

## SECOND DIVISION

[ G.R. Nos. 176935-36, October 20, 2014 ]

**ZAMBALES II ELECTRIC COOPERATIVE, INC. (ZAMECO II) BOARD OF DIRECTORS, NAMELY, JOSE S. DOMINGUEZ (PRESIDENT), ISAIAS Q. VIDUA (VICE-PRESIDENT), VICENTE M . BARRETO (SECRETARY), JOSE M. SANTIAGO (TREASURER), JOSE NASERIV C. DOLOJAN, JUAN D. FERNANDEZ AND HONORIO L. DILAG, JR. (MEMBERS), PETITIONERS, VS. CASTILLEJOS CONSUMERS ASSOCIATION, INC. (CASCONA), REPRESENTED BY DOMINADOR GALLARDO, DAVID ESPOSO, CRISTITA DORADO, EDWIN CORPUZ, E. ROGER DOROPAN, JOSEFINA RAMIREZ, FERNANDO BOGNOT, JR., CARMELITA DE GUZMAN, MAXIMO DE LOS SANTOS, AURELIO FASTIDIO, BUENAVENTURA CELIS, ROBERTO LADRILLO, CORAZON ACAYAN, CARLITO CARREON, EDUARDO GARCIA, MARCIAL VILORIA, FILETO DE LEON AND MANUEL LEANDER, RESPONDENTS,**

**ZAMBALES II ELECTRIC COOPERATIVE, INC. (ZAMECO II) BOARD OF DIRECTORS, JOSE S. DOMINGUEZ (PRESIDENT), ISAIAS Q. VIDUA (VICE-PRESIDENT), VICENTE M . BARRETO (SECRETARY), JOSE M. SANTIAGO (TREASURER), JOSE NASERIV C. DOLOJAN, JUAN D. FERNANDEZ AND HONORIO L. DILAG, JR. (MEMBERS), PETITIONERS, VS. NATIONAL ELECTRIFICATION ADMINISTRATION (NEA) NEA-OFFICE OF THE ADMINISRATIVE COMMITTEE, ENGR. PAULINO T. LOPEZ AND CASTILLEJOS CONSUMERS ASSOCIATION, INC. (CASCONA), RESPONDENTS.**

### R E S O L U T I O N

**BRION, J.:**

The Court notes the March 25, 2010 Report submitted by the Court of Appeals (CA) pursuant to our March 13, 2009 Decision<sup>[1]</sup> and takes this Report into account in fully resolving the case in caption.

By way of background, our March 13, 2009 Decision remanded the case to the CA to resolve the factual issue raised in relation with the registration of Zambales II Electric Cooperative, Inc. (ZAMECO II) with the Cooperative Development Authority (CDA). We needed to settle these factual issues to determine whether the November 24, 2004<sup>[2]</sup> resolution and February 15, 2005 decision<sup>[3]</sup> of the National Electrification Administration (*the NEA*) may still be enforced against petitioners Jose S. Dominguez, Isaias Q. Vidua, Vicente M. Barreto, Jose M. Santiago, Jose Naseriv C. Dolojan, Juan D. Fernandez and Honorio L. Dilag, Jr. (*petitioners*).

#### **Factual Antecedents**

## I. Background

### a. *The NEA proceedings*

The petitioners are members of the Board of Directors of the ZAMECO II, an electric cooperative organized and registered under Presidential Decree (*P.D.*) No. 269.<sup>[4]</sup> Castillejos Consumers Association, Inc. (*CASCONA*), on the other hand, is an organization of electric consumers from the municipality of Castillejos, Zambales under the coverage area of ZAMECO II.

On November 21, 2002, *CASCONA* filed a letter-complaint<sup>[5]</sup> with the NEA seeking the removal of the petitioners from the Board based **on the NEA's June 25, 1998 Financial Audit Report of ZAMECO II for the period January 1, 1989 to September 30, 1997.**<sup>[6]</sup> The NEA endorsed the letter-complaint<sup>[7]</sup> to the NEA-Office of the Administrative Committee (*the NEA-ADCOM*), which in turn immediately set the case for mandatory conference after completion of the exchange of pleadings between the parties. The NEA-ADCOM thereafter issued its Report and Recommendations,<sup>[8]</sup> recommending the removal of the petitioners from office. The NEA-ADCOM's Report and Recommendations was eventually endorsed to the NEA for its consideration.

