

ELMER F. ESPINA, PETITIONER, VS. COURT OF APPEALS, NATIONAL ELECTRIFICATION ADMINISTRATION, ROMMEL L. MANIKAN, LEYTE IV ELECTRIC COOPERATIVE, INC., BOARD OF DIRECTORS OF LEYTE ...

G.R. No. 97903. August 24, 1998

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition seeking review of the decision of the Court of Appeals, dated March 15, 1991, which dismissed the petition for certiorari filed by herein petitioner and affirmed the order of the National Electrification Administration (NEA), dated October 1, 1990, declaring private respondent Miguel Cotiamco a bonafide member of the Leyte IV Electric Cooperative (LEYECO IV) and therefore qualified to be a director of said cooperative.

The facts are as follows:

Petitioner Elmer Espina and private respondent Miguel Cotiamco were candidates for director of respondent Leyte IV Electric Cooperative (LEYECO IV), representing the Baybay South District.[1]

On May 23, 1990, petitioner Elmer Espina filed with the LEYECO IV District Election Committee (DECOM) a petition to disqualify private respondent Miguel Cotiamco on the ground that respondent was not a bonafide member of the LEYECO IV.[2] The DECOM endorsed the petition to the National Electrification Administration on May 26, 1990.[3]

On May 27, 1990, the election for the position of director of the LEYECO IV, Baybay South District was held. The results of the election showed that Cotiamco garnered 636 votes against Espina's 599 votes. Accordingly, private respondent Cotiamco was proclaimed winner by the DECOM and sworn in as member of the board on June 6, 1990.[4]

On June 27, 1990, the NEA remanded the petition for disqualification filed by petitioner Espina to the DECOM for proper disposition on the ground that the latter had original jurisdiction over the case.[5]

After hearing, the DECOM rendered a decision on July 28, 1990 disqualifying private respondent Cotiamco.[6] Consequently, petitioner Espina took his oath and assumed office.[7]

However, private respondent Cotiamco appealed to the NEA which on October 1, 1990 reversed the DECOM and declared private respondent duly elected director of LEYECO IV, Baybay South District.[8] The NEA found that, contrary to petitioner's claim, private respondent Miguel Cotiamco was a bonafide member of the LEYECO IV.[9]

On October 23, 1990, petitioner Espina in turn filed with the Court of Appeals a petition for certiorari and prohibition with an urgent prayer for the issuance of a temporary restraining order and a writ of preliminary and permanent injunction.[10]

Private respondent Cotiamco moved to dismiss the petition on the ground of lack of jurisdiction of the Court of Appeals, failure of petitioner to exhaust administrative remedies, and lack of merit of the petition.[11]

In a decision rendered on March 15, 1991, the Court of Appeals upheld the order of the NEA.[12] It held that the doctrine of exhaustion of administrative remedies was inapplicable to the case at bar; that the NEA did not commit grave abuse of discretion; that the order of the NEA dated October 1, 1990 was issued in the exercise of its power of supervision and control over electric cooperatives; and, that the findings of the NEA were supported by substantial evidence.[13]

Hence, this petition. Petitioner contends:[14]

I.

RESPONDENT COURT OF APPEALS AND NEA ERRED IN HOLDING AND FINDING THAT MIGUEL COTIAMCO IS A MEMBER OF THE COOPERATIVE AND IS ELIGIBLE FOR CANDIDATE [sic] TO THE POSITION OF MEMBER OF THE BOARD OF DIRECTORS, LEYECO IV.

II.

RESPONDENT COURT OF APPEALS ERRED IN HOLDING AND FINDING THAT RESPONDENT NEA'S LETTER-ORDER (ANNEX "G") WAS ISSUED IN ACCORDANCE WITH LAW, RULES AND REGULATIONS. IN FACT, THE SAID LETTER-ORDER WAS ISSUED IN GROSS VIOLATION OF PETITIONER'S RIGHT TO DUE PROCESS.

