

EN BANC

[G.R. No. 143076, June 10, 2003]

PHILIPPINE RURAL ELECTRIC COOPERATIVES ASSOCIATION, INC. (PHILRECA); AGUSAN DEL NORTE ELECTRIC COOPERATIVE, INC. (ANECO); ILOILO I ELECTRIC COOPERATIVE, INC. (ILECO I); AND ISABELA I ELECTRIC COOPERATIVE, INC. (ISELCO I), PETITIONERS, VS. THE SECRETARY, DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT, AND THE SECRETARY, DEPARTMENT OF FINANCE, RESPONDENTS.

D E C I S I O N

PUNO, J.:

This is a petition for Prohibition under Rule 65 of the Rules of Court with prayer for the issuance of a temporary restraining order seeking to annul as unconstitutional sections 193 and 234 of R.A. No. 7160 otherwise known as the Local Government Code.

On May 23, 2000, a class suit was filed by petitioners in their own behalf and in behalf of other electric cooperatives organized and existing under P.D. No. 269 who are members of petitioner Philippine Rural Electric Cooperatives Association, Inc. (PHILRECA). Petitioner PHILRECA is an association of 119 electric cooperatives throughout the country. Petitioners Agusan del Norte Electric Cooperative, Inc. (ANECO), Iloilo I Electric Cooperative, Inc. (ILECO I) and Isabela I Electric Cooperative, Inc. (ISELCO I) are non-stock, non-profit electric cooperatives organized and existing under P.D. No. 269, as amended, and registered with the National Electrification Administration (NEA).

Under P.D. No. 269, as amended, or the National Electrification Administration Decree, it is the declared policy of the State to provide "the total electrification of the Philippines on an area coverage basis" the same "being vital to the people and the sound development of the nation."^[1] Pursuant to this policy, P.D. No. 269 aims to "promote, encourage and assist all public service entities engaged in supplying electric service, particularly electric cooperatives" by "giving every tenable support and assistance" to the electric cooperatives coming within the purview of the law.^[2] Accordingly, Section 39 of P.D. No. 269 provides for the following tax incentives to electric cooperatives:

SECTION 39. Assistance to Cooperatives; Exemption from Taxes, Imposts, Duties, Fees; Assistance from the National Power Corporation.

— Pursuant to the national policy declared in Section 2, the Congress hereby finds and declares that the following assistance to cooperative is necessary and appropriate:

(a) Provided that it operates in conformity with the purposes and

provisions of this Decree, **cooperatives (1) shall be permanently exempt from paying income taxes**, and (2) for a period ending on December 31 of the thirtieth full calendar year after the date of a cooperative's organization or conversion hereunder, or until it shall become completely free of indebtedness incurred by borrowing, whichever event first occurs, **shall be exempt from the payment (a) of all National Government, local government and municipal taxes and fees, including franchise, filing, recordation, license or permit fees or taxes and any fees, charges, or costs involved in any court or administrative proceeding in which it may be a party, and (b) of all duties or imposts on foreign goods acquired for its operations**, the period of such exemption for a new cooperative formed by consolidation, as provided for in Section 29, to begin from as of the date of the beginning of such period for the constituent consolidating cooperative which was most recently organized or converted under this Decree: Provided, That the Board of Administrators shall, after consultation with the Bureau of Internal Revenue, promulgate rules and regulations for the proper implementation of the tax exemptions provided for in this Decree.

....^[3]

From 1971 to 1978, in order to finance the electrification projects envisioned by P.D. No. 269, as amended, the Philippine Government, acting through the National Economic Council (now National Economic Development Authority) and the NEA, entered into six (6) loan agreements with the government of the United States of America through the United States Agency for International Development (USAID) with electric cooperatives, including petitioners ANECO, ILECO I and ISELCO I, as beneficiaries. The six (6) loan agreements involved a total amount of approximately US\$86,000,000.00. These loan agreements are existing until today.

The loan agreements contain similarly worded provisions on the tax application of the loan and any property or commodity acquired through the proceeds of the loan. Thus, Section 6.5 of A.I.D. Loan No. 492-H-027 dated November 15, 1971 provides:

Section 6.5. Taxes and Duties. The Borrower covenants and agrees that this Loan Agreement and the Loan provided for herein shall be free from, and the Principal and interest shall be paid to A.I.D. without deduction for and free from, any taxation or fees imposed under any laws or decrees in effect within the Republic of the Philippines or any such taxes or fees so imposed or payable shall be reimbursed by the Borrower with funds other than those provided under the Loan. To the extent that (a) any contractor, including any consulting firm, any personnel of such contractor financed hereunder, and any property or transactions relating to such contracts and (b) any commodity procurement transactions financed hereunder, are not exempt from identifiable taxes, tariffs, duties and other levies imposed under laws in effect in the country of the Borrower, the Borrower and/or Beneficiary shall pay or reimburse the same with funds other than those provided under the Loan.^[4]

Petitioners contend that pursuant to the provisions of P.D. No. 269, as amended, and the above-mentioned provision in the loan agreements, they are exempt from

payment of local taxes, including payment of real property tax. With the passage of the Local Government Code, however, they allege that their tax exemptions have been invalidly withdrawn. In particular, petitioners assail Sections 193 and 234 of the Local Government Code on the ground that the said provisions discriminate against them, in violation of the equal protection clause. Further, they submit that the said provisions are unconstitutional because they impair the obligation of contracts between the Philippine Government and the United States Government.

