

**NATIVIDAD Q. SALOMON, PETITIONER, VS. NATIONAL ELECTRIFICATION ADMINISTRATION, REPRESENTED BY ADMINISTRATOR RODRIGO CABRERA; LA UNION ELECTRIC COOPERATIVE, INC., REPRESENTED BY ...**

*G.R. No. 81816. January 26, 1989*

Ponente: PARAS, J.

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**PARAS, J.:**

The petitioner, Natividad Q. Salomon, seeks among others her reinstatement as Director for District II of respondent La Union Electric Cooperative, Inc., (LUELCO) by filing the instant petition for certiorari assailing the ruling of respondent National Electrification Administration (NEA) dated May 7, 1987, denying petitioner's request to annul Resolution No. 15-0487 dated April 26, 1987 of respondent La Union Electric Cooperative, Inc., as well as the ruling of the Office of the President dated January 21, 1988, sustaining the NEA Ruling dated May 7, 1987.

The antecedent facts, as narrated in public respondents' Comment dated May 13, 1988 were affirmed by petitioner in her Reply dated May 26, 1988 except for the term of the petitioner as the elected Director for District II of respondent LUELCO which according to her would expire in April 1989 as sworn to by the petitioner in her Reply ("Rejoinder") dated May 26, 1988.

On July 20, 1986, petitioner Natividad Q. Salomon was elected Director of District II of respondent LUELCO for a term to expire in April 1988. However, Eduardo P. Marzan, who garnered the second highest number of votes in the election, filed an election protest with respondent National Electrification Administration (NEA).

On the basis of a finding that petitioner was not a bona fide member of the LUELCO at the time of her election, NEA decided the election protest against petitioner.

Petitioner filed a letter-appeal dated February 25, 1987, which was in the nature of a motion for reconsideration of the NEA ruling.

On February 27, 1987, being the Barangay Captain of Natividad (Poblacion), Naguilian, La Union, petitioner was appointed by the then Minister of Local Government Jaime N. Ferrer as member of the Sangguniang Panlalawigan of La Union, representing the barangay officials of the province. And on March 18, 1987, petitioner took her oath of office and thereafter assumed her duties as such.

In April 1987, respondent administrator Rodrigo Cabrera, in his capacity then as Deputy Administrator, ruled on behalf of the NEA that the designation of the petitioner to the Sangguniang Panlalawigan of La Union disqualified her from further acting as LUELCO Director and that the Board of Directors could appoint her successor for the unexpired portion of her term.

The ruling of the then NEA Deputy Administrator Rodrigo Cabrera was grounded on the provision of Section 21

of Presidential Decree No. 269 to the effect that "elective officers of the government; except barrio captain and councilors, shall be ineligible to become officers and/or directors of any (electric cooperative)." (Section 21 P.D. No. 269). That the said legal proviso is also incorporated in section 3, Article IV, of the LUELCO'S by-laws which runs: "No person shall be eligible to become or to remain a board member of the cooperative who holds an elective office in the government above the level of a barangay captain." (Rollo, p. 3)

Respondent NEA Deputy Administrator Rodrigo Cabrera, ruling on petitioner's Motion for Reconsideration, sent a radio message to the LUELCO Board of Directors stating that the letter appeal of the petitioner to the NEA dated February 25, 1987 had been rendered moot and academic and the Board may now avail of Article IV, Section 12 of the By-laws in filling up the vacancy in District II and pursuant to the said radio message, the LUELCO Board of Directors passed Resolution No. 15-04-87 On April 26, 1987 which provides:

"NOW THEREFORE, on Motion of Director Manuel Mangaser duly seconded by Director Ramon Posadas, be it:

"RESOLVED, as it is hereby resolved to appoint Mr. Eduardo P. Marzan as a member of the Board of this Cooperative (LUELCO) to serve the unexpired portion of the term of Mrs. Natividad Salomon;

"RESOLVED, further, to notify NEA of the said appointment of Mr. Eduardo P. Marzan." (p. 68, Rollo)

On April 28, 1987, petitioner filed with NEA another letter appeal dated April 26, 1987 addressed to NEA Administrator Ernesto Tabios requesting that Resolution No. 15-04-87 be declared null and void.

