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SECOND DIVISION

[G.R. Nos. 176935-36. March 13, 2009]

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 FERNANDEZ and HONORIO 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 FERNANDEZ and HONORIO DILAG, JR. (MEMBERS), *petitioners, vs.* **NATIONAL ELECTRIFICATION ADMINISTRATION (NEA), NEA-OFFICE OF THE ADMINISTRATIVE COMMITTEE, ENGR. PAULINO T. LOPEZ and CASTILLEJOS CONSUMERS ASSOCIATION, INC. (CASCONA),** *respondents.*

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SYLLABUS

1. POLITICAL LAW; EXECUTIVE DEPARTMENT; NATIONAL ELECTRIFICATION ADMINISTRATION (NEA); AUTHORITY TO SUPERVISE AND CONTROL ELECTRIC COOPERATIVES; UPHELD. — P.D. No. 269, as amended by P.D. No. 1645, vested NEA with the authority to supervise and control electric cooperatives. In the exercise of its authority, it has the power to conduct investigations and other similar actions in all matters affecting electric cooperatives. The failure of electric cooperatives to comply with NEA orders, rules and regulations and/or decisions authorizes the latter to 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 electric cooperative concerned. Contrary to petitioners' assertion, NEA's regulatory power over electric cooperatives is not dependent on the existence of a creditor-debtor relationship between the former and the latter. This is clear from the express wording of Sec. 5 of P.D. No. 1645, amending Sec. 10, Chapter II of P.D. No. 269, enumerating the instances when NEA may avail of the remedies outlined in the law, including, as previously mentioned, the removal from office of any or all of the members of the Board of Directors, officers or employees of the electric cooperative. These instances are when the electric cooperative concerned or other similar entity fails after due notice to comply: (1) with NEA orders, rules and regulations and/or decisions; or (2) with any of the terms of the Loan Agreement. Had the existence of a creditor-debtor relationship between the parties been the sole *vinculum* which the law intended as a precondition for NEA's exercise of regulatory powers over electric cooperatives, there would not have been any need for the above distinction.

2. ID.; ID.; ID.; ID.; NOT AFFECTED BY THE PASSAGE OF EPIRA (ELECTRIC POWER INDUSTRY REFORM ACT OF 2001). — The passage of the EPIRA and its creation of PSALM Corp. which assumed all outstanding financial obligations of electric cooperatives did not affect the power of the NEA particularly over administrative cases involving the board of directors, officers and employees of electric cooperatives. This authority is expressly recognized under the last paragraph of Sec. 58, Chapter VII of the EPIRA which

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states that, "NEA shall continue to be under the supervision of the DOE and *shall exercise its functions under Presidential Decree No. 269, as amended by Presidential Decree No. 1645 insofar as they are consistent with this Act*." Remarkably, even as they continually assert that NEA's regulatory authority over electric cooperatives had been abrogated by the EPIRA, petitioners fail to cite passages of the latter law which are supposedly inconsistent with the powers granted to NEA under P.D. Nos. 269 and 1645 and which should accordingly be deemed to have been withheld from it. A review of the provisions of the EPIRA reveals that the ERC has been given the specific mandate to "promote competition, encourage market development, ensure customer choice and penalize abuse of market power in the restructured electricity industry." PSALM Corp., on the other hand, was created in order to "manage the orderly sale, disposition, and privatization of NPC generation assets, real estate and other disposable assets, and IPP contracts with the objective of liquidating all NPC financial obligations and stranded contract costs in an optimal manner." Obviously, the functions of these two agencies do not come into conflict and are not inconsistent with the supervisory power exercised by NEA in the instant case.

3. ID.; ID.; ID.; THE NEED FOR A HEARING BEFORE ANY PUNITIVE MEASURE MAY BE UNDERTAKEN BY AN ADMINISTRATIVE AGENCY IN THE EXERCISE OF ITS QUASI-JUDICIAL FUNCTIONS; SUSTAINED. — In *Globe Telecom, Inc. v. National Telecommunications Commission, supra*, the Court invalidated a fine imposed by the NTC on Globe (due to the latter's alleged lack of authority to operate SMS services) on the ground that Globe was never notified that its authority to operate SMS was put in issue. The Court emphasized the need for a hearing before any punitive measure may be undertaken by an administrative agency in the exercise of its quasi-judicial functions. The Court said: Sec. 21 requires notice and hearing because fine is a sanction, regulatory and even punitive in character. Indeed, the requirement is the essence of due process. Notice and hearing are the bulwark of administrative due process, the right to which is among the primary rights that must be respected even in administrative proceedings. The right is guaranteed by the Constitution itself and does not need legislative enactment. The statutory affirmation of the requirement serves merely to enhance the

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fundamental precept. The right to notice and hearing is essential to due process and its non-observance will, as a rule, invalidate the administrative proceedings.

