



**Republic of the Philippines  
Supreme Court  
Baguio City**

**EN BANC**

**JOSE RIZAL L. REMO,  
REYNALDO G. PANALIGAN,  
TITA L. MATULIN, ISAGANI  
CASALME, CIPRIANO P.  
ROXAS, CESARIO S.  
GUTIERREZ, CELSO A.  
LANDICHO, and EDUARDO L.  
TAGLE,**

Petitioners,

**G.R. No. 175736**

*- versus -*

**ADMINISTRATOR EDITA S.  
BUENO, NATIONAL  
ELECTRIFICATION  
ADMINISTRATION (NEA)  
BOARD OF  
ADMINISTRATORS AND  
MEMBER-CONSUMERS OF  
BATELEC II,**

Respondents.

X ----- X  
**JOSE RIZAL L. REMO,  
REYNALDO G. PANALIGAN,  
TITA L. MATULIN, ISAGANI  
CASALME, CIPRIANO P.  
ROXAS, CESARIO S.  
GUTIERREZ, CELSO A.  
LANDICHO, and EDUARDO L.  
TAGLE,**

Petitioners,

**G.R. No. 175898**

Present:

SERENO, *CJ.*,  
CARPIO,  
VELASCO, JR.,  
LEONARDO-DE CASTRO,  
BRION,  
PERALTA,\*  
BERSAMIN,  
DEL CASTILLO,\*\*  
PEREZ,  
MENDOZA,  
REYES,  
PERLAS-BERNABE,  
LEONEN,  
JARDELEZA,\*\* and  
CAGUIOA, *JJ.*

**ADMINISTRATOR EDITA S.  
BUENO, SEC. RAPHAEL  
LOTILLA, WILFREDO  
BILLENA, JOSE VICTOR**

\* On official leave.

\*\* No part.

*mm*

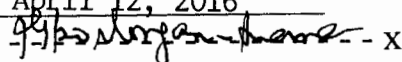
**LOBRIGO, EVANGELITO  
ESTACA AND MARILYN  
CAGUIMBAL,**

Promulgated:

Respondents.

April 12, 2016

X

X

## DECISION

**LEONARDO-DE CASTRO, J.:**

Before the Court are the consolidated cases G.R. No. 175736 and G.R. No. 175898, filed by the same petitioners against slightly different sets of respondents.

**G.R. No. 175736** is a petition for review on *certiorari* under Rule 45 with prayers for the issuance of a temporary restraining order (*status quo ante*) and/or preliminary mandatory injunction. Petitioners therein question the **Decision**<sup>1</sup> of the **Court of Appeals** in **CA-G.R. SP No. 96486** (the questioned Court of Appeals Decision).

**G.R. No. 175898** is a petition for indirect contempt under Section 3(a), Rule 71 of the Rules of Court.

Petitioners Jose Rizal L. Remo, Reynaldo G. Panaligan, Tita L. Matulin, Isagani Casalme, Cipriano P. Roxas, Cesario S. Gutierrez, Celso A. Landicho, and Eduardo L. Tagle (petitioners) are members of the Board of Directors of the Batangas II Electric Cooperative, Inc. (BATELEC II).

Public respondent Edita S. Bueno is impleaded as the Administrator of the National Electrification Administration (NEA), an agency created under Presidential Decree No. 269, as amended by Presidential Decree No. 1645.

The members of the Board of Administrators of NEA, at the time of the filing of the petition, were Department of Energy Secretary Raphael Lotilla as Chairman, and Wilfredo Billena, Jose Victor Lobrigo, and Edita Bueno.

The member-consumers of BATELEC II are the private respondents.

The Court of Appeals, in CA-G.R. SP No. 96486, summarized the facts in the following manner:

<sup>1</sup> *Rollo* (G.R. No. 175736), pp. 26-40; penned by Associate Justice Mariano C. del Castillo (now a member of this Court) with Associate Justices Conrado M. Vasquez, Jr. and Ricardo S. Rosario concurring.



The antecedent facts show that on May 12, 2005, an administrative complaint for gross mismanagement and corruption was lodged before the Board of Administrators, National Electrification Administra[tion] (NEA) by bonafide members of BATELEC II against petitioners and other members of the Board of Directors of the cooperative.

