Cooperative Election Code), 'act as Board of Canvassers' (Sec. 26-g, *ibid*), and 'proclaim the winning candidate' (Sec. 50, *ibid*). It is likewise vested with the 'sole jurisdiction' over all protests relating to the election of the members of the Board of Directors, although its decision is appealable to the NEA (Secs. 51, 52, *ibid*).

As already adverted to above, respondent Abante filed two formal complaints questioning the residence qualification of petitioner Fortunato. These two complaints were duly heard and resolved by the DEC in its Resolution No. 04 dated 8 February 1985 (Exh. 4). Abante did not appeal from this Resolution which upheld the residence qualification of Fortunato.

In other words, the District Election Committee which is vested with authority to decide questions of this nature has already ruled that petitioner Fortunato possesses the necessary residence qualification, a decision

which has long become final, no appeal having been taken therefrom. The question, therefore, of Fortuno's alleged non-residence within the area coverage of District V had finally been resolved by the duly constituted and authorized administrative body in accordance with the internal rules and regulations of both CASURECO II and the National Electric Administration.

Moreover, we earnestly underline the fact that immediately after the elections on the afternoon of February 9, 1985, the DEC proclaimed Fortuno as the duly elected Director for District V. No protest against petitioner's proclamation was filed with the DEC, which has the sole jurisdiction to entertain the same, within the reglementary 72-hour period provided for in Section 51 of the Electric Cooperative Election Code. Therefore, said proclamation may no longer be questioned.

These facts assume greater significance when it is remembered that private respondent Abante himself, in his Certificate of Candidacy (Exh. 3), expressly agreed to abide by the Electric Cooperative Election Code, thereby placing himself squarely within the jurisdiction of the provisions thereof.

We respectfully submit, therefore, that inasmuch as the power to determine and decide the residence qualification of petitioner Fortuno is vested in, and falls within the peculiar function and competence of the NEA, acting through its duly created District Election Committee, that the decision rendered by the latter had already become final, said resolution may no longer be questioned elsewhere. The respondent Court thus is without jurisdiction and authority to review and reverse the aforesaid decision of the District Election Committee."^[3]

In support of petitioners' theory the cases of *Lions Clubs International vs. Judge Amores*^[4] and of *Bataan Electric Cooperative vs. Judge Pedro T. Santiago* are cited..^[5]

In the questioned order of March 13, 1985 of the respondent court it made the following disquisition:

"The pleadings and motions filed by counsels disclose the following: 1) Petitioner Joel David S. Abante and respondent Salvio S. Fortuno were the only candidates in the election for District Director, District V, CASURECO II, Inc. for the towns of Canaman, Magarao and Bombon held on February 9, 1985. 2) Few days before the election, or on January 30, 1985 Abante in a petition to the National Electrification Administration (NEA) sought the disqualification of respondent Salvio Fortuno on the ground that the latter was not a resident within the area coverage of District V, CASURECO II. The NEA endorsed the petition to the District Election Committee which in resolution No. 04 dated February 8, 1985 denied Abante's petition. 3) A petition for Mandamus with preliminary injunction to disqualify Fortuno on grounds of non-residence and to enjoin the CASURECO II from proceeding with the election scheduled on February 9, 1985 was filed before the RTC, which was docketed as Civil Case No. RTC' 85-599. After due hearing the Court denied the prayer for postponement of the election and dismissed the petition. 4) The DEC proclaimed Fortuno elected having garnered 1,429 votes as against Abante's votes of 637. No protest was filed by Abante within the 72-hour reglementary period as allegedly provided for in Section 51 of the Electric Cooperative Election Code.

The elected board of CASURECO II will assume their position for a term of 3 years on March 30, 1985. Abante, convinced that Fortuno is disqualified because of non-residence in the area, filed this present Special Civil Action for Quo Warranto. Respondent Fortuno in raising the issue of jurisdiction contends that judicial intervention is not proper; that petitioner failed to exhaust administrative remedies; that this Court has no jurisdiction over the nature of subject matter of the action; that it is the DEC who is vested with the 'sole jurisdiction over all protests of directors, although its decision is appealable to the NEA'. It is claimed that Courts may not intervene in the purely internal affairs of the cooperative and in this regard, respondent cited the case of the *Lions Club International vs. Judge Amores, et al.* (121, SCRA 628) where the Supreme Court opined that: 'in accordance with the general rules as to the judicial interference, the decision of an unincorporated association on the question of an election to office is a matter peculiarly and exclusively to be determined by the association and, in the absence of fraud, is final and binding on the courts'. But in the same

case the Supreme Court also said 'The general rule on non-interference in the internal affairs of associations is, however, subject to exceptions, but the power of review is extremely limited. Accordingly, the courts have and will exercise power to interfere in the internal affairs of associations where law and justice so require, and the proceedings of the association are subject to judicial review where there is fraud, oppression or bad faith, or where the action complained of is capricious, arbitrary, or unjustly discriminatory (underlining supplied, p. 628, Vol. 121, SCRA). Paragraph 4 of the verified petition, last sentence thereof, alleges 'that the DEC with wanton disregard of the elementary rules of fair play - - due process - - arbitrarily denied petitioners complaint for the disqualification of respondent Fortuno.' This Court finds that hearing of the petition for preliminary injunction would not constitute undue interference in the internal affairs of the CASURECO II.

Respondent CASURECO II in support of its objection to the grant of preliminary injunction has cited the case of *Silon vs. Vera* (64, Philippine 868) to wit:

'In quo warranto proceedings instituted for the sole purpose of questioning the legality of the election of the directors of a corporation x x x preliminary injunction does not lie to prevent said directors and officers from discharging their offices and to restore the former directors, and the issuance thereof constitute an excess of jurisdiction and abuse of discretion.'