4. ID.; ID.; ID.; ELECTRIC COOPERATIVES ARE GIVEN THE OPTION TO CONVERT INTO EITHER STOCK COOPERATIVE OR STOCK CORPORATION UNDER THE EPIRA; APPLICATION IN CASE AT BAR. — Sec. 57, Chapter VII of the EPIRA provides that, "Electric cooperatives are hereby given the option to convert into either stock cooperative under the Cooperatives Development Act or stock corporation under the Corporation Code x x x" Sec. 7, Rule VII of the EPIRA Implementing Rules, in turn, provides as follows: Sec. 7. *Structural and Operational Reforms Between and Among Distribution Utilities. . . .* (c) Pursuant to Section 57 of the Act, ECs are given the option to convert into Stock Cooperatives under the CDA or Stock Corporations under the Corporation Code. Nothing contained in the Act shall deprive ECs of any privilege or grant granted to them under Section 39 of Presidential Decree No. 269, as amended, and other existing laws. The conversion and registration of ECs shall be implemented in the following manner: (i) ECs shall, upon approval of a simple majority of the required number of turnout of voters as provided in the Guidelines in the Conduct of Referendum (Guidelines), in a referendum conducted for such purpose, be converted into a Stock Cooperative or Stock Corporation and thereafter shall be governed by the Cooperative Code of the Philippines or the Corporation Code, as the case may be. The NEA, within six (6) months from the effectivity of these Rules, shall promulgate the guidelines in accordance with Section 5 of Presidential Decree No. 1645. Whether ZAMECO II complied with the foregoing provisions, particularly on the conduct of a referendum and obtainment of a simple majority vote prior to its conversion into a stock cooperative, is a question of fact which this Court shall not review. At any rate, the evidence on record does not afford us sufficient basis to make a ruling on the matter. The remand of the case to the Court of Appeals solely on this question is, therefore, proper.

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APPEARANCES OF COUNSEL

Cayetano Sebastian Ata Dado and Cruz for petitioners.
Victoria F. Mejia for respondents.
Randy B. Escolango for CASCONA.

D E C I S I O N

TINGA, *J.*:

Petitioners Zambales II Electric Cooperative, Inc. (ZAMECO II) Directors, namely: Jose S. Dominguez, Isaias Q. Vidua, Vicente M. Barreto, Jose M. Santiago, Jose Naseriv C. Dolojan, Juan Fernandez and Honorio Dilag, Jr., assail the Decision[1] dated October 4, 2006 of the Court of Appeals in CA-G.R. SP No. 88195 and CA-G.R. SP No. 88845, and its Resolution[2] dated March 13, 2007. The assailed Decision upheld the authority of public respondent National Electrification Administration (NEA) to supervise electric cooperatives such as ZAMECO II and the power of NEA to take preventive and/or disciplinary measures against an electric cooperative's board of directors, officers or employees. The questioned Resolution asserted the continuing regulatory power of NEA over electric cooperatives under Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA).

The following facts are quoted from the assailed Decision:

Jose S. Dominguez, Isaias Q. Vidua, Vicente M. Barretto, Jose M. Santiago, Jose Naseriv C. Dolojan, Juan Fernandez and Honorio Dilag, Jr. (hereafter petitioners) are members of the Board of Directors of the Zambales II Electric Cooperative, Inc. (hereafter ZAMECO II). ZAMECO II is an electric cooperative organized and registered under Presidential Decree No. 269, as amended.

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[1] *Rollo*, pp. 54-66; Penned by Associate Justice Juan Q. Enriquez, Jr. with the concurrence of Associate Justices Portia Aliño-Hormachuelos and Vicente Q. Roxas.

[2] *Id.* at 68-71.

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NEA is a government owned and controlled corporation organized under Presidential Decree (PD) No. 269, as amended by PD No. 1645.

Castillejos Consumers Associations, Inc. (hereafter CASCONA) is an organization of electric consumers from the municipality of Castillejos, Zambales under the coverage area of ZAMECO II.

