



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NATIONAL ELECTRIFICATION
ADMINISTRATION, represented
by its administrator, EDGARDO R.
MASONGSONG,

Petitioner,

- versus -

G.R. No. 232581

Present:

CAGUIOA, J., Chairperson,
INTING,
GAERLAN,
DIMAAMPAO, and
SINGH,* JJ.

OSCAR C. BORJA and
VENANCIO B. REGULADO,
Respondents.

Promulgated:

November 13, 2024

MisDOCB-7

DECISION

DIMAAMPAO, J.:

This Petition for Review on *Certiorari*¹ challenges the Decision² and the Resolution³ of the Court of Appeals (CA), which affirmed the unconstitutionality of Section 2 of Memorandum No. 2012-016, or the “Guidelines in the Candidacy of EC Officials and Employees in the 2013 National and Local Elections,” issued by petitioner National Electrification Administration (NEA), and which denied NEA’s motion for partial reconsideration, respectively, in CA-G.R. CV No. 102421.

* On official business.

¹ *Rollo*, pp. 9–43.

² *Id.* at 46–55. The September 5, 2016 Decision in CA-G.R. CV No. 102421 was penned by Associate Justice Zenaida T. Galapate-Laguilles, with the concurrence of Associate Justices Mariflor P. Punzalan Castillo and Victoria Isabel A. Paredes of the Special Tenth Division, Court of Appeals, Manila.

³ *Id.* at 57–58. Dated June 9, 2017.

At the core of the controversy is the legality of Section 2 of Memorandum No. 2012-016—

EC Officials who shall have filed their Certificates of Candidacy, thus, officially signifying that they would run for public office/position in either the local or national election shall be considered automatically resigned from their respective positions, effective upon the following dates, which mark the beginning of the campaign period:

- a. February 12, 2013 – candidates for senators and Party-list; and
- b. March 29, 2013 – candidates for Member, House of Representatives and elective regional, provincial, city and municipal officials.

Prior to the institution of the present case, respondents Oscar C. Borja (Borja) and Venancio B. Regulado (Regulado) were then incumbent members of the Board of Directors of the Camarines Sur Electric Cooperative II (CASURECO II). Borja was elected for a three-year term, expiring in October 2014, whereas Regulado's term was set to expire in December 2013. During their tenure, Borja filed his certificate of candidacy for mayor of the Municipality of Bombom, Camarines Sur for the May 2013 elections, while Regulado ran for municipal councilor of the Municipality of Canaman.⁴ Aggrieved by the issuance of Memorandum No. 2012-016 on July 6, 2012, respondents filed the Petition⁵ with prayer for temporary restraining order and preliminary injunction before the Regional Trial Court (RTC) of Naga City, seeking to have Section 2 of Memorandum No. 2012-016 declared as unconstitutional for contravening election laws and the will of the electorate.⁶ To buttress their application for injunction, Borja and Regulado argued that the members-consumers of their represented district will suffer if they are deprived of their representatives in the CASURECO II Board.⁷

NEA countered that the Petition was premature for the failure of Borja and Regulado to exhaust administrative remedies.⁸ NEA also argued that their prayer for a temporary restraining order and preliminary injunction is baseless. The provisions of law relied upon by Borja and Regulado apply only to public officials, not elected members of a private entity, such as CASURECO II. Additionally, they have failed to prove either a right in *esse* or grave and irreparable injury.⁹

⁴ *Id.* at 47.

⁵ *Id.* at 59–64.

⁶ *Id.* at 62.

⁷ *Id.* at 63.

⁸ *Id.* at 65–66, Answer.

⁹ *Id.* at 69–71.

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In its September 23, 2013 Order,¹⁰ the RTC granted the prayer for preliminary injunction but only as to Borja.¹¹ The RTC noted that its Order could no longer cover Regulado as he won the local elections and already assumed office as a municipal councilor.¹²

Through its Decision,¹³ the RTC struck down Section 2 of Memorandum No. 2012-016 given that it was sourced from Section 66 of the Omnibus Election Code, Section 13 of Republic Act No. 9369, and Section 4(a) of Commission on Elections (COMELEC) Resolution No. 8678, which were already declared void in *Quinto v. COMELEC*.¹⁴ The wording of the assailed administrative issuance expanded what is provided under the law, hence, must be struck down.¹⁵

