

## SECOND DIVISION

[ G.R. No. 158761, December 04, 2007 ]

**NATIONAL ELECTRIFICATION ADMINISTRATION, PETITIONER,  
VS. VICTORIANO B. GONZAGA, RESPONDENT.**

### DECISION

**VELASCO JR., J.:**

For review under Rule 45 are the March 6, 2003 Decision<sup>[1]</sup> and June 10, 2003 Resolution<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 68769, which dismissed petitioner's appeal of the July 23, 2001 Order<sup>[3]</sup> of the Pagadian City Regional Trial Court (RTC), Branch 21 in Civil Case No. 4282-2K, and denied petitioner's Motion for Reconsideration, respectively.

On November 13, 2000, respondent Victoriano B. Gonzaga filed his Certificate of Candidacy for membership in the Board of Directors of Zamboanga del Sur II Electric Cooperative, Inc., District II (ZAMSURECO). Later that day, the screening committee resolved to disqualify respondent because his spouse was an incumbent member of the *Sangguniang Bayan* of Diplahan, Zamboanga del Sur. Based on the Electric Cooperative Election Code (ECEC), promulgated by petitioner National Electrification Administration (NEA), a candidate whose spouse occupies an elective government position higher than Barangay Captain is prohibited to run as director of an electric cooperative. ZAMSURECO's by-laws, however, do not provide for such ground for disqualification.<sup>[4]</sup>

On November 21, 2000, respondent filed a Petition for Prohibition and Damages, docketed as Civil Case No. 4282-2K with the Pagadian City RTC.

ZAMSURECO filed a Motion to Dismiss and Answer on November 24, 2000, which the RTC denied. However, it issued a temporary restraining order, ordering ZAMSURECO's officials to refrain from conducting the election for directorship set on December 2, 2000.

The RTC said that the petition was dismissible because of the failure of respondent to exhaust all administrative remedies, as required by Section 2, 2.C of the ECEC Guidelines on the Conduct of District Elections for Electric Cooperative. The section required that "a protest arising from disqualification shall be filed with the screening committee in not less than FIVE (5) days before the election. The screening committee shall decide the protest within FORTY-EIGHT (48) hours from receipt thereof. Failure of the applicant to file his/her protest within the above-cited period shall be deemed a waiver of his right to protest."<sup>[5]</sup>

As observed by the RTC, respondent had urgently filed the petition on November 21, 2000 because the election sought to be restrained was going to be held on

December 2, 2000 and November 20 was a holiday. Under the circumstances, respondent had little time to exhaust the remedy in Sec. 2 of the Guidelines, such that an exception could be made. More importantly, according to the RTC, the rule on exhaustion of administrative remedies cannot be invoked in the instant case since the guidelines prescribing the administrative remedy is a subject matter of the ECEC, which is at issue, and is exactly what is being sought to be invalidated.<sup>[6]</sup>

On December 12, 2000, respondent filed a motion to withdraw the amended petition, and to admit a second amended petition that impleaded NEA as indispensable party. Respondent also averred that the ECEC was null and void because it had not been published. On December 20, 2000, the RTC admitted the second amended petition, issued a writ of preliminary injunction to prevent the conduct of election for directorship, issued summons to NEA, and required NEA to comment if the ECEC was published in any newspaper of general circulation.<sup>[7]</sup>

On January 29, 2001, NEA filed a motion for extension of time to file an answer, and subsequently on April 10, 2001, a Motion for Leave to Admit Pleading to which a Motion to Dismiss was attached. NEA questioned the jurisdiction of the RTC and alleged that respondent failed to exhaust administrative remedies.<sup>[8]</sup>

In its July 23, 2001 Order,<sup>[9]</sup> the RTC denied petitioner's Motion to Dismiss for being filed out of time. More importantly, it noted NEA's failure to state whether the ECEC was indeed published in a newspaper of general circulation as required by the New Civil Code and the Administrative Code of 1987. The RTC said the failure rendered the ECEC null and void. As regards the lack of jurisdiction and non-exhaustion of administrative remedies, the RTC noted that NEA erroneously relied on Sec. 59 of Presidential Decree No. (PD) 269 and misapplied the cases it cited.

According to the RTC, Sec. 59 of PD 269 refers to "order, ruling or decision of the NEA" in the exercise of NEA's quasi-judicial functions. And the RTC noted that Secs. 51 to 58 refer to hearings, investigations, and procedures. On the other hand, the validity of the ECEC, subject of the instant petition, was an exercise of NEA's quasi-legislative function or rule-making authority.

Further, according to the RTC, NEA took Sec. 58 of PD 269 out of context when it said Sec. 58 dealt with the administrative remedy available to petitioner. It said that Sec. 58 presupposed a ruling or decision of the NEA and there was none in the case before it. The RTC ruled in favor of Gonzaga, and ordered ZAMSURECO to accept Gonzaga's certificate of candidacy for director.<sup>[10]</sup> The RTC denied NEA's motion for reconsideration.