On November 21, 2002, CASCONA, through its Board of Trustees, filed a letter-complaint with NEA seeking the removal of the petitioners for the following alleged offenses:

a. illegal payment of 13th Month Pay and Excessive Mid-Year and Christmas Bonus to petitioners;

b. excessive expenses of the Board President, petitioner Mr. Jose S. Dominguez, charged to ZAMECO Power Corporation (ZPC) and Central Luzon Power Transmission Development Corporation (CLPTDC) but advanced by ZAMECO II and treated as receivables by the ZAMECO II from aforesaid corporations;

c. anomalous contract with Philreca Management Corporation (PMC) for ZAMECO II's Systems Loss Reduction Program; and

d. overstaying as members of the Board of Directors of ZAMECO II.

The letter-complaint was essentially based on the "Management and Financial Audit Report of Zambales II Electric Cooperative, Inc. (ZAMECO II) for the period from 01 January 1989 to 30 September 1997" dated June 1998 submitted by the Manager of the Coop Systems Audit Division to the NEA.

After an exchange of pleadings between herein parties, on March 12, 2003, the NEA-Administrative Committee (NEA-ADCOM) issued an Order setting the case for a preliminary mandatory conference.

During the preliminary mandatory conference, the parties agreed that:

a. ZAMECO II Board shall be given up to November 15, 2003 to deliberate complainant's proposed term of compromise; and

b. If no compromise agreement is reached until November 15, 2003, the parties shall submit verified/sworn "Position Paper" in lieu of a formal type of hearing.

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On November 19, 2003, CASCONA submitted its position paper. For failure of petitioner to file its position paper despite the extended period, the ADCOM considered the case submitted for resolution.

On November 24, 2004, the NEA issued the assailed Resolution.[3] Petitioners filed a motion for reconsideration thereto.

Without acting on petitioner's motion for reconsideration, on December 21, 2004, the NEA issued the assailed Office Order[4] dated

[3] *Id.* at 124-125; The NEA meted out the penalty of removal from office with perpetual disqualification to run for the same position against all incumbent members of the Board of Directors of ZAMECO II and authorized the NEA Administrator to designate a Project Supervisor in order not to disrupt the operations of the cooperative.

The dispositive portion of the Resolution states:

WHEREFORE, in view of the foregoing premises and pursuant to the power vested in the NEA Board of Administrators under Section 5(3) of Presidential Decree No. 1645, the respondents, Jose S. Dominguez, Isaias Q. Vidua, Vicente M. Barreto, Jose M. Santiago, Jose Naseriv C. Dolojan, Juan Fernandez, Honorio Dilag, Jr., all incumbent members of the Board of Directors of ZAMECO II are hereby meted the penalty of Removal from Office with perpetual disqualifications to run for the same position in any future district elections of the Cooperative.

Let it be stated however, that except for the irregularities as contemplated or mentioned herein, acts of the ZAMECO II Board Members performed in their hold-over capacity are presumed valid unless otherwise proven before competent authority.

The penalty of removal and disqualification shall be without prejudice to the filing or institution of appropriate legal actions against the respondents and other erring officials and employees of ZAMECO II. ZAMECO II is directed to initiate such legal action as soon as possible.

Furthermore, the respondents and concerned coop's officials and employees as identified in June 25, 1998 and July 24. 2003 Audit Reports are hereby ordered to immediately reimburse the amounts disallowed in audit.

To fill the vacuum in the Board of Directors arising from the removal of the respondents, this Board hereby orders the immediate conduct of district elections in the affected areas. For this purpose, the NEA Management is hereby instructed to immediately create an election committee.

In order not to disrupt the operations of the Cooperative, the NEA Administrator is hereby authorized to designate a Project Supervisor who shall perform his duty until such time that a new set of Board of Directors shall have been constituted.

SO ORDERED.

[4] *Id.* at 56; The Office Order designated Engr. Paulino T. Lopez as Project Supervisor of ZAMECO II.

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December 21, 2004 prompting petitioners to file the present petition for *certiorari* with this Court docketed as CA-G.R. SP No. 88195.

In a Resolution dated February 7, 2005 in CA-G.R. SP No. 88195, then 7th Division of this Court, issued a Temporary Restraining Order (TRO) valid for sixty (60) days enjoining the NEA, NEA-ADCOM and CASCONA from enforcing or implementing the Resolution dated November 24, 2004, Office Order No. 2005-003, Series of 2004 dated December 21, 2004.

After the issuance of said resolution, the NEA-ADCOM resolved petitioners' motion for reconsideration in the assailed Decision[5] dated February 15, 2005.

In a Resolution dated April 5, 2005, then 7th Division of this Court granted the preliminary injunction in CA-G.R. SP No. 88195.

On March 29, 2005, petitioners filed the present petition for review docketed as CA-G.R. SP. No. 88845.