Respondents justify the decision of the NEA to take cognizance of the case and dispose of it as a valid exercise of its appellate jurisdiction and power of supervision and control over electric cooperatives. Moreover, they contend that the present petition for review should be dismissed for failure of petitioner Espina to exhaust administrative remedies.

The present petition is well taken. Private respondents' contentions have no merit.

The rule of exhaustion of administrative remedies is not absolute but admits of exceptions. One of these exceptions is when only a question of law is involved and nothing of an administrative nature is to be done or can be done.[15] In this case, the issue whether private respondent Cotiamco is a member of the cooperative is one which calls for the interpretation and application of both the law creating the NEA and the by-laws of the LEYECO IV. Consequently, the Court of Appeals correctly assumed jurisdiction over the case.

However, we hold that the appellate court erred in upholding the NEA's decision and ruling that the said agency did not commit grave abuse of discretion in declaring private respondent Cotiamco a bonafide member of the LEYECO IV and therefore qualified to run for a seat in the board of directors on the basis of the following facts:[16]

- a) That membership No. 166 had long been approved by the LEYECO IV Board of Directors on October 30, 1977;
- b) That the LEYECO IV Consumer's Index bears the entry Carmen-Miguel Cotiamco using the same membership number;
- c) That Miguel Cotiamco had been using the aforementioned membership number in all his dealings/transactions with the electric cooperative;
- d) That the LEYECO IV Board and Management allowed him to use the same membership number when he availed of separate metering on November 16, 1987 per Meter No. 65026129 and which fact can be gleaned from the entries of the Consumer's Index thereafter separately issued in his favor;

e) That it was he who used the said membership number and not Carmen Cotiamco in the District Elections for Baybay South District in 1987 per ballot No. 000219 - entry No. 951 of the Voters' Masterlist;

f) That his name as bonafide member of the electric cooperative appeared in both the 1987 and 1990 Masterlist of Voters for Baybay South District.

and on the principle of estoppel:[17]

Furthermore, the principle of estoppel now lies as against the LEYECO IV Board and Management with respect to the issue of his [Miguel Cotiamco's] membership with the electric cooperative.

Section 21 of P.D. No. 269 (Charter of the NEA) provides:

SEC. 21. Members. - Each incorporator of a cooperative shall be a member thereof, but no other person may become a member thereof unless such other person agrees to use services furnished by the cooperative when made available by it. Membership in a cooperative shall not be transferable, except as provided in the by-laws. The by-laws may prescribe additional qualifications and limitations with respect to membership. (underlining ours)

Thus, the law clearly requires that for a person other than an incorporator to be a member of the cooperative, he must agree to use the services furnished by the cooperative and he must have such other qualifications as may be prescribed by the by-laws of the cooperative. In this case, the by-laws of the LEYECO IV requires not only that one agrees to purchase electric energy but that one must apply for membership in the cooperative. Thus, the by-laws states:[18]

SECTION 1. Requirements for membership. Any person, firm, association, corporation or body politic or subdivision thereof will become member of LEYTE IV ELECTRIC COOPERATIVE, INC. hereinafter called the "Cooperative"), provided that he or it has first:

- (a) Made a written application for membership therein;
- (b) Agreed to purchase from the Cooperative electric energy as hereinafter specified;
- (c) Agreed to comply with and be bound by the articles of incorporation and by laws of the Cooperative and any rules and regulations adopted by the board; and
- (d) Paid the Membership fee hereinafter specified.

Provided, however, that no person, firm, corporation or body politic shall become a member unless and until he or it has been accepted for membership by the board.

No membership in the Cooperative shall be transferable, except as provided in these bylaws.

The word "board" is used herein to refer to the board of directors.

SECTION 2. Membership Certificates. Membership in the Cooperative shall be evidenced by a membership certificate which shall be in such form and shall contain such provisions as shall be determined by the board. Such certificate shall be signed by the President and by the Secretary of the Cooperative and the corporate seal shall be affixed thereto. No membership certificate shall be issued for less than the membership fee fixed in these bylaws, nor until such membership fee has been fully paid for. In case a certificate is lost, destroyed or mutilated a new certificate may be issued therefor upon such uniform terms and indemnity to the Cooperative as the board may prescribe.