### **The CA Ruled that the Courts Have Jurisdiction Over Issues on Legality of Codes**

Aggrieved, petitioner appealed to the CA. The CA denied due course and dismissed the petition. It said that NEA was not exercising its quasi-judicial powers but its rule-making authority. In the case before the trial court, the CA stressed that the issue involved the interpretation of the ECEC, and to this extent, NEA had no jurisdiction because the issue is within the province of the courts.

The CA denied petitioner's Motion for Reconsideration in its June 10, 2003

Resolution. Hence, we have this petition.

### **The Issues**

WHETHER OR NOT THE COURT OF APPEALS ERRED IN NOT APPLYING SECTION 59 OF P.D. 269

WHETHER OR NOT THE COURT OF APPEALS ERRED IN UPHOLDING THE TRIAL COURT'S NULLIFICATION OF THE ECEC

### **Issues Involving NEA's Rule-Making Authority Are Cognizable by Regular Courts**

The petition has no merit.

Sec. 59 of PD 269 provides:

SEC. 59. *Court Review.*—The Supreme Court is hereby given jurisdiction to review any order, ruling or decision of the NEA and to modify or set aside such order, ruling or decision when it clearly appears that there is no evidence before the NEA to support reasonably such order, ruling or decision, or that the same is contrary to law, or that it was without the jurisdiction of the NEA. The evidence presented to the NEA, together with the record of the proceedings before the NEA, shall be certified by the NEA to the Supreme Court. Any order, ruling or decision of the NEA may likewise be reviewed by the Supreme Court upon writ of certiorari in proper case. The procedure for review, except as herein provided, shall be presented by rules of the Supreme Court. Any order or decision of the NEA may be reviewed on the application of any person or public service entity aggrieved thereby and who was a party in the subject proceeding, by certiorari in appropriate cases or by a petition for review, which shall be filed within thirty (30) days from the notification of the NEA order, decision or ruling on reconsideration. Said petition shall be placed on file in the office of the Clerk for the Supreme Court who shall furnish copies thereof to the NEA and other interested parties.

Petitioner argues that based on the foregoing provision, only the Supreme Court has the authority to review the "acts" of NEA as an administrative body with adjudicative and rule-making power. It cited *NEA v. Mendoza*, using the Court's pronouncement that:

[T]he power of judicial review of NEA's order or decision pertains to the Supreme Court as decreed in Section 59 of P.D. 269 which vests specifically *on the Supreme Court* the jurisdiction to review any order, ruling or decision of the NEA and to modify or set aside such orders, rulings or decisions.<sup>[11]</sup>

It is obvious that Sec. 59 of PD 269 refers to "order, ruling or decision" of NEA. What is being challenged in this case is the decision of the screening committee of ZAMSURECO to disqualify respondent. Likewise assailed is the validity of the ECEC, particularly, whether the requirement of publication was complied with. The ECEC was issued by NEA pursuant to its rule-making authority, not its quasi-judicial function. Hence, the issue regarding the controversy over respondent's

disqualification and the question on the ECEC's validity are within the inherent jurisdiction of regular courts to review. Petitioner's reliance on *NEA* is misplaced. The subject in that case was the electricity rates charged by a cooperative, a matter which is clearly within NEA's jurisdiction. The issue in the present petition, however, centers on the validity of NEA's rules in light of the publication requirements of the Administrative Code and New Civil Code. The present issue is cognizable by regular courts.

With regard to the second issue, we find no error in the appellate and trial courts' nullification of the ECEC. The CA correctly observed that while ZAMSURECO complied with the requirements of filing the code with the University of the Philippines Law Center, it offered no proof of publication in the *Official Gazette* nor in a newspaper of general circulation. Without compliance with the requirement of publication, the rules and regulations contained in the ECEC cannot be enforced and implemented.

Article 2 of the New Civil Code provides that laws shall take effect after fifteen (15) days following the completion of their publication in the *Official Gazette* or in a newspaper of general circulation in the Philippines, unless it is otherwise provided.

Executive Order No. 292, otherwise known as the *Administrative Code of 1987*, reinforced the requirement of publication and outlined the procedure, as follows:

Sec. 3. Filing. (1) Every Agency shall file with the University of the Philippines Law Center three (3) Certified copies of every rule adopted by it. Rules in force on the date of effectivity of this Code which are not filed within three (3) months from that date shall not thereafter be the basis of any sanction against any party or persons.

(2) The Records Officer of the agency, or his equivalent functionary, shall carry out the requirements of this section under pain of disciplinary action.

(3) A permanent register of all rules shall be kept by the issuing agency and shall be open to public inspection.

Sec. 4. Effectivity – In addition to other rule-making requirements provided by law not inconsistent with this Book, each rule shall become effective fifteen (15) days from the date of filing as above provided unless a different date is fixed by law, or specified in this rule.

Sec. 18. When Laws Take Effect – Laws shall take effect after Fifteen (15) days following the completion of their publication in the *Official Gazette* or in a newspaper of general circulation, unless it is otherwise provided.

We have already emphasized and clarified the requirement of publication in this Court's Resolution in *Tañada v. Tuvera*:

We hold therefore that all statutes, including those of local application and private laws, shall be published as a condition for their effectivity which shall begin fifteen (15) days after publication unless a different effectivity date is fixed by the legislature.