On November 24, 2004, the NEA issued its resolution<sup>[9]</sup> (*NEA Resolution*) removing the petitioners from office with the accessory penalty of perpetual disqualification to run for the same position.<sup>[10]</sup> To address the operational vacuum caused by the petitioners' removal, the NEA urged the NEA Administrator to designate a Project Supervisor to manage the operations of ZAMECO II, until the election and constitution of a new set of Board of Directors.<sup>[11]</sup>

In arriving at its conclusions, the NEA relied on the NEA-ADCOM's Report and Recommendations and **the July 24, 2003 Audit Report** that was not part of the letter-complaint,<sup>[12]</sup> or of the proceedings before the NEA-ADCOM. The petitioners thus moved for reconsideration of the NEA resolution contending that they had been denied due process as they had never been notified of the charges based on the July 24, 2003 Audit Report. The NEA, however, would later deny the petitioners' motion for reconsideration,<sup>[13]</sup> in its February 15, 2005 decision (*NEA decision*), prompting the petitioners to seek the CA's intervention, under Rule 43 of the Rules of Court, docketed as CA-G.R. No. SP 88845.<sup>[14]</sup>

Previously, the NEA also designated Engr. Paulino T. Lopez as ZAMECO II's Project Supervisor in its Office Order No. 2005-003 (*NEA Office Order*).<sup>[15]</sup> The petitioners promptly questioned this NEA Office Order with the CA via a Rule 65 special civil action for *certiorari*, with prayer for a temporary restraining order (*TRO*),<sup>[16]</sup> docketed as CA-G.R. SP No. 88195.

The CA eventually consolidated these two cases,<sup>[17]</sup> and on October 4, 2006, rendered its decision,<sup>[18]</sup> denying both petitions and affirming the assailed the NEA issuances. The petitioners timely moved for reconsideration,<sup>[19]</sup> but the CA denied their motion.<sup>[20]</sup> The petitioners then filed the present Rule 45 petition for

review<sup>[21]</sup> with this Court.

### ***b. The Rule 45 proceedings***

The petitioners argued that the NEA's jurisdiction over electric cooperatives originated from the loans extended by the NEA. According to the petitioners, Republic Act (R.A.) No. 9136, otherwise known as the "*Electric Power Industry Reform Act of 2001*"(EPIRA),<sup>[22]</sup> effectively abrogated the NEA's power to supervise and control electric cooperatives after it transferred to the Power Sector Assets and Liabilities Management Corporation (*PSALM*) all outstanding financial obligations of electric cooperatives to the NEA.<sup>[23]</sup> They likewise claimed a denial of due process as the NEA failed to notify them of the charges based on the July 24, 2003 Audit Report. **Subsequently, the petitioners filed a supplemental petition,<sup>[24]</sup> contending that ZAMECO II's registration with the CDA on December 4, 2007, had ousted the NEA of its jurisdiction.**

The NEA, in its Comment<sup>[25]</sup> of November 18, 2008, assailed the validity of ZAMECO II's registration with the CDA. It claimed that ZAMECO II failed to comply with the EPIRA's formal conversion requirements to structure either as a stock cooperative under R.A. No. 6938 (*Cooperative Code*), in relation to R.A. No. 6939,<sup>[26]</sup> or as a stock corporation under the Batas Pambansa Blg. 68 (*Corporation Code*), before it registered with the CDA. The NEA thus insisted on assuming jurisdiction over ZAMECO II in light of its invalid registration.<sup>[27]</sup>

### ***c. The Court's March 13, 2009 Decision***

We denied the petitioners' petition for lack of merit in our Decision<sup>[28]</sup> of March 13, 2009. We ruled that the NEA's regulatory power over electric cooperatives is not dependent on the existence of any creditor-debtor relationship between them. The passage of the EPIRA and its creation of the PSALM, which assumed all outstanding financial obligations of electric cooperatives, did not therefore affect the power of the NEA particularly over administrative cases involving the board of directors, officers and employees of electric cooperatives.

The NEA's authority is expressly recognized under the last paragraph of Section 58, Chapter VII of the EPIRA, which states that "*the NEA shall continue to be under the supervision of the [Department of Energy] and shall exercise its functions under [P.D. No. 269], as amended by [P.D. No. 1645]<sup>[29]</sup> insofar as they are consistent with this Act.*"

Although we agreed with the petitioners' observation that they had been denied due process before the NEA, as they had not been informed of the charges based on the July 24, 2003 Audit Report, we refused to nullify the entire proceedings. We found substantial evidence to support the other allegations in the letter-complaint, to justify the petitioners' removal from office.