In a Resolution, dated August 22, 2005 issued by then 17th Division of this Court, CA-G.R. SP No. 88195 and CA-G.R. SP No. 88845 were ordered consolidated pursuant to Section 3(a), Rule III of the 2002 Internal Rules of the Court of Appeals, as amended.[6]

The appellate court denied the consolidated petitions on the ground that NEA properly exercised its supervisory power over ZAMECO II. Corollary to this ruling is the Court of Appeals' declaration that petitioners have not been deprived of due process in the administrative proceedings. The appellate court denied reconsideration.

In the instant Petition for Review on *Certiorari*[7] dated March 22, 2007, petitioners argue that NEA's power to supervise and control electric cooperatives had been abrogated by the EPIRA which decreed that all outstanding financial obligations of electric cooperatives to NEA shall be assumed by the Power Sector Assets and Liabilities Management Corporation (PSALM Corp.).

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[5] *Id.* at 131; The decision denied ZAMECO II's motion for reconsideration for lack of merit.

[6] *Id.* at 57-59.

[7] *Id.* at 10-49.

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Petitioners theorize that the regulatory authority which NEA exercises over electric cooperatives exists only by virtue of the loans incurred by the latter from NEA. With the condonation of these loans ordained under the EPIRA, NEA's power to supervise and control electric cooperatives had allegedly become defunct.

Petitioners insist that they were denied due process as they were never notified of the charges against them based on the July 24, 2003 Audit Report (2003 Audit Report). Allegedly, petitioners had been asked to respond only to the charges under the June 25, 1998 Audit Report (1998 Audit Report).

Finally, petitioners argue that NEA's Office of the Administrative Committee (ADCOM) does not have the authority to hear election-related cases. The questions raised by respondent Castillejos Consumers Association, Inc. (CASCONA), such as whether a director of an electric cooperative is already overstaying in office or is qualified to run for re-election, are allegedly election-related cases properly addressed to the Screening Committee in accordance with the Guidelines on the Conduct of Electric Cooperative District Elections (NEA Election Code).

NEA asserts in its Comment[8] dated June 20, 2007, that the EPIRA did not abrogate its regulatory power over electric cooperatives and that its authority to supervise and control the latter does not emanate solely from the cooperatives' loan agreements with NEA. The EPIRA itself allegedly enhances the powers of the NEA and, together with Executive Order No. 460, Series of 2005 (E.O. No. 460), does not expressly or even impliedly state that the assumption by PSALM Corp. of (electric cooperatives') debts to NEA carries with it the abrogation of the latter's power to impose disciplinary action.

Furthermore, NEA refutes petitioners' allegation that they were denied due process in the administrative proceedings, insisting that they were sent notices of the audit proceedings conducted by NEA.

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[8] *Id.* at 975-986.

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In its Comment[9] dated June 22, 2007, CASCONA avers that there is no connection between PSALM Corp.'s assumption of the loan obligations of electric cooperatives and NEA's power to impose disciplinary action against petitioners. It also points out that the Deputy Administrator of NEA furnished a copy of the highlights of the 2003 Audit Report to petitioners in a letter dated August 15, 2003, and required petitioners to submit their explanation thereon on or before September 16, 2003. The audit exceptions in the 2003 Audit Report allegedly pertain to issues which were already raised in CASCONA's complaint filed with NEA and which persisted as found in the 2003 Audit Report. Thus, petitioners cannot claim that the 2003 Audit Report was not made known to them.

CASCONA also argues that the issue pertaining to petitioners' overstaying in office is an administrative and not an election-related matter. The fact that there was no election scheduled at all negates the assertion of petitioners that the issue is a pre-election protest.

Petitioners filed a Consolidated Reply[10] dated November 15, 2007, tracing the provenance of NEA's supervisory power over electric cooperatives. According to petitioners, with the passing of the EPIRA and E.O. No. 460, the borrower-lender relationship between ZAMECO II and NEA, by virtue of which the latter exercises regulatory powers over ZAMECO II, had been severed as of June 26, 2006. Thus, the Energy Regulatory Commission (ERC) is now the only regulatory agency which has jurisdiction over players in the power industry.

Petitioners insist that they had been deprived of due process as they were never heard on the charges as stated in the 2003 Audit Report cited as the bases for three (3) of the five (5) offenses in the Resolution of the NEA dated November 24, 2004, which directed, among other things, their removal from office.

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[9] *Id.* at 998-1018.

[10] *Id.* at 1110-1147.

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In a Supplemental Petition[11] dated November 3, 2008, petitioners inform the Court that it had registered as a cooperative under the Cooperative Development Authority (CDA) and had been issued a Certificate of Registration dated December 4, 2007. They also inform the Court that CASCONA members had taken over the grounds of ZAMECO II and that NEA, in a letter dated October 30, 2008, designated Engineer Alvin Farrales as Officer-in-Charge of ZAMECO II.