On July 25, 2000 we issued a Temporary Restraining Order.^[5]

We note that the instant action was filed directly to this Court, in disregard of the rule on hierarchy of courts. However, we opt to take primary jurisdiction over the present petition and decide the same on its merits in view of the significant constitutional issues raised by the parties dealing with the tax treatment of cooperatives under existing laws and in the interest of speedy justice and prompt disposition of the matter.

I

There is No Violation of the Equal Protection Clause

The pertinent parts of Sections 193 and 234 of the Local Government Code provide:

Section 193. *Withdrawal of Tax Exemption Privileges.*—Unless otherwise provided in this Code, tax exemptions or incentives granted to, or presently enjoyed by all persons, whether natural or juridical, including government-owned and controlled corporations, except local water districts, **cooperatives duly registered under R.A. No. 6938**, non-stock and non-profit hospitals and educational institutions, are hereby withdrawn upon the effectivity of this Code.

....

Section 234. *Exemptions from real property tax.*—The following are exempted from payment of the real property tax:

....

(d) All real property owned by duly registered cooperatives as provided for under R.A. No. 6938; and

....

Except as provided herein, any exemption from payment of real property tax previously granted to, or presently enjoyed by, all persons whether natural or juridical, including all government-owned and controlled corporations are hereby withdrawn upon effectivity of this Code.^[6]

Petitioners argue that the above provisions of the Local Government Code are unconstitutional for violating the equal protection clause. Allegedly, said provisions unduly discriminate against petitioners who are duly registered cooperatives under P.D. No. 269, as amended, and not under R.A. No. 6938 or the Cooperative Code of

the Philippines. They stress that cooperatives registered under R.A. No. 6938 are singled out for tax exemption privileges under the Local Government Code. They maintain that electric cooperatives registered with the NEA under P.D. No. 269, as amended, and electric cooperatives registered with the Cooperative Development Authority (CDA) under R.A. No. 6938 are similarly situated for the following reasons: a) petitioners are registered with the NEA which is a government agency like the CDA; b) petitioners, like CDA-registered cooperatives, operate for service to their member-consumers; and c) prior to the enactment of the Local Government Code, petitioners, like CDA-registered cooperatives, were already tax-exempt.^[7] Thus, petitioners contend that to grant tax exemptions from local government taxes, including real property tax under Sections 193 and 234 of the Local Government Code only to registered cooperatives under R.A. No. 6938 is a violation of the equal protection clause.

We are not persuaded. The equal protection clause under the Constitution means that "no person or class of persons shall be deprived of the same protection of laws which is enjoyed by other persons or other classes in the same place and in like circumstances."^[8] Thus, the guaranty of the equal protection of the laws is not violated by a law based on reasonable classification. Classification, to be reasonable, must (1) rest on substantial distinctions; (2) be germane to the purposes of the law; (3) not be limited to existing conditions only; and (4) apply equally to all members of the same class.^[9]

We hold that there is reasonable classification under the Local Government Code to justify the different tax treatment between electric cooperatives covered by P.D. No. 269, as amended, and electric cooperatives under R.A. No. 6938.

First, substantial distinctions exist between cooperatives under P.D. No. 269, as amended, and cooperatives under R.A. No. 6938. These distinctions are manifest in at least two material respects which go into the nature of cooperatives envisioned by R.A. No. 6938 and which characteristics are not present in the type of cooperative associations created under P.D. No. 269, as amended.

a. Capital Contributions by Members

A cooperative under R.A. No. 6938 is defined as:

[A] duly registered association of persons with a common bond of interest, who have voluntarily joined together to achieve a lawful common or social economic end, **making equitable contributions to the capital required** and accepting a fair share of the risks and benefits of the undertaking in accordance with universally accepted cooperative principles.^[10]

The above definition provides for the following elements of a cooperative: a) association of persons; b) common bond of interest; c) voluntary association; d) lawful common social or economic end; e) capital contributions; f) fair share of risks and benefits; g) adherence to cooperative values; and g) registration with the appropriate government authority.^[11]

The importance of capital contributions by members of a cooperative under R.A. No.

6938 was emphasized during the Senate deliberations as one of the key factors which distinguished electric cooperatives under P.D. No. 269, as amended, from electric cooperatives under the Cooperative Code. Thus:

Senator Osmeña. Will this Code, Mr. President, cover electric cooperatives as they exist in the country today and are administered by the National Electrification Administration?

Senator Aquino. That cannot be answered with a simple yes or no, Mr. President. The answer will depend on what provisions we will eventually come up with. **Electric cooperatives as they exist today would not fall under the term "cooperative" as used in this bill because the concept of a cooperative is that which adheres and practices certain cooperative principles.**

....

Senator Aquino. To begin with, one of the most important requirements, Mr. President, is **the principle where members bind themselves to help themselves. It is because of their collectivity that they can have some economic benefits.** In this particular case [cooperatives under P.D. No. 269], the government is the one that funds these so-called electric cooperatives. ...

....

Senator Aquino. ... That is why in Article III we have the following definition:

A cooperative is an association of persons with a common bond of interest who have voluntarily joined together to achieve a common social or economic end, making equitable contributions to the capital required.

In this particular case [cooperatives under P.D. No. 269], Mr. President, the members do not make substantial contribution to the capital required. It is the government that puts in the capital, in most cases.

....

Senator Osmeña. Under line 6, Mr. President, making equitable contributions to the capital required would exclude electric cooperatives [under P.D. No. 269]. Because the membership does not make equitable contributions.

Senator Aquino. Yes, Mr. President. This is precisely what I mean, that electric cooperatives [under P.D. No. 269] do not qualify in the spirit of cooperatives. That is the reason why they should be eventually assessed whether they intend to comply with the cooperatives or not. Because, if after giving them a second time, they do not comply, then, they should not be classified as cooperatives.