In a Manifestation and Motion dated April 12, 2006, respondents informed the Office of the Administrative Committee of NEA (Adcom) that they are adopting their Joint Answers filed in two other administrative cases as part of their arguments and evidence in this case. In their Joint Answers, respondents averred among others that the complaints were never subscribed and sworn to before an administering officer, non-payment of filing fees as well as non-submission of a certification against non-forum shopping and, hence, prayed for dismissal. On May 25, 2006, an Order was issued giving the complainant members of the cooperative a period of fifteen (15) days to submit the needed documents in these cases. Respondents moved for a reconsideration of the Order dated May 25, 2006 but the same was denied on June 29, 2006 after the submission of the required documents. Another pleading captioned Motion for Reconsideration and Clarification was filed by respondents which was denied on July 25, 2006.

Meanwhile and undaunted, respondents filed before [the Court of Appeals] on September 21, 2006 a Petition for Certiorari with a plea for Temporary Restraining Order and Preliminary Injunction [CA-G.R. SP No. 96486], alleging therein that the NEA acted with grave abuse of discretion amounting to lack or excess of jurisdiction in not dismissing the complaint in NEA Adm. Case No. 01-05-05 and in accepting token compliance made more than a year after the complaint was filed.

On October 5, 2006, NEA found substantial evidence to hold the respondents administratively liable. The dispositive portion of its decision [the NEA decision] reads:

“WHEREFORE, premises considered, it is hereby ordered:

(1) That pursuant to Section 10, Chapter II of Presidential Decree No. 269, as amended by Section 5(e) of Presidential Decree 1645, Respondents Reynaldo Panaligan, Isagani Casalme, Cesario Gutierrez, Celso Landicho, Tita Matulin, Jose Rizal Remo, Cipriano Roxas and Eduardo Tagle, all incumbent members of the Board of Directors of BATELEC II, are REMOVED as members of the Board of Directors with disqualification to run for the same position in any future district election of the cooperative, effective immediately;

(2) That Respondents Ruben Calinisan, Gerardo Hernandez, Ireneo Montecer, and Tirso Ramos, who are no longer members of the Board of Directors of BATELEC II, are DISQUALIFIED to run for the same position in any future district election of the cooperative effective immediately; and

(3) That the penalty as recommended above shall be without prejudice to future criminal and/or civil actions that may be taken against the responsible members of the Board by BATELEC II. Accordingly, the present BATELEC II Board of Directors, are directed to file the appropriate criminal and/or civil action against all of the respondent members of the Board of Directors of BATELEC II.

x x x x

On October 9, 2006, the Administrator of NEA, Edita S. Bueno ordered seven of the Board of Directors of BATELEC II namely Atty. Natalio M. Panganiban, Mr. Leovino O. Hidalgo, Mr. Gonzalo O. Batugon, Mr. Ruperto H. Manalo, Mr. Adrian G. Ramos, Mr. Dakila P. Atienza, and Mr. Michael Angelo C. Rivera to reorganize and elect a new set of officers for the cooperative effective immediately and ruled that the vacancies in the Board by reason of the NEA Decision x x x shall not be included in the count for the determination of a quorum in the BATELEC II Board.

On October 10, 2006 (not October 9, 2006 as alleged in the Petition) therein respondents moved for a reconsideration of the Decision dated October 5, 2006 arguing that NEA erred in holding respondents guilty of grave misconduct, in making its decision immediately executory, in rendering the decision despite the pendency of a motion to defer proceeding/Petition for Certiorari and Adm. Case Nos. 01-02-06 and 02-02-06, and in directing the filing of criminal and/or civil actions against them.

Without awaiting the resolution of their Motion for Reconsideration, respondents filed before [the Court of Appeals a Petition for Certiorari, which was docketed as CA-G.R. SP No. 96486] on the following grounds:

- “A. That the Public Respondent Edita Bueno committed grave abuse of discretion amounting to lack or excess of jurisdiction when she ordered the execution of the assailed decision of the NEA Board of Administrators to which she is a member, during the pendency of a Motion for Reconsideration directed against the said decision; and
- B. That the Public Respondent Edita Bueno committed grave abuse of discretion amounting to lack or excess of jurisdiction when she declared in her assailed order that the majority of the Board of Directors of BATELEC II, whom she prematurely ordered removed shall not be considered in the count for the determination of a quorum.<sup>2</sup> (Citations omitted.)