NEA filed a Comment[12] dated November 18, 2008, asserting that ZAMECO II's registration with the CDA should be revoked since it failed to comply with the requirement under the EPIRA for it to be first convert into a stock cooperative prior to its registration as an electric cooperative with the CDA. With the ineffectivity of ZAMECO II's registration with the CDA, it follows that NEA retains its supervisory and regulatory powers over ZAMECO II.

CASCONA, for its part, also insists on the continuing supervisory power of the NEA over ZAMECO II as the latter did not comply with the pre-conditions for its registration as a cooperative under the CDA.[13]

Fundamental to the resolution of this case is the determination of the power and authority which NEA can properly exercise in light of the recently passed EPIRA and executive orders bearing on the power industry, particularly E.O. No. 119 series of 2002 and E.O. No. 460 series of 2005.

P.D. No. 269, as amended by P.D. No. 1645, vested NEA with the authority to supervise and control electric cooperatives. In the exercise of its authority, it has the power to conduct investigations and other similar actions in all matters affecting electric cooperatives. The failure of electric cooperatives to comply with NEA orders, rules and regulations and/or decisions authorizes the latter to take preventive and/or disciplinary

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[11] *Id.* at 1157-1168.

[12] *Id.* at 1220-1226.

[13] *Id.* at 1229-1249; Comment/Opposition dated November 25, 2008.

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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 electric cooperative concerned.

Contrary to petitioners' assertion, NEA's regulatory power over electric cooperatives is not dependent on the existence of a creditor-debtor relationship between the former and the latter. This is clear from the express wording of Sec. 5 of P.D. No. 1645, amending Sec. 10, Chapter II of P.D. No. 269, enumerating the instances when NEA may avail of the remedies outlined in the law, including, as previously mentioned, the removal from office of any or all of the members of the Board of Directors, officers or employees of the electric cooperative. These instances are when the electric cooperative concerned or other similar entity fails after due notice to comply: (1) with NEA orders, rules and regulations and/or decisions; or (2) with any of the terms of the Loan Agreement. Had the existence of a creditor-debtor relationship between the parties been the sole *vinculum* which the law intended as a precondition for NEA's exercise of regulatory powers over electric cooperatives, there would not have been any need for the above distinction.

The passage of the EPIRA and its creation of PSALM Corp. which assumed all outstanding financial obligations of electric cooperatives did not affect the power of the NEA particularly over administrative cases involving the board of directors, officers and employees of electric cooperatives. This authority is expressly recognized under the last paragraph of Sec. 58, Chapter VII of the EPIRA which states that, "NEA shall continue to be under the supervision of the DOE and *shall exercise its functions under Presidential Decree No. 269, as amended by Presidential Decree No. 1645 insofar as they are consistent with this Act*."

Remarkably, even as they continually assert that NEA's regulatory authority over electric cooperatives had been abrogated by the EPIRA, petitioners fail to cite passages of the latter law which are supposedly inconsistent with the powers granted to NEA under P.D. Nos. 269 and 1645 and which should accordingly be deemed to have been withheld from it.

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A review of the provisions of the EPIRA reveals that the ERC has been given the specific mandate to "promote competition, encourage market development, ensure customer choice and penalize abuse of market power in the restructured electricity industry."[14] PSALM Corp., on the other hand, was created in order to "manage the orderly sale, disposition, and privatization of NPC generation assets, real estate and other disposable assets, and IPP contracts with the objective of liquidating all NPC financial obligations and stranded contract costs in an optimal manner." Obviously, the functions of these two agencies do not come into conflict and are not inconsistent with the supervisory power exercised by NEA in the instant case.

Furthermore, Sec. 8 of E.O. No. 119 specifically provides that, "The assumption by PSALM of the Rural Electrification Loan/s of an EC shall be revoked for failure to continually comply with Section 5 of this Executive Order …" Sec. 5, in turn, provides that the assumption of Rural Electrification Loans shall be effective upon compliance with certain terms and conditions, among which, is the continued compliance by the electric cooperatives with all NEA policies governing their relationship with NEA pursuant to P.D. Nos. 269 and 1645. These provisions explicitly recognize the continued authority of the NEA over electric cooperatives and the requirement for the latter to remain compliant with NEA policies on pain of having the assumption of their loan obligations by PSALM Corp. revoked.