In reply thereto, Editha S. Bueno, NEA Director for Cooperative Development, in a letter dated May 7, 1987, furnished the petitioner with a copy of the Memorandum dated October 7, 1980 of Atty. Manuel P. Senar, Chief Corporate Legal Counsel of NEA, which reads:

"In view of the above, it is the considered opinion of this office that a barangay Captain who has been appointed to the Sangguniang Bayan, a position higher than a Barangay Captain, is disqualified to run for Director and if already elected, ceases to be a Director from the time he qualifies and assumes office." (Rollo, P. 69)

Said letter dated May 7, 1987 was in effect a denial of the request to annul Resolution No. 15-04-87.

On August 25, 1987, the petitioner wrote the President of the Philippines thru the Honorable Executive Secretary praying that she be reinstated as Director of LUELCO. (Petition, Annex "A"). The said letter appeal is in pursuance of Section 13 of P.D. No. 269 which provides that "all orders, rules and regulations promulgated by the NEA shall be subject to the approval of the Office of the President." (Rollo, p. 4)

On January 21, 1988, the office of the President, thru respondent acting Deputy Executive Secretary Samilo M. Barlongay, in its letter sustained the NEA ruling dated May 7, 1987.

Hence, this petition.

Petitioner interposes her lone issue of whether or not she was legally disqualified from continuing as a duly elected Director for District II of respondent, La Union Electric Cooperative, Inc., (LUELCO) on account of her designation as a member of the Sangguniang Panlalawigan of La Union as the representative of the Barangay officials of the province.

What the petitioner would like to emphasize to this Court is that, her designation as a member of the Sangguniang Panlalawigan falls under the other kind of membership in the Sangguniang Panlalawigan, which is definitely an appointive and not elective position as it is filled up by appointment (or designation) extended by the President of the Philippines (or by his or her alter ego), as provided for in Section 205(2) of the Local Government Code.

Petitioner adopts the view that since she is an appointed public official, having been designated by the then Minister of Local Government Jaime N. Ferrer as member of the Sangguniang Panlalawigan of La Union, the prohibition on elective officers of the government above the rank of Barangay Captain provided by the above quoted Section 21 of P.D. No. 269, as amended, and Section 3(c) Article IV of the By-laws of Electric Cooperative is not applicable to her.

This Court finds petitioner's contention untenable.

Although the disqualification mandated by the provisions pertains to elective officers of the government, except barrio captains and councilors, the same is equally applicable to an appointed member of the Sangguniang Panlalawigan which is an elective office. The prohibition should be construed to refer to a person holding an office, the assumption to which, while generally determined by an election, is not precluded by appointment. The purpose of the disqualification is to prevent incumbents of elective offices from exerting political influence and pressure on the management of the affairs of the cooperative. This purpose cannot be fully achieved if one who is appointed to an elective office is not made subject to the same disqualification.

A person appointed to an elective office can exercise all powers and prerogatives attached to said office. Thus, an appointed member of a Sangguniang Panlalawigan, like petitioner, can wield as much pressure and influence on an electric cooperative, as an elected member thereof.

Petitioner, having been appointed as member of the Sangguniang Panlalawigan of La Union, a position decidedly above the rank of Barangay Captain, cannot remain as Director of LUELCO without violating the spirit and intent of Section 21 P.D. No. 269, as amended, and Section 3(c) Article IV of the By-laws of Electric Cooperatives.

As aptly held in the case of *Matabuena vs. Cervantes* 38 SCRA 284 (1971). " xxxx What is within the spirit of the law is as much a part of what is written xxxx." (p. 73, Rollo)

WHEREFORE, in view of the foregoing, the instant petition is hereby DISMISSED for lack of merit.

**SO ORDERED.**

Melencio-Herrera, (Chairman), Padilla, Sarmiento, and Regalado, JJ., concur.

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