Private respondent Cotiamco did not meet these requirements. In fact, he has no certificate to show as evidence of membership in the cooperative. The fact that he purchased electric energy using Membership Certificate No. 166

does not prove he is a member of the cooperative. The membership certificate in question is not his but that of his sister-in-law Carmen Cotiamco. The Manager of the Member Service Department of LEYECO IV certified that Miguel Cotiamco is not a member of the cooperative. His certification states:[19]

LEYTE IV ELECTRIC COOPERATIVE, INC.

Hilongos, Leyte

C E R T I F I C A T I O N

TO WHOM IT MAY CONCERN:

This is to certify that one Miguel Cotiamco of 30 de Diciembre St., Baybay, Leyte is an “industrial consumer of the Cooperative as of November 11, 1987.

It is certified further that nothing on record showed the membership of Miguel Cotiamco to (sic) the Cooperative.

Issued this 3rd day of July, 1990 at Hilongos, Leyte.

(SGD.) ROMULO L. LACERNA

Manager, Member Services Dept.

(underlining ours)

On the other hand, said manager certified that the registered member is actually Carmen Cotiamco, Miguel’s sister-in-law, thus:[20]

LEYTE IV ELECTRIC COOPERATIVE, INC.

Hilongos, Leyte

C E R T I F I C A T I O N

TO WHOM IT MAY CONCERN:

THIS IS TO CERTIFY that Mrs. Carmen Cotiamco is the registered member of Leyeco IV under membership #166 which was approved by the Board of Directors on October 30, 1997.

Evidencing her membership is the issuance of Official Receipt No. 000287 issued on October 24, 1997.

Hilongos, Leyte, May 23, 1990.

(SGD.) ROMULO LACERNA

Manager, Member Services Department

(underlining ours)

He also certified that there is nothing on record which showed a separate membership of private respondent Miguel Cotiamco, thus:[21]

C E R T I F I C A T I O N

TO WHOM IT MAY CONCERN:

THIS IS TO CERTIFY that records of this office show that CARMEN-MIGUEL COTIAMCO is a member-consumer bearing membership number 166 since August 18, 1981.

It is further certified that Miguel Cotiamco become an industrial consumer since November 16, 1987 using the same membership number.

Nothing on record showed a separate membership of Miguel Cotiamco.

Issued this 6th day of June, 1990 at Hilongos, Leyte.

(SGD.) ROMULO L. LACERNA

Manager, Member Services Department

Nor can there be a joint membership of private respondent Miguel Cotiamco and his sister-in-law Carmen, as the by-laws allow joint membership only in the case of husband and wife. Thus, the by-laws provides in Article I, §§3&4 that:

Section 3. Joint Membership. A husband and wife may apply for a joint membership and, subject to their compliance with the requirements set forth in Section 1 of this Article, may be accepted for such membership. The term "member" as used in these bylaws shall be deemed to include a husband and wife holding a joint membership and any provisions relating to the rights and liabilities of membership shall apply equally with respect to the holders of a joint membership. Without limiting the generality of the foregoing, the effect of the hereinafter specified actions by or in respect of the holders of a joint membership shall be as follows:

- (a) The presence at a meeting of either or both shall be regarded as the presence of one member and shall constitute a joint waiver of notice of the meeting;
- (b) The vote of either separately or both jointly shall constitute one joint vote;
- (c) A waiver of notice signed by either or both shall constitute a joint waiver;
- (d) Notice to either shall constitute notice to both;
- (e) Expulsion of either shall terminate the joint membership;
- (f) Withdrawal of either terminate the joint membership;
- (g) Either but not both may be elected or appointed as an officer or board member, provided that both meet the qualifications for such office.