However, we agree with petitioners' contention that they were deprived of due process in the administrative proceedings before the NEA insofar as they were not informed that the audit disallowances contained in the 2003 Audit Report would constitute additional charges in the administrative proceedings.

The records disclose that petitioners were furnished with a copy of the 2003 Audit Report by the Chief Operating Officer of NEA in a letter[15] dated August 15, 2003, and were asked to

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[14] Republic Act No. 9136 (2002), Chapter IV, Sec. 43.

[15] CA *rollo*, (Vol. 1), pp. 763-768.

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submit their explanation and action plan on the audit findings and recommendations on or before September 16, 2003. Petitioners were warned that their failure to submit an explanation shall be deemed a waiver of their opportunity to be heard and that the Audit Report shall accordingly be considered final.[16]

Petitioners were also given three (3) 30-day extensions within which to submit their explanation/justification. Thus, in the letter[17] dated November 20, 2003, petitioners were given up to November 28, 2003 to explain the audit findings, failing which the 2003 Audit Report shall be considered final as of November 29, 2003.

In yet another letter dated July 21, 2004,[18] petitioners were informed that the explanation given on some of the audit findings was not acceptable and that the refund of the disallowed expenses covered in the Audit Report should follow. However, note should be taken of the fact that the letters dated November 20, 2003 and July 21, 2004 were sent by the Cooperatives Audit Department and not by the ADCOM which was then conducting the administrative investigation of CASCONA's letter-complaint.

The first time that the 2003 Audit Report was expressly mentioned in the ADCOM proceedings was when CASCONA submitted the report together with its Position Paper[19] dated November 14, 2003. Yet, even when the ADCOM issued its Order[20] dated April 13, 2004, giving petitioners an extension of ten (10) days within which to file their Position Paper, there was no indication at all that the contents of the 2003 Audit Report shall be considered by the ADCOM as additional charges in the administrative proceedings.

Parenthetically, both the audit investigation and the administrative investigation on account of CASCONA's letter-

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[16] *Id.* at 768.

[17] *Id.* at 770.

[18] *Id.* at 772.

[19] CA *rollo*, (Vol. 1), pp. 653-654.

[20] *Id.* at 664-665.

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complaint were administrative proceedings. The difference between the two is that in ruling that petitioners had violated various guidelines pertaining to electric cooperatives and imposing the penalty of removal from office, NEA exercised a function which was decidedly quasi-judicial in nature. As such, NEA's compliance with due process requirements should be evaluated based on the standard set forth in *Ang Tibay v. CIR*,[21] pertaining to the cardinal rights which must be observed in proceedings before administrative tribunals, synthesized in a subsequent case as follows:

> There are cardinal primary rights which must be respected even in proceedings of this character. The first of these rights is the right to a hearing, which includes the right of the party interested or affected to present his own case and submit evidence in support thereof. Not only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts but the tribunal must consider the evidence presented. While the duty to deliberate does not impose the obligation to decide right, it does imply a necessity which cannot be disregarded, namely, that of having something to support its decision. Not only must there be some evidence to support a finding or conclusion, but the evidence must be substantial. The decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected.[22]

Moreover, P.D. No. 269, from which NEA derives its jurisdiction over the controversy, contains an express provision that a "hearing proceeding" be conducted wherein the party whose rights shall be substantially affected by the exercise of NEA's jurisdiction shall be given the opportunity to be heard. Sec. 47 of the law states:

> Sec. 47. *Hearings and Investigations.* — The NEA is empowered to conduct such hearings and investigations and to issue such orders as are necessary for it to implement the provisions of this Chapter,

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[21] 69 Phil. 635 (1940).

[22] *Globe Telecom, Inc. v. National Telecommunications Commission,* 479 Phil. 1, 33 (2004), citing *National Development Co., et al. v. Collector of Customs Manila,* 118 Phil. 1265, 1270-1271 (1963).

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and in connection therewith, without necessity of previous hearing, to require any public service entity or the officials thereof to furnish to it such information and data, including statements of account, schedules of rates, fees and charges, contracts, service rules and regulations, articles of incorporation, by-laws, audit reports and other internal records, documents, policies and procedures, as will enable the NEA to be sufficiently informed in exercising its powers and authorities: ***Provided,*** **That no order shall issue finally determining and substantially affecting any right of any person subject to the NEA's jurisdiction without first affording such person and any other interested person opportunity for hearing as a party in the hearing proceeding.** [Emphasis supplied]

It may be pointed out that in the Order[23] dated November 6, 2003, the ADCOM mentioned an agreement between the parties that the submission of their respective position papers shall be in lieu of formal trial-type proceedings. This agreement, however, preceded CASCONA's mention of the 2003 Audit Report on November 13, 2003. Therefore, it binds petitioners only insofar as they have effectively waived a "hearing proceeding" on the 1998 Audit Report but not with respect to the 2003 Audit Report.