Lastly, while we upheld the NEA's assumption and exercise of jurisdiction over electric cooperatives, we recognized the adverse effect of ZAMECO II's **supposed registration with the CDA as a stock cooperative** on the NEA's power to enforce

its assailed resolution and decision. Since the validity of ZAMECO II's registration involved a factual question, we remanded the case to the CA for further proceedings. To quote our ruling:

WHEREFORE, the instant case is hereby REMANDED to the Court of Appeals for further proceedings in order to determine whether the procedure outlined in Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001, and its Implementing Rules for the conversion of an electric cooperative into a stock cooperative under the Cooperative Development Authority had been complied with. The Court of Appeals is directed to raffle this case immediately upon receipt of this Decision and to proceed accordingly with all deliberate dispatch. Thereafter, it is directed to forthwith transmit its findings to this Court for final adjudication. No pronouncement as to costs.

***d. Motion for Partial Reconsideration and the Court's August 10, 2009 Resolution***

The petitioners moved for reconsideration of our March 13, 2009 Decision on the ground that the EPIRA's condonation of these NEA loans *ipso facto* deprived the NEA of any power to regulate or supervise ZAMECO II.<sup>[30]</sup> The petitioners further argued that a CDA certificate of registration is a conclusive evidence of registration under the Cooperative Code; it was thus unnecessary to remand the case to the CA to resolve the factual issue of validity of registration.<sup>[31]</sup> We denied the petitioners' Motion for Partial Reconsideration for lack of merit in our August 10, 2009 Resolution.<sup>[32]</sup>

***e. Entry of Judgment and its subsequent recall***

In view of the denial of the petitioners' Motion for Partial Reconsideration, this Court issued an Entry of Judgment on September 2, 2009,<sup>[33]</sup> stating that our March 13, 2009 Decision had become final and executory. The petitioners, afterwards, promptly filed a motion to set aside the entry of judgment on the sole ground that our March 13, 2009 Decision is an interlocutory order.<sup>[34]</sup>

On February 3, 2010, we granted the petitioners' motion<sup>[35]</sup> and recalled the Entry of Judgment as our Decision was interlocutory in character. It **still left something to be done** by the CA, *i.e.*, to determine whether the proceedings outlined in the EPIRA and its Implementing Rules and Regulations (*IRR*), for the conversion of an electric cooperative into a stock cooperative under the CDA, had been complied with. In this sense, our March 13, 2009 Decision cannot attain a final and executory character.

**II. CA's Compliance Report**

On March 25, 2010, the CA submitted its Report pursuant to our March 13, 2009 Decision. The CA found that **ZAMECO II's registration with the CDA did not comply with the referendum requirement under the EPIRA's IRR.** In the absence of a referendum, ZAMECO II failed to obtain the required simple majority

vote in order to validly convert it into either a stock cooperative or a stock corporation. On June 16, 2010 we issued a resolution noting the CA's Report.<sup>[36]</sup>

### **The Court's Ruling**

In view of the CA's Report, we find no reason to depart from our March 13, 2009 Decision and August 10, 2009 Resolution. Before proceeding to discuss the validity of ZAMECO II's registration in 2007, however, we shall first determine the basis of the NEA's jurisdiction up to the time of its challenge by the petitioners.

#### **A. The NEA's creation and disciplinary jurisdiction**

The present NEA was created in 1973 under P.D. No. 269 to administer the country's total electrification on an area coverage basis, by organizing, financing and regulating electric cooperatives throughout the country. The NEA's enforcement powers under P.D. No. 269, however, was limited.<sup>[37]</sup>

In 1979, P.D. No. 1645 amended P.D. No. 269 and **broadened the NEA's regulatory powers**, among others. Specifically, the amendments **emphatically recognized the NEA's power of supervision and control** over electric cooperatives; and **gave it the power to conduct investigations, and impose preventive or disciplinary sanctions over the board of directors** of regulated entities. Section 10 of P.D. No. 269, as amended by P.D. No. 1645 reads:

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 the 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.** [Emphasis supplied]

Likewise, Section 24 of P.D. No. 269, as amended by P.D. No. 1645, stressed that the board of directors of a regulated electric cooperative is subject to the NEA's