SECTION 4. Conversion of Membership. (a) A Membership may be converted to a joint membership upon the written request of the holder thereof and the agreement by such holder and his or her spouse to comply with the articles of incorporation, by-laws and rules and regulations adopted by the board. The outstanding membership certificates shall be surrendered, and shall be reissued by the Cooperative in such manner as shall indicate the changed membership status.

(b) Upon the death of either spouse who is a party to the joint membership, such membership shall be held solely by the survivor. The outstanding membership certificate shall be surrendered, and shall be reissued in such manner as shall indicate the changed membership status, provided, however, that the estate of the deceased shall not be released from any debts due to the Cooperative.

Nevertheless, the NEA and the Court of Appeals held that having allowed private respondent Cotiamco to exercise the membership rights of Carmen Cotiamco to vote in the district elections of 1987 and 1990, the cooperative could no longer deny his membership under the principle of estoppel. But, as petitioner points out, he was not privy to any arrangement that private respondent and the LEYECO IV might have and thus the doctrine of estoppel cannot be invoked against himself. It may be added that the doctrine cannot be used to disregard the provisions of law, in this case, the provision of P.D. No. 269, §24 which requires membership in the cooperative

as a condition for membership in the board of directors. It states:

Sec. 24. Board of Directors.- (a) The business of a cooperative shall be managed by a board of not less than five directors, each of whom shall be a member of the cooperative or of another which is a member thereof. . . .

The ruling of the NEA that private respondent is a bonafide member of the cooperative and for that reason was qualified to be a director contravenes both the provisions of P.D. No. 269 and the by-laws of the LEYECO IV. It was error for the Court of Appeals to affirm such ruling of the NEA which was clearly rendered with grave abuse of discretion.

Petitioner's contention that he was denied due process is, however, untenable. As the NEA and the Court of Appeals found, petitioner filed an opposition to private respondent Cotiamco's "Motion for Issuance of Restraining Order Against Espina" in the NEA, thus belying petitioner's claim that he did not know that the decision of the DECOM had been appealed to the NEA. Consequently, he cannot claim lack of notice. It is settled that what the law prohibits is not the absence of previous notice but the absolute absence thereof and lack of an opportunity to be heard.[22]

Under §48(17) of the LEYECO IV Election Code, votes cast for a "candidate who has been disqualified" are considered stray votes. Although at the time the election in this case was held private respondent had not been declared to be disqualified, there is no reason why this provision cannot be applied to this case and the votes cast for him considered stray so as to declare petitioner the winner. After all, the petition for disqualification of private respondent was filed before the election.

At all events, this case is now moot and academic as the term of office of director expired on June 26, 1993, pursuant to Art. IV, §2 of the by-laws of LEYECO IV.

WHEREFORE, petition is DISMISSED for being moot and academic.

SO ORDERED.

Melo and Martinez, JJ., concur.

Regalado, J. (Chairman), on official leave.

Puno, J., no part. Participated in the court below.

[1] Rollo, p. 45; Annex C.

[2] Id., p. 51; Annex D.

[3] Id., p. 53; Annex E.

[4] Id., p. 45.

[5] Ibid.

[6] Id., pp. 54-55; Annex F.

[7] CA Rollo, p. 105.

[8] Rollo, pp. 45-50; Annex C.

[9] Ibid.

[10] CA Rollo, pp. 2-27.

[11] *Id.*, p. 80.

[12] *Id.*, pp. 120-131.

[13] *Ibid.*

[14] *Rollo*, p. 15.

[15] *Valmonte v. Belmonte, Jr.*, 170 SCRA 256, 263 (1989), citing *Pascual v. Provincial Board*, 106 Phil. 466 (1959); *Aguilar v. Valencia, et al.*, 40 SCRA 210 (1971); *Malabanan v. Ramento*, 129 SCRA 359 (1984).

[16] *Rollo*, p. 48.

[17] *Ibid.*

[18] *CA Rollo*, p. 36; Annex H.

[19] *Id.*, p. 95.

[20] *Id.*, p. 96.

[21] *Id.*, p. 98

[22] *Figuerola v. Securities and Exchange Commission*, 162 SCRA 689, 695 (1988).

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