On appeal,¹⁶ the CA dismissed the case for being moot and academic in the impugned Decision. With the expiration of Borja's term, the writ of preliminary injunction issued on September 24, 2013 was also lifted for becoming *functus officio*.¹⁷ The CA held that the subject Memorandum was only effective for a specific and limited time. With the conclusion of the 2013 elections, and the expiration of the terms of Borja and Regulado with the CASURECO II Board, a ruling on the merits of the appeal would be of no practical value.¹⁸ In any case, the CA resolved to pass upon the constitutionality of the Memorandum, as the issue was capable of repetition yet evading review. The appellate court noted that the applicable law is Presidential Decree No. 269, or the NEA's charter. Section 21 thereof provides that only "elective officers of the government, except *barrio* captains and councilors" are ineligible to become officers and/or directors of cooperatives. Nowhere does it provide therein that candidates should be deemed automatically resigned from the board of cooperatives. As such, Section 2 of Memorandum No. 2012-016 effectively amended an act of Congress and was properly struck down.¹⁹

NEA sought reconsideration, but this was denied by the CA in the oppugned Resolution. It then filed the present Petition asserting the validity of Section 2 of Memorandum No. 2012-016.²⁰

¹⁰ *Id.* at 98–102. The September 23, 2013 Order in Special Civil Action No. 2013-0031 was penned by Presiding Judge Bernhard B. Beltran of Branch 24, Regional Trial Court, Naga City, Camarines Sur.

¹¹ *Id.* at 102.

¹² *Id.* at 100.

¹³ *Id.* at 151–153. The February 25, 2014 Decision in Special Civil Action No. 2013-0031 was penned by Judge Filemon B. Montenegro of Branch 26, Regional Trial Court, Naga City, Camarines Sur.

¹⁴ 621 Phil. 236 (2009) [Per J. Nachura, *En Banc*].

¹⁵ *Rollo*, p. 153, RTC Decision.

¹⁶ *Id.* at 154–155, Notice of Appeal.

¹⁷ *Id.* at 54, CA Decision.

¹⁸ *Id.* at 51–52.

¹⁹ *Id.* at 52–53.

²⁰ *Id.* at 23–27.

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The issues for the Court's consideration are whether the CA erred in: (1) decreeing the case is already moot and academic; (2) decreeing that Section 2 of Memorandum No. 2012-016 contravenes the NEA's charter; and (3) failing to rule that the petition before the RTC should have been dismissed on procedural grounds.

The Court's Ruling

The Petition is devoid of merit.

At the outset, the Court resolves to dispense with the filing of Borja and Regulado's comment owing to their failure to file the same despite the lapse of a considerable period from the issuance of the Court's Resolution²¹ dated May 3, 2021.

With regard to the first issue, the Court affirms that the subject of the present controversy has been rendered moot and academic.

A case is considered moot and academic "when it ceases to present a justiciable controversy by virtue of supervening events, so that **an adjudication of the case or a declaration on the issue would be of no practical value or use.**"²² In such instances, the Court generally declines jurisdiction as its resulting judgment "will not serve any useful purpose or have any practical legal effect because, in the nature of things, it cannot be enforced."²³

As the CA correctly observed, Memorandum No. 2012-016 is an issuance with a limited period of effectivity—specifically, the **2013 National and Local Elections**, as is readily apparent from the title of the Memorandum itself. It is beyond cavil that the covered election period has long since concluded. Additionally, Borja and Regulado are no longer members of the Board of CASURECO II. As a result, a ruling on the merits would be an exercise in futility given that a judgment would have no practical value to the parties.

Still, a recognized exception to the moot and academic principle is when the issues presented are capable of repetition, yet evading review. For this exception to apply, the following elements must concur: (1) the challenged action was in its duration too short to be fully litigated prior to its

²¹ *Id.* at 218–219.

²² *Philippine Veterans Bank v. Court of Appeals*, G.R. No. 249353, August 22, 2022 [Per J. Kho, Jr., Second Division] at 4. This pinpoint citation refers to the copy of the Resolution uploaded to the Supreme Court website. (Emphasis supplied, citations omitted)

²³ *Id.*



cessation or expiration, and (2) there was a reasonable expectation that the same complaining party would be subjected to the same action again.²⁴

Both elements are present in this instance. *First*, the challenged action could not have been fully litigated prior to the cessation of the controversy. In fact, the preliminary injunction was only issued on September 24, 2013, months after the conclusion of the May 2013 elections. *Second*, there is a clear possibility that the complaining parties or, at the very least, other members of the Boards of various electric cooperatives would be subjected to the same treatment in succeeding elections. NEA is adamant that it is well within its authority to deem as resigned the officials and directors of electric cooperatives upon their filing of their candidacy for national and local elections; thus, it is highly conceivable that it may issue similar guidelines in the future. To forestall litigation on the same subject matter, it would be more appropriate for the Court to rule definitively on the issues posed in the case at bench.