Incidentally, under the 2005 Administrative Rules of Procedure of the National Electrification Administration and its Administrative Committee, which governs the procedure in administrative cases of electric cooperatives' Board of Directors, officers and employees, the ADCOM or Hearing Officer is mandated to determine whether there is a need for a formal trial or hearing after the submission of the parties' respective position papers.[24]

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[23] CA *rollo*, (Vol. 1), pp. 650-651.

[24] THE NEW ADMINISTRATIVE RULES OF PROCEDURE OF THE NATIONAL ELECTRIFICATION ADMINISTRATION AND ADMINISTRATIVE COMMITTEE, Rule V, Sec. 4. *Determination of Necessity of Hearing*.— Immediately after the submission by the parties of their position papers/ memoranda, the NEA-ADCOM or Hearing Officer shall, *motu proprio*, determine whether there is a need for a formal trial or hearing. At this stage, it may, at its discretion and for the purpose of making such determination, ask clarificatory questions to further elicit facts or information, including but not limited to the subpoena of relevant documentary evidence, if any, from any party or witness.

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In *Globe Telecom, Inc. v. National Telecommunications Commission, supra,* the Court invalidated a fine imposed by the NTC on Globe (due to the latter's alleged lack of authority to operate SMS services) on the ground that Globe was never notified that its authority to operate SMS was put in issue. The Court emphasized the need for a hearing before any punitive measure may be undertaken by an administrative agency in the exercise of its quasi-judicial functions. The Court said:

> Sec. 21 requires notice and hearing because fine is a sanction, regulatory and even punitive in character. Indeed, the requirement is the essence of due process. Notice and hearing are the bulwark of administrative due process, the right to which is among the primary rights that must be respected even in administrative proceedings. The right is guaranteed by the Constitution itself and does not need legislative enactment. The statutory affirmation of the requirement serves merely to enhance the fundamental precept. The right to notice and hearing is essential to due process and its non-observance will, as a rule, invalidate the administrative proceedings.[25]

Nonetheless, we hesitate to declare the entire proceedings undertaken by the ADCOM void if only because petitioners were given fair and ample opportunity to present their side with respect to CASCONA's charges covered by the 1998 Audit Report. Specifically, the charges of illegal payment of 13th month pay and excessive bonuses/allowances claimed by petitioners in violation of a NEA Memorandum and overstaying as members of the Board of Directors were duly established by the evidence on record. It should be mentioned, in this regard, that the issue that petitioners had overstayed in office is not so much election-related as it is connected to the allegation that they had committed serious misconduct and deliberate negligence in office.

In its Resolution dated November 24, 2004, the NEA quoted the following findings of its audit team and the CASCONA complaint and found sufficient evidence to justify the penalty of removal from office meted against petitioners:

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[25] *Globe Telecom, Inc. v. The National Telecommunications Commission,* 479 Phil. 1, 39 (2004).

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The Audit Report dated 25 June 1998, showed that ZAMECO II Board of Directors claimed 13th month pay, Anniversary bonus, Mid-year/Year-end Bonuses, Medical/clothing allowances, Prompt Payment Discount Bonus, and Separation Pay from January 1989 to September 1997.

The Audit Team's findings that the grant of benefits/allowances/ bonuses to the members of the Board were in violation of NEA guidelines and without legal basis and as such, the total amount of ₱3,680,425.00 were disallowed in audit and charged back to each Director as receivable.

Under the 1998 Audit Report, the details of the findings regarding the illegal 13th month pay and excessive Mid-year and Christmas bonus are as follows:

5. *Board of Directors and GM Excessive Bonuses/Allowances*

During the period audited, January 1989 to September 1997, the Board of Directors received/claimed various benefits which were in violation of NEA guidelines:

a. 13th Month Pay

This benefit is only granted to regular employees of the coop. Amount received by the Board ranges from ₱5,000.00 to ₱15,000.00.

b. Anniversary Bonus

There was no specific NEA guideline allowing the granting of such benefit but the Board Directors and the GM claimed bonuses of ₱300.00 to ₱10,000.00 from 1990-1996.

c. Mid-Year/Year-end Bonuses

Per NEA memo # 35, the EC may grant mid-year and year-end bonuses of ₱500.00 and equivalent to one month per diem/salary to its officers and employees respectively as long as all the four (4) criteria are met. During the period under audit, only one criteria current with NPC was met. However, the Board Directors claimed mid-year bonuses from ₱2,000.00 to ₱20,000.00 and Christmas bonus from ₱5,000.00 to ₱47,555.