The Court has read the case and found that the facts of the case has no parallel to the case at bar. The doctrine laid down in said case cannot apply even by analogy to the present case. The 'Reply to the objection' filed by petitioner's counsel has clearly pointed out the striking difference between the two cases and the inapplicability of said case to the case at bar.

The rule regarding exhaustion of administrative remedies is not absolute except when there is an express legal provision requiring such administrative step as a condition precedent to taking action in court. This specially in point taking the fact raised by the respondent that the position is not a public office which would be strictly subject to the hierarchy of higher administrative offices. Failure to exhaust administrative remedies may possibly affect the cause of action but not the jurisdiction of the Court. Another factor, in this particular case, is that the petitioner, has no other immediate and adequate remedy than to go to court in view of the forthcoming assumption of office of the new Board of Directors which would not afford sufficient time to raise the matter to the higher NEA authorities in Manila.

It is to be noted that this case does not involve the validity of the election proceedings, or the number of votes cast but, simply the question of whether the respondent is qualified or not under the residence requirement of the position for which he was a candidate. It is therefore a justiciable controversy."

We agree.

Under Section 1, Rule 66 of the Rules of Court a quo warranto proceeding maybe instituted to determine the right to the use or exercise of a franchise or office and to oust the holder from its enjoyment, if his claim is not well-founded, or if he has forfeited his right to enjoy the privilege.[6] Where the dispute is on the eligibility to perform the duties by the person sought to be ousted or disqualified a quo warranto is the proper action.[7]

Under Section 6, Rule 66 of the Rules of Court it is provided:

"SEC. 6. When an individual may commence such an action. - A person claiming to be entitled to a public office or position usurped or unlawfully held or exercised by another may bring an action therefor in his own name."

In this connection this Court held that an office in a private corporation is an office of public character in such a sense and to such an extent as to render the remedy available to a person having an interest which is injuriously affected.[8] The action may also be brought by a public utility whose rights are invaded by another.[9]

The Supreme Court has concurrent jurisdiction over quo warranto proceedings with the Regional Trial Court in the province in which the defendant or one of the defendants reside, or when defendant is a corporation, in the province in which it is domiciled or has a place of business; but when the Solicitor General of the Philippines commences the action, it may be brought in a Court of First Instance in the City of Manila or the Supreme Court.[10]

From the foregoing provision of the rules and rulings of this Court, the conclusion is inescapable that the quo warranto proceeding filed in the RTC of Naga City questioning the qualification of petitioner Fortuno is within the jurisdiction of said Court. Nowhere in the law can We find any provision that excepts the electric cooperatives from its coverage.

True it is that the NEA has supervision and control over the directors of CASURECO II and that under its election code respondent Abante has the remedy of appeal to the NEA within 72 hours which he did not avail of. Be that as it may, it does not deprive said respondent of the right to avail of the right to file the quo warranto suit when it is shown that the DEC committed a grave abuse of discretion or otherwise acted without jurisdiction or in excess of its jurisdiction in the resolution of the qualification of Fortuno.[11]

The ruling of this Court in *Lions Club International* that the "courts will not interfere with the internal affairs of an unincorporated association" cannot apply to the present case as CASURECO II is clearly a duly organized private corporation in the Philippines. Nevertheless, in said case this Court held that its proceedings (*Lions Clubs International*) are nevertheless subject to judicial review "where law and justice so requires, and x x x" where there is fraud, oppression, bad faith, or where the action complained of is capricious, arbitrary or unjust discriminatory[12] In the present case, Abante alleged in the quo warranto petition that the DEC "arbitrarily denied petitioner's complaint for disqualification of respondent Fortuno" warranting the intervention of the courts.[13]

By the same token the case of *Bataan Electric Cooperative* is predicated on different environmental facts. In said case, what is questioned is the qualification of the voters who voted for the member of the board of directors and not of the one voted for and further the elections sought to be prevented had already been held, so that the petition was considered moot and academic.[14]

WHEREFORE, the petition is DISMISSED without pronouncement as to costs.

SO ORDERED.

Teehankee, C.J., Narvasa, Cruz, and Paras, JJ., concur.

[1] Section 26(f) CASURECO Election Code.

[2] Pages 100-101, Rollo.

[3] Pages 101-102, Rollo.

[4] 121 SCRA 621, 628-629 (1983).

[5] Resolution in G.R. No. 57058, promulgated Feb. 25, 1985.

[6] *State vs. Columbus, etc. Elec. Co.*, 104 O.G. St. 120, 135, N.E. 297, cited in *Comments on the Rules of Court*, Moran, Volume 3, 1980 Edition, p. 218.

[7] *Cesar vs. Garrido*, 53 Phil. 97, 103; *Remata vs. Javier*, 36 Phil. 483.

[8] Cui vs. Cui, 60 Phil. 37.

[9] Ammen Transportation Co. vs. Golingco, 43 Phil. 280, 285.

[10] Section 8, Rule 66, Rules of Court.

[11] Cui vs. Cui, *supra*; Section 6, Rule 66, Rules of Court; Section 2, Rule 65, *supra*; Lions Clubs International vs. Judge Amores, *supra*.

[12] Lions Club International vs. Judge Amores, *supra*.

[13] See Order of Trial Court of March 13, 1985, *supra*.

[14] Bataan Electric Cooperative vs. Judge Pedro Santiago, *supra*.

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