In resolving the second issue, the Court must discern whether the governing law to adjudge the validity of Memorandum No. 2012-016 is the Omnibus Election Code, as amended, or the NEA's charter under Presidential Decree No. 269, as amended. This, in turn, necessitates a clarification on the nature of electric cooperatives as well as the positions held by their officers.

It is settled that an administrative agency, such as NEA, cannot, by its own issuances, amend an act of Congress; it cannot modify, expand, or subtract from the law that it is intended to implement.²⁵

Under the Omnibus Election Code, "ipso facto resignation" upon filing of certificates of candidacy applies only to persons "holding a public appointive office or position, including active members of the Armed Forces of the Philippines, and officers and employees in government-owned or controlled corporations."²⁶

It cannot be gainsaid that electric cooperatives are private entities engaged in public service, particularly as electric distribution utilities. Under Section 15 of the NEA's charter, electric cooperatives are "non-stock, non-profit membership corporations" created for the "supplying, and of promoting and encouraging the fullest use of, service on an area coverage basis at the lowest cost consistent with sound economy and the prudent management of the business of such corporations." With this definition, electric cooperatives can hardly be considered an agency of government, although they are

²⁴ See *Presidential Commission on Good Government v. Cojuangco*, G.R. Nos. 215527–28, March 22, 2023 [Per J. Zalameda, First Division] at 12. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website. (Citations omitted)

²⁵ See *Abrenica v. Commission on Audit*, 910 Phil. 112, 129 (2021) [Per M. Lopez, *En Banc*]. (Citations omitted)

²⁶ OMNIBUS ELECTION CODE (1985), sec. 66.

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undoubtedly regulated as public utilities by NEA. Under prevailing law, agencies of government refer to “any of the various units of the Government, including a department, bureau, office, instrumentality, or government-owned or controlled corporation, or a local government or a distinct unit therein.”²⁷ This definition is inapplicable to electric cooperatives.

Electric cooperatives cannot likewise be considered government-owned or controlled corporations. Government-owned or controlled corporations refer to stock or non-stock corporations vested with functions relating to public needs whether governmental or proprietary in nature, and **owned by the government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least 51% of its capital stock.**²⁸ While electric cooperatives are vested with functions serving public needs, their composition are limited to their respective members-consumers.

In the same vein, the officers of these electric cooperatives remain private individuals despite the public nature of the service they render. Notably, officers of electric cooperatives are elected from its board of directors²⁹ and its directors, in turn, are elected from its members.³⁰ Although its officers are technically “elected” and chosen to exercise their functions, the position they hold cannot be considered a public appointed position within the contemplation of Section 66 of the Omnibus Election Code. In this regard, they are no different from the elected corporate officers of regular stock and non-stock corporations.

It bears stressing that the only type of “private individual” that is deemed resigned upon the filing of their certificate of candidacy would be mass media columnists, commentators, announcers, reporters, on-air correspondents or personalities.³¹ Even then, they are only deemed resigned “if so required by their employer.”³² Certainly, officers of electric cooperatives do not fall within the foregoing category.

With the foregoing disquisition, it becomes clear that Memorandum No. 2012-016 cannot find support under election laws. The question now turns to whether it is consistent under the NEA’s charter.

On this score, the only relevant provision under the NEA’s charter is the ineligibility for certain elective officers of the government to become members of cooperatives:

²⁷ ADMINISTRATIVE CODE (1987), Introductory Provisions, sec. 2(4).

²⁸ ADMINISTRATIVE CODE (1987), Introductory Provisions, sec. 2(13).

²⁹ Presidential Decree No. 269, sec. 26.

³⁰ Presidential Decree No. 269, sec. 24.

³¹ Republic Act No. 9006 (2001), Fair Election Act, sec. 6.6.

³² *Id.*



SECTION 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.

The provision of any law or regulation to the contrary notwithstanding, an officer or employee of the government shall be eligible for membership in any cooperative if he meets the qualifications therefor and he shall not be precluded from being elected to or holding any position therein, or from receiving such compensation or fee in relation thereto as may be authorized by the by-laws; ***Provided, That elective officers of the government, except barrio captains and councilors, shall be ineligible to become officers and/or directors of any cooperative.*** For this purpose, individual permission need not be obtained from the proper head of office; *Provided, however,* That this authority shall not be construed as a permit to the government officer or employee concerned to devote official time to the affairs of the cooperative. (Emphasis supplied)

Hence, the question devolves to whether the ineligibility under Section 21 can be interpreted as blanket authority for NEA to demand that the officers of electric cooperatives be deemed resigned upon the mere filing of their certificate of candidacy for national or local elections.

On this point, the Court must answer in the negative.