d. Medical/clothing Allowances

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The allowed allowances for coop officers and employees per Memo #35 for medical and clothing allowance were ₱2,000.00 and ₱1,000.00 (increased to ₱1,500.00 in 1996) respectively but what was granted to the Board ranges from ₱2,500.00 to ₱10,000.00

e. Prompt Payment Discount Bonus

From 1989 to 1994, the Board Directors and the GM were receiving additional monthly Prompt Payment Discount (PPD) bonus of ₱1,500.00 each.[26]

x x x x x x x x x

The Audit Report dated 25 June 1998 covering the period January 01, 1989 to September 30, 1997 showed that "*the district elections of ZAMECO II Board of Directors are long overdue which deprived the members of the right to choose or change their district representative. The holdover stay of the incumbent directors also affects the operations of the coop because no election of officers is being made.*"

Under Section 13, Article III of the 1993 Guidelines on the Conduct of District Elections for Electric Cooperatives, it expressly provides that ***"the term of office of a regularly elected member of the Board of Directors shall be three (3) years. Such member shall be entitled to only one consecutive re-election."***

However, the above 1993 EC Election Code was amended, specifically the Term of Office of the EC Board of Directors by *"adding another term of three years for a total of nine years (three term) to the present two consecutive terms (or a total of six years)"* pursuant to NEA Board of Administrator Resolution No. 38, Series of 1999.

It is an undisputed fact that the term of office of most of the members of the Board of Directors of ZAMECO II had already expired. They remain as members of the Board on a hold over capacity since the coop's district elections are not being conducted regularly which is a clear violation of the 1993 Guidelines on the Conduct of District Election, as amended, and ZAMECO II Constitution and By-Laws.[27]

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[26] *Rollo*, pp. 113-114.

[27] *Id.* at 122.

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Thus, even if the other charges based on the 2003 Audit Report, on which petitioners were not heard, were disregarded, there is indeed substantial evidence to justify the penalty of removal from office imposed by the NEA.

The foregoing, notwithstanding, the apparent registration of ZAMECO II with the CDA on December 4, 2007 would ultimately bear on the question of whether NEA can still enforce its Resolution dated November 24, 2004 and Decision dated February 15, 2005, as affirmed by the Court of Appeals and by the Court herein.

Respondents NEA and CASCONA uniformly assert the invalidity of ZAMECO II's CDA Registration on the ground that ZAMECO II allegedly did not follow the procedure outlined in the EPIRA and the Rules and Regulations to Implement Republic Act No. 9136 (EPIRA Implementing Rules) for an electric cooperative to first convert into a stock cooperative as a precondition to its registration with the CDA.

Sec. 57, Chapter VII of the EPIRA provides that, "Electric cooperatives are hereby given the option to convert into either stock cooperative under the Cooperatives Development Act or stock corporation under the Corporation Code x x x" Sec. 7, Rule VII of the EPIRA Implementing Rules, in turn, provides as follows:

> Sec. 7. *Structural and Operational Reforms Between and Among Distribution Utilities.*
>
> . . . .
>
> (c) Pursuant to Section 57 of the Act, ECs are given the option to convert into Stock Cooperatives under the CDA or Stock Corporations under the Corporation Code. Nothing contained in the Act shall deprive ECs of any privilege or grant granted to them under Section 39 of Presidential Decree No. 269, as amended, and other existing laws. The conversion and registration of ECs shall be implemented in the following manner:
>
> (i) ECs shall, upon approval of a simple majority of the required number of turnout of voters as provided in

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> the Guidelines in the Conduct of Referendum (Guidelines), in a referendum conducted for such purpose, be converted into a Stock Cooperative or Stock Corporation and thereafter shall be governed by the Cooperative Code of the Philippines or the Corporation Code, as the case may be. The NEA, within six (6) months from the effectivity of these Rules, shall promulgate the guidelines in accordance with Section 5 of Presidential Decree No. 1645.

. . . . . .

Whether ZAMECO II complied with the foregoing provisions, particularly on the conduct of a referendum and obtainment of a simple majority vote prior to its conversion into a stock cooperative, is a question of fact which this Court shall not review. At any rate, the evidence on record does not afford us sufficient basis to make a ruling on the matter. The remand of the case to the Court of Appeals solely on this question is, therefore, proper.

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.

SO ORDERED.

Quisumbing (Chairperson), Carpio Morales, Velasco, Jr., and *Brion, JJ.*, concur.