<sup>2</sup>

Id. at 27-31.

On October 10, 2006, in compliance with the October 9, 2006 NEA Order, the following resolution was issued:

BATELEC II RESOLUTION #001  
SERIES: 2006

**WHEREAS**, a letter dated 09 October 2006 from NEA was received by the undersigned, a portion of which reads as follows:

*"We hereby order the seven (7) above-named Board of Directors to re-organize and accordingly elect a new set of officers for the cooperative effective immediately"*

**WHEREAS**, in faithful compliance of the above and in order to protect and promote the general welfare and interest of the cooperative, an election was held today, October 10, 2006 and the duly elected set of officers are as follows:

President	-	Ruperto H. Manalo
Vice President	-	Atty. Natalio M. Panganiban
Secretary	-	Dakila P. Atienza
Treasurer	-	Leovino O. Hidalgo

x x x x

Adapted this 10<sup>th</sup> day of October 2006 at Lipa City, Batangas.

[Signed by Manalo, Panganiban, Atienza, Hidalgo, Gonzalo O. Bantugon (Director), Adrian G. Ramos (Director), and Michael Angelo C. Rivera (Director).]

Erwin M. Layog, Notary Public (October 12, 2006)<sup>3</sup>

On October 11, 2006, respondent Bueno wrote to the Board of Directors through Manalo confirming Board Resolution No. 001, Series of 2006, reorganizing and accordingly electing a new set of officers for the electric cooperative Board of Directors.<sup>4</sup>

On October 16, 2006, the Court of Appeals issued a Temporary Restraining Order (TRO),<sup>5</sup> effective for sixty (60) days, ordering the respondents and their representatives to cease and desist from enforcing or otherwise giving effect to the October 5, 2006 Decision of the NEA in NEA ADM. Case No. 01-05-05.

Meanwhile, the petitioners, on December 7, 2006, filed with the Court of Appeals a Motion to Cite Respondents in Contempt of Court.<sup>6</sup>

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<sup>3</sup> Id. at 633.

<sup>4</sup> Id. at 634.

<sup>5</sup> Id. at 122-123.

<sup>6</sup> Id. at 38.

*mtk*

On December 15, 2006, the **Court of Appeals** rendered its **Decision** in **CA-G.R. SP No. 96486** and held that there was no abuse of discretion on respondent Bueno's part when she issued her October 9, 2006 order, as such was done in the legitimate exercise of her mandate under Presidential Decree No. 269 and pursuant to Section 15 of the New Administrative Rules of Procedures of the NEA and its Administrative Committee. The *fallo* of the decision provides:

WHEREFORE, in light of the foregoing, the instant petition is DISMISSED for lack of merit. The temporary restraining order issued on October 16, 2006 is hereby declared LIFTED and of no further effect.<sup>7</sup>

Undaunted, the petitioners brought their case before this Court via a petition for review on *certiorari* with prayers for the issuance of a temporary restraining order (*status quo ante*) and/or preliminary mandatory injunction.

On **December 29, 2006**, this Court issued a ***Status Quo Ante Order***,<sup>8</sup> and reiterated in a Resolution issued on July 31, 2007. The pertinent part of the *Status Quo Ante Order* reads as follows:

Meanwhile, a **STATUS QUO ANTE ORDER** is hereby **ISSUED**, effective immediately and continuing until further orders from this Court, ordering You, parties, your agents, representatives, or persons acting in your place or stead, to maintain the **STATUS QUO** prevailing before the issuance of the Order dated October 5, 2006 of public respondent National Electrification Administration.

Petitioners then filed with this Court a Manifestation and Motion<sup>9</sup> dated January 9, 2007, informing this Court that when they tried to enter the premises of BATELEC II to assume their respective posts, they were refused entry by the security guards, who were allegedly acting upon the orders of NEA's project supervisor Evangelisto Estaca and Acting General Manager Marilyn Caguimbal. Petitioners averred that the respondents appointed caretaker-directors to take the posts petitioners had vacated despite the *Status Quo Ante Order*. The petitioners further averred that the respondents' actions made them guilty of indirect contempt as described under Section 3(a), Rule 71 of the Rules of Court.

Thus, petitioners, on the same day, filed a **verified petition for indirect contempt**,<sup>10</sup> asking this Court to cite respondents for indirect contempt for their clear disobedience of, or resistance to, a lawful order of this Court, and have them imprisoned and fined according to the Rules of Court. The petition for indirect contempt was docketed as **G.R. No. 175898** and was consolidated with G.R. No. 175736.

<sup>7</sup> Id. at 39.

<sup>8</sup> Id. at 300-301.

<sup>9</sup> Id. at 308-314.

<sup>10</sup> *Rollo* (G.R. No. 175898), pp. 3-11.

*mn*

Petitioners submit the following:

**ASSIGNMENT OF ERRORS**

- 1. THE COURT OF APPEALS COMMITTED GRAVE AND PALPABLE ERROR IN ITS INTERPRETATION OF SECTION 15 OF THE NEW ADMINISTRATIVE RULES OF NEA IN RELATION TO SECTION 58 OF PRESIDENTIAL DECREE NO. 269, THUS ITS ERRONEOUS RULING THAT NEA BOARD OF ADMINISTRATOR'S DECISION IS EXECUTORY EVEN PENDING A MOTION FOR RECONSIDERATION SEASONABLY FILED;**
- 2. THE COURT OF APPEALS COMMITTED GRAVE AND PALPABLE LEGAL ERROR IN ITS INTERPRETATION OF SECTION 24 (D) OF PRESIDENTIAL DECREE NO. 269, WHICH MADE IT TO RULE THAT SEVEN (7) OF THE FIFTEEN MAN BOARD OF DIRECTORS CAN CONSTITUTE A QUORUM TO ELECT OFFICERS AND CONDUCT BUSINESS OF THE COOPERATIVE[.]<sup>11</sup>**

**PETITIONERS' ARGUMENTS:**

1. THE DECISION OF THE NEA CANNOT BE MADE EXECUTORY PENDING A MOTION FOR RECONSIDERATION, HENCE THE MOVE OF THE PUBLIC RESPONDENT TO EXECUTE THE QUESTIONED DECISION OF NEA DURING THE PENDENCY THEREOF IS A GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION, WHICH SHOULD HAVE BEEN CHECKED BY THE COURT OF APPEALS.<sup>12</sup>

Petitioners argue that administrative rules cannot "supplant the dictates and meaning of the law which it seeks to implement."<sup>13</sup> The law in question is Presidential Decree No. 269,<sup>14</sup> which created the NEA.

Petitioners allege that the New Administrative Rules of Procedures of The National Electrification Administration and Its Administrative Committee (the NEA Rules of Procedures)<sup>15</sup> supplanted the clear meaning and intent of Presidential Decree No. 269 when it expressly disallowed judicial review of its decisions by stating in its rules that its decisions are immediately executory.

<sup>11</sup> *Rollo* (G.R. No. 175736), pp. 8-9.

<sup>12</sup> *Id.* at 9.

<sup>13</sup> *Id.*

<sup>14</sup> CREATING THE "NATIONAL ELECTRIFICATION ADMINISTRATION" AS A CORPORATION, PRESCRIBING ITS POWERS AND ACTIVITIES, APPROPRIATING THE NECESSARY FUNDS THEREFOR AND DECLARING A NATIONAL POLICY OBJECTIVE FOR THE TOTAL ELECTRIFICATION OF THE PHILIPPINES ON AN AREA COVERAGE SERVICE BASIS, THE ORGANIZATION, PROMOTION AND DEVELOPMENT OF ELECTRIC COOPERATIVES TO ATTAIN THE SAID OBJECTIVE, PRESCRIBING TERMS AND CONDITIONS FOR THEIR OPERATIONS, THE REPEAL OF REPUBLIC ACT NO. 6038, AND FOR OTHER PURPOSES. (August 6, 1973.)

<sup>15</sup> Approved by the NEA Board of Administrators on May 19, 2005; Table of Offenses and Penalties approved by the NEA Board of Administrators on September 7, 2005.

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**SECTION 15. *Execution of Decision.*** — The Decision of the NEA shall be immediately executory although the respondent(s) is not precluded from filing a Motion for Reconsideration unless a restraining order or an injunction is issued by the Court of Appeals in which case the execution of the Decision shall be held in abeyance.<sup>16</sup>

Petitioners contend that Section 15 should be invalidated for being in direct contravention of the law which it seeks to implement. Petitioners claim that even granting *arguendo* that NEA's decision may be considered immediately executory, still the Court of Appeals gravely erred in declaring that its execution is proper even during the pendency of a motion for reconsideration.<sup>17</sup>

Petitioners contend that Section 15 of the NEA Rules of Procedures allows the filing of the motion for reconsideration, which motion is specifically required by Section 58 of Presidential Decree No. 269, before any judicial review may be sought. As such, the same can be considered as an exception to the immediately executory nature of the NEA decision. Petitioners argue that Section 15 recognizes the jurisdiction of the Court of Appeals to issue a TRO and/or Preliminary Injunction to stay the execution of its decision. However, the aggrieved party cannot go to the Court of Appeals to seek the issuance of a TRO and/or preliminary injunction without first filing a motion for reconsideration as required by Section 58 of Presidential Decree No. 269. As such, if the pendency of a motion for reconsideration cannot hold the execution of the questioned decision of the NEA, its rule allowing the effects of the TRO and/or Preliminary Injunction to stay the execution of its questioned decision is rather illusory as it can never be actualized, thereby making the questioned rule absurd, vis-à-vis the requirements of Section 58 of Presidential Decree No. 269.<sup>18</sup>

Petitioners argue that it is basic in this jurisdiction that the filing of a motion for reconsideration stays the execution of the decision.<sup>19</sup>

Petitioners further claim that, even applying by analogy the decisions of the National Labor Relations Commission or other administrative bodies, which by law makes their decisions final and executory, still their decisions are stayed pending a motion for reconsideration, as the only remedy left for the aggrieved party is a Petition for *Certiorari* under Rule 65 of the 1997 Rules of Civil Procedure, where they can apply for the issuance of a TRO and/or Preliminary Injunction. Such stay of execution pending a motion for reconsideration is allowed and recognized pursuant to a section of Rule 65

<sup>16</sup> NEA Rules of Procedure, Rule V.

<sup>17</sup> *Rollo* (G.R. No. 175736), p. 12.

<sup>18</sup> *Id.*

<sup>19</sup> RULES OF COURT, Rule 52, SEC. 4. *Stay of execution.*—The pendency of a motion for reconsideration filed on time and by the proper party shall stay the execution of the judgment or final resolution sought to be reconsidered unless the court, for good reasons, shall otherwise direct.

*mm*



specifically requiring for the filing of a Motion for Reconsideration, just like in the proceedings before the NEA.<sup>20</sup>

2. WITH THE PENDENCY OF A MOTION FOR RECONSIDERATION, THE DECISION OF THE PUBLIC RESPONDENT NEA CAN NEVER BE CONSIDERED FINAL, HENCE THE OFFICE OF HEREIN PETITIONERS CANNOT STILL BE CONSIDERED VACANT AND THEIR NUMBER CONSTITUTING THE MAJORITY OF THE BOARD CANNOT BE UNDETERMINED IN DETERMINING THE QUORUM.<sup>21</sup>

Petitioners assert that the motion for reconsideration they filed on October 10, 2006 relative to the October 5, 2006 decision of the NEA Board of Administrators remains pending and unresolved. As such, the questioned decision has not yet attained finality and therefore cannot yet be executed. Petitioners note that respondent Buéno issued her Order after a mere passage of four days from the date that the questioned decision was issued by the NEA Board of Administrators.<sup>22</sup>

Regarding the declaration of the Court of Appeals that seven of the fifteen (15)-man Board can constitute a quorum, citing Section 24 of Presidential Decree No. 269 as its basis, petitioners aver that it cannot hold water as Section 24 provides that “[a] majority of the board of directors in office shall constitute a quorum.” Petitioners further aver that BATELEC II has fifteen (15) members of the Board of Directors; thus, the presence of **eight** of its directors is necessary to constitute a quorum in any of its meetings. The eight members of the Board of Directors who have been summarily ordered dismissed by respondent Bueno have remained in office as their motion for reconsideration has not yet been acted upon. Besides, at the time that their office was declared vacant by respondent Bueno on October 9, 2006, their period to file a motion for reconsideration had not yet lapsed, as they had indeed filed the same on October 10, 2006. Petitioners conclude that the respective positions of herein petitioners cannot be considered vacant, and