



Republic of the Philippines

National Electrification Administration

July 28, 2010

LEGAL ADVISORY NO. 17

**TO : ALL ELECTRIC COOPERATIVES
: ALL NEA OFFICES**

**SUBJECT : Decision of the Supreme Court in G.R. No. 168203
(National Electrification Administration vs. Val L. Villanueva)**

In line with NEA's continuing efforts to help the Electric Cooperatives (ECs) upgrade their performance and competitiveness and also to help avoid unnecessary and expensive court litigations, we call your attention to the implications of the subject Supreme Court decision which, very recently, has become final and executory:

1. A Barangay Chairman who becomes an ex-officio member of a Sangguniang Bayan by virtue of his being elected as President of the Liga ng mga Barangay, is considered automatically resigned as member of the EC Board of Directors upon taking his oath of office as such President of the Liga.
2. The same rule holds true to any member of the EC Board of Directors who assumes any elective position (whether by election, appointment or otherwise) higher than Barangay Chairman. Specifically, a member of the EC Board of Directors who runs for public office higher than a Barangay Chairman, is considered resigned from the moment he files his certificate of candidacy.
3. Any person or entity who disagrees with any order or act of NEA can not immediately resort to any court action without first assailing such order or act of NEA by way of an appeal to the Office of the President. This is in line with the doctrine of exhaustion of administrative remedies such that any such court action, can not prosper until after all such administrative remedies have been exhausted and pursued to their appropriate conclusion/s.

For your information and ready reference, we have enclosed a photocopy of the subject decision of the Supreme Court.

For your guidance and appropriate action.

ATTY. JOHN JOSEPH M. MAGTULOY, CPA
Deputy Administrator for Legal Services

Noted by:

Edita S. Bueno
EDITA S. BUENO
Administrator

NATIONAL ELECTRIFICATION
ADMINISTRATION

IN REPLYING, PLS. CITE: #DR016B47



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Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NATIONAL ELECTRIFICATION ADMINISTRATION, G.R. No. 168203
Petitioner, Present:

- versus -

CORONA, J., Chairperson,
VELASCO, JR.,
NACHURA,
PERALTA, and
MENDOZA, JJ.

VAL L. VILLANUEVA,
Respondent.

Promulgated:

March 9, 2010

X-----

md Villanueva

DECISION

PERALTA, J.:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to annul and set aside the Decision¹ dated November 12, 2004 and Resolution² of April 6, 2005 of the Regional Trial Court (RTC) of Cabadbaran, Agusan del Norte, Branch 34, in SP. Civil Case No. 03-03 entitled *Val L. Villanueva, Petitioner, versus National Electrification Administration and the Agusan del Norte Electric Cooperative, Inc., Respondents*.

¹ Penned by Executive Judge Orlando F. Doyon; *rollo*, pp. 74-104.
² *Id.* at 105-107.

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The undisputed facts are as follows:


Herein respondent Val L. Villanueva (Villanueva) was an elected member of the Board of Directors (BOD) of Agusan del Norte Electric Cooperative (ANECO) for a term of three years, from 2001 to 2003. However, with the subsequent redistricting of the area he represented, his term was extended until 2006.

In 2002, while serving as a member of the ANECO BOD, he was elected as *Barangay* Chairman of *Barangay* 12, in the Municipality of Cabadbaran, Agusan del Norte. Thereafter, he was also elected as President of what was formerly known as the Association of *Barangay* Captains (ABC), now known as *Liga ng mga Barangay* (Liga), of Cabadbaran. By virtue of his position as Liga President, he sat as *ex-officio* member of the *Sangguniang Bayan* of Cabadbaran.

Subsequently, the General Manager of ANECO sought the opinion of herein petitioner National Electrification Administration (NEA) as to whether or not respondent is still qualified to sit as member of the ANECO BOD.

In response to such query, the NEA Director for Co-Op Operations came out with the opinion, dated December 10, 2002, that respondent could no longer serve as a member of the ANECO BOD, because he was considered automatically resigned from the said position when he took his oath of office as Liga President. As basis of its opinion, the NEA Director for Co-Op Operations cited as authority the Local Government Code of 1991, NEA Memorandum dated February 13, 1998, and the Guidelines in the Conduct of Electric Cooperative District Elections.³

³ Rollo, p. 117.



In a letter dated January 3, 2003, respondent sought the opinion of the Provincial Director of the Department of Interior and Local Government (DILG) relative to his disqualification as a member of the ANECO BOD.