A plain reading of Section 21 yields the inevitable conclusion that candidates for elective posts are not among those disqualified to be members of electric cooperatives. Indeed, there is a substantial distinction between a mere electoral candidate and an elected official of government. The former has no public authority or political leverage whatsoever to speak of compared to the latter.

The foregoing reading is further bolstered by the amendments introduced by Republic Act No. 10531, or the National Electrification Administration Reform Act of 2013, which was enacted by Congress on May 7, 2013, almost a year after Memorandum No. 2012-016 was issued by NEA. This law introduced a new section adding further qualifications to members of the board of directors and officers of electric cooperatives:

SEC. 10. A new section, to be designated as Section 26-A of Presidential Decree No. 269, as amended, is hereby inserted to read as follows:

SEC. 26-A. Independence of the Board of Directors and Officers of Electric Cooperatives. — To ensure the long-term business and economic viability of electric cooperatives, **the management, operations and strategic planning of electric cooperatives shall, as much as practicable, be insulated from local politics.**



Towards this end, no person shall be elected or appointed as an officer or be eligible to run as a board member of an electric cooperative if:

(a) such person or his or her spouse holds any public office;

(b) such person or his or her spouse has been a candidate in the last preceding local or national elections;

(c) such person has been convicted by final judgment of a crime involving moral turpitude;

(d) such person has been terminated for cause from public office or private employment;

(e) such person is related to any member of the electric cooperative board of directors, general manager and department managers within the fourth civil degree of consanguinity or affinity;

(f) such person is a representative of a juridical person; and

(g) such person is employed by or financially interested in a competing enterprise or a business selling electric energy or electrical hardware to the cooperative or doing business with the cooperative, including the use or rental of poles. (Emphasis supplied)

As is evident from the provision, the added qualifications and restrictions for directors and officers are intended to insulate the cooperatives from local politics. Congress, in its wisdom, prohibits only candidates of “last preceding local or national elections” from becoming directors or officers. It must be emphasized that even when Congress added further restrictions, it did not include a provision mandating that present candidates be deemed *ipso facto* resigned as NEA did with Memorandum No. 2012-016. This further proves that it was never Congress’s intent to prevent officers of electric cooperatives from throwing their hats in the ring for local and national elections.

As the Court held in its subsequent Resolution in *Quinto v. Commission on Elections*,³³ the power to decide to whom deemed-resigned provisions should apply rests with Legislature and not the Court. As this power rests with Congress itself, and it did not seem fit to apply the same to officers of electric cooperatives, NEA cannot arrogate this power unto itself through its administrative issuances.

³³ 627 Phil. 193 (2010) [Per C.J. Puno, *En Banc*].



It is well-settled that administrative issuances must “not override, supplant, or modify the law; they must remain consistent with the law they intend to carry out. When the application of an administrative issuance modifies existing laws or exceeds the intended scope, the issuance becomes void, not only for being ultra vires, but also for being unreasonable.”³⁴

Consequently, in mandating that officers of electric cooperatives be deemed resigned upon the mere filing of their certificates of candidacy, NEA expanded Presidential Decree No. 269 and exceeded its authority to implement the law.


Given the foregoing discourse, there is no further need to delve into the merits of the third issue raised. The Court has consistently held that procedural rules may be relaxed in order to advance substantial justice,³⁵ as it does so in this instance by definitively ruling on the legality of Memorandum No. 2012-016.

ACCORDINGLY, the Petition for Review on *Certiorari* is **DENIED** for lack of merit. The September 5, 2016 Decision and the June 9, 2017 Resolution of the Court of Appeals in CA-G.R. CV No. 102421 are **AFFIRMED**.

SO ORDERED.


JAPAR B. DIMAAMPAO
Associate Justice


WE CONCUR:


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

³⁴ *Department of Finance v. Asia United Bank*, 917 Phil. 271, 282 (2021) [Per J. Zalameda, Third Division]. (Citations omitted)

³⁵ *See Tan v. Dagpin*, 868 Phil. 504, 514 (2020) [Per J. Lazaro-Javier, First Division]. (Citation omitted)

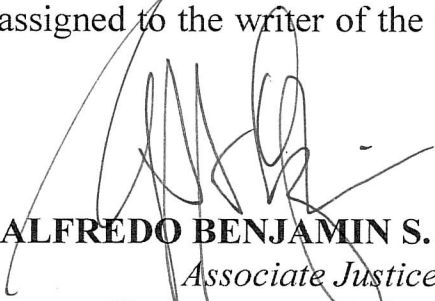

HENRI JEAN PAUL B. INTING
Associate Justice


SAMUEL H. GAERLAN
Associate Justice

On official business
MARIA FILOMENA D. SINGH
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.


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Article VIII, Section 13 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 this Court.


ALEXANDER G. GESMUNDO
Chief Justice