In his letter⁴ dated January 7, 2003, the DILG Provincial Director gave the view that his office could not issue an official opinion on the matter being sought, considering that another agency had jurisdiction over it. Nonetheless, he stated the view that respondent was not a regular member of the *Sangguniang Bayan*; instead, he occupied the office only in an *ex-officio* capacity, because he was not duly elected thereto by the registered voters of Cabadbaran, but occupied the said position only by reason of his being the president of the Liga.

On January 31, 2003, respondent requested review and reconsideration of the disputed opinion of the NEA Director for Co-Op Operations, but the same was denied in a letter dated February 17, 2003 by the NEA Chief Operating Officer/Deputy Administrator for Co-Op Development.⁵

Aggrieved by such denial, respondent filed with the RTC of Cabadbaran, Agusan del Norte, a petition for *certiorari* with prayer for preliminary injunction against NEA and ANECO.⁶ The case was docketed as SP Civil Case No. 03-03.

On December 2, 2003, the RTC issued a Temporary Restraining Order enjoining NEA and ANECO and their representatives, attorneys and agents from disqualifying respondent as member of the ANECO BOD or allowing him to continue attending meetings or sessions of the said BOD and granting

⁴ *Id.* at 120

⁵ *Id.* at 121.

⁶ *Id.* at 108.

him back all benefits, emoluments and remunerations due him on account of his disqualification.⁷

NEA and ANECO filed separate motions for reconsideration.

On January 7, 2004, the RTC issued an Order⁸ denying the motions for reconsideration of NEA and ANECO and directing the issuance of a preliminary injunction, which enjoined NEA and ANECO from enforcing the disqualification of respondent as member of the ANECO BOD and directing them to put up a bond in the amount of ₱300,000.00.

Consequently, on February 10, 2004, the RTC issued a Writ of Preliminary Injunction.⁹

On November 12, 2004 the RTC rendered its presently assailed Decision, the dispositive portion of which reads, thus:


WHEREFORE, the petition is hereby granted. The injunction issued against respondent is hereby made permanent.

Respondents are likewise ordered to pay to petitioner the amount of Ph50,000.00 as attorney's fees and Ph50,000.00 as expenses of litigation.

SO ORDERED.¹⁰

NEA filed a motion for reconsideration, but the RTC denied it in its Resolution¹¹ dated April 6, 2005.

Hence, the present petition raising the following issues:



⁷ *Id.* at 133.

⁸ *Id.* at 154.

⁹ *Id.* at 159.

¹⁰ *Id.* at 104.

¹¹ *Id.* at 105-107.

1. Whether or not the Hon. Orlando F. Doyon, in his capacity as Presiding Judge of the Regional Trial Court of Cabadbaran, Agusan del Norte, Branch 34, exercised grave abuse of discretion which is tantamount to lack or in excess of jurisdiction in deciding the case in an action for *certiorari* with prayer for Preliminary Injunction it resolved to nullify an order issued by an administrative agency without sufficient legal basis;

2. Whether or not the instant case should be dismissed for lack of cause of action on the ground of respondent's failure to exhaust administrative remedies; and


3. Whether or not the law was correctly applied by the trial court in the issuance of the Temporary Restraining Order and Writ of Preliminary Injunction.¹²

Petitioner contends that respondent went to court without first exhausting the administrative remedies available to him making his action premature or his case not ripe for judicial determination and, for that reason, he has no cause of action to ventilate in court.

Petitioner also avers that in coming up with its decision nullifying the order issued by the NEA, the RTC, in effect, deprived the Office of the President of its power to review the disputed order.

Petitioner further argues that the provision under the Guidelines in the Conduct of Electric Cooperative District Elections, which prohibits persons who hold an elective office in the government or appointed to an elective position above the level of *Barangay* Captain from being members of the BOD of an electric cooperative, applies not only to candidates for membership in the BOD but also to incumbent members thereof.

Lastly, petitioner asserts that the temporary restraining order issued by the RTC is invalid, because it was made effective beyond the 20-day period provided under the Rules of Court.



¹²*Id.* at 49-50.

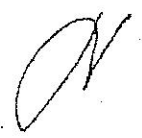
The Court finds the petition meritorious.

With respect to the procedural aspect of the case, respondent should have first exhausted the administrative remedies still available to him by appealing the challenged order of the NEA to the Office of the President, which exercises the power of supervision over it. Section 13, Chapter II of Presidential Decree No. 269 (PD 269), otherwise known as the *National Electrification Administration Decree*, provides that:

Sec. 13 - *Supervision over NEA; Power Development Council* -
The NEA shall be under the supervision of the Office of the President of the Philippines. **All orders, rules and regulations promulgated by the NEA shall be subject to the approval of the Office of the President of the Philippines.** (Emphasis supplied)

Considering that the President has the power to review on appeal the orders or acts of petitioner NEA, the failure of respondent to undertake such an appeal bars him from resorting to a judicial suit.¹³ It is settled that under the doctrine of exhaustion of administrative remedies, recourse through court action cannot prosper until after all such administrative remedies have first been exhausted.¹⁴ If remedy is available within the administrative machinery, this should be resorted to before recourse can be made to courts. The party with an administrative remedy must not only initiate the prescribed administrative procedure to obtain relief but also pursue it to its appropriate conclusion before seeking judicial intervention in order to give the administrative agency an opportunity to decide the matter itself correctly and prevent unnecessary and premature resort to the court.¹⁵ The non-observance of the doctrine of exhaustion of administrative remedies results in lack of cause of action, which is one of the grounds in the Rules of Court justifying the dismissal of the complaint.¹⁶

¹³ *National Electrification Administration v. Judge Mendoza*, 223 Phil. 215, 219 (1985).
¹⁴ *Teotico v. Baer*, G.R. No. 147464, June 8, 2006, 490 SCRA 279, 285.
¹⁵ *Montanez v. Provincial Agrarian Reform Adjudicator*, G.R. No. 183142, September 17, 2009.
¹⁶ *Teotico v. Baer*, *supra* note 14.



In the present case, respondent failed to exhaust his administrative remedies when he filed a case with the RTC without appealing the decision of the NEA to the Office of the President. As such, his petition filed with the RTC must necessarily fail.

In any case, the main issue of whether respondent can still continue to be a member of the ANECO BOD after becoming an *ex-officio* member of the *Sangguniang Bayan* of Cabadbaran must be answered in the negative.

Section 7 (8), Article II of the Guidelines in the Conduct of Electric Cooperative District Elections issued by the NEA Main Office, through its Board of Administrators, on June 23, 1993, provides:

Section 7 - *Qualification for Board of Directors.* - *Bona fide* members who possess the following qualifications are eligible to become and/or to remain as member of Board of Directors:

1. He/she is a Filipino citizen

x x x x

8. He/she does not hold elective office in the government nor appointed to an elective position above the level of a Barangay Captain.

x x x x¹⁷

In the same manner, the Memorandum¹⁸ dated February 13, 1998 issued by the NEA Main Office states:

2.3.1. Book III, Article Three, Sec. 446 of R.A. 7160 listed the composition of the Sangguniang Bayan which includes, among others, the President of the Municipal Chapter of the Liga ng mga Barangay x x x. As such, therefore, they are considered as an *ex-officio* member of the Sanggunian, as likewise provided for in Rule XXIX, Article 211 (d) of the Implementing Rules and Regulations of RA 7160.

2.3.2. All coop officials and employees who are subsequently elected to the post of President of the Municipal Chapter of the Liga ng mga Barangay, after having won in the barangay elections, shall be

¹⁷ Exhibits "1-A" and "1-B," records, pp. 76-77.

¹⁸ Exhibit "2," *id.* at 91-93.

considered automatically resigned upon taking his/her oath of office as Liga President.

The above-quoted provisions find support in *Salomon v. National Electrification Administration*¹⁹ – a case decided by the Court more than a decade prior to respondent's filing of his petition with the RTC. In the said case, the petitioner, an elected *Barangay* Captain, sought the nullification of a ruling issued by the NEA which disqualified her from further acting as a member of the Board of Directors of La Union Electric Cooperative, Inc. (LUELCO) by reason of the fact that she was appointed as an *ex-officio* member of the *Sangguniang Panlalawigan* of La Union, representing the *barangay* officials of the province. This Court, in upholding the disqualification of therein petitioner as a member of the Board of Directors, held:

Although the disqualification mandated by the provisions [of PD 269] 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
x x x.²⁰

¹⁹ 251 Phil. 459 (1989).
²⁰ *Id.* at 463-464. (Emphasis supplied.)

The Court finds that, while the position to which the petitioner in the above-quoted ruling was appointed is different from the position to which herein respondent was named, the rule or principle enunciated above, nonetheless, applies squarely to the present case. Consequently, and in consonance with the Guidelines and Memorandum issued by the NEA, when respondent was designated as member of the *Sangguniang Bayan* of Cabadbaran, he became ineligible, and was thereby disqualified as member of the ANECO BOD.

As to the issue of whether the temporary restraining order issued by the RTC remained valid even if it was beyond the 20-day period provided under the Rules of Court, it is settled that under Section 5, Rule 58²¹ of the Rules of Court, a judge may issue a temporary restraining order within a limited life of twenty (20) days from date of issue. If before the expiration of the twenty (20)-day period the application for preliminary injunction is denied, the temporary restraining order would be deemed automatically vacated. If no action is taken by the judge on the application for preliminary injunction within the said twenty (20) days, the temporary restraining order would automatically expire on the 20th day by the sheer force of law, no judicial declaration to that effect being necessary and the courts having no discretion to extend the same.²² The rule against the non-extendibility of the twenty (20)-day limited period of effectivity of a temporary restraining order is absolute if issued by a regional trial court.²³ Hence, the RTC committed error when it ruled that the temporary restraining order it issued on

²¹ Sec. 5. *Preliminary injunction not granted without notice; exception.* - No preliminary injunction shall be granted without hearing and prior notice to the party or person sought to be enjoined. If it shall appear from facts shown by affidavits or by the verified application that great or irreparable injury would result to the applicant before the matter can be heard on notice, the court to which the application for preliminary injunction was made, may issue *ex parte* a temporary restraining order to be effective only for a period of twenty (20) days from notice to the party or person sought to be enjoined, except as herein provided. Within the said twenty-day period, the court must order said party or person to show cause, at a specified time and place, why the injunction should not be granted, determine within the same period whether or not the preliminary injunction shall be granted, and accordingly issue the corresponding order.

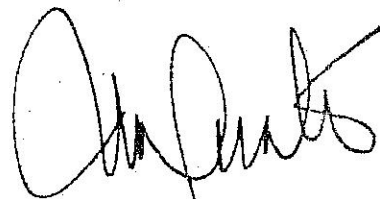
²² *Mendoza v. Judge Ubiadas*, 462 Phil. 633, 647 (2003). *Golangco v. Judge Villanueva*, 343 Phil. 937, 946 (1997). *Asset Privatization Trust v. Court of Appeals*, G.R. No. 101344, October 1, 1992, 214 SCRA 400, 406; *Golden Gate Realty Corporation v. Intermediate Appellate Court*, 236 Phil. 732, 738 (1987).

²³ *Bacolod City Water District v. Hon. Labayan*, 487 Phil. 335, 348 (2004).

December 2, 2003 was effective until January 5, 2004, a period that was beyond the twenty (20) days allowed under the Rules of Court. This does not mean, however, that the entire TRO was invalidated. The same remained valid and in effect, but only within the 20-day period, after which it automatically expired.

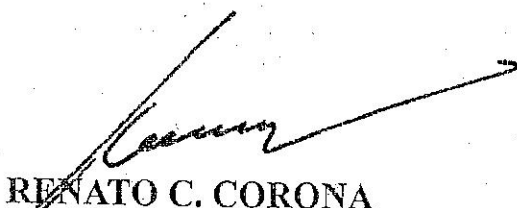
WHEREFORE, the petition is **GRANTED**. The assailed Decision of the Regional Trial Court of Cabadbaran, Agusan Del Norte, Branch 34, dated November 12, 2004, and its Resolution dated April 6, 2005 in SP. Civil Case No. 03-03, are **REVERSED AND SET ASIDE**. The petition for *certiorari* therein filed is **DISMISSED**.

SO ORDERED.



DIOSDADO M. PERALTA
Associate Justice

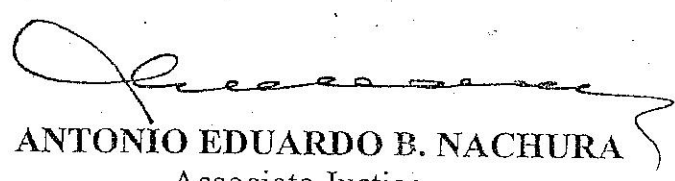
WE CONCUR:



RENATO C. CORONA
Associate Justice
Chairperson



PRESBITERO J. VELASCO, JR.
Associate Justice



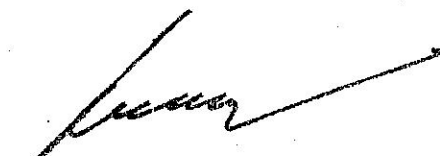
ANTONIO EDUARDO B. NACHURA
Associate Justice



JOSE CATRAL MENDOZA
Associate Justice

ATTESTATION

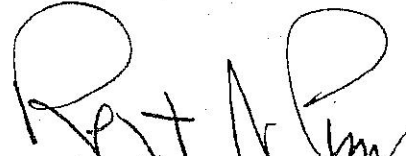
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



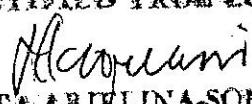
RENATO C. CORONA
Associate Justice
Third Division, Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



REYNATO S. PUNO
Chief Justice

CERTIFIED TRUE COPY:

LUCITA ARJELLINA-SORIANO
Clerk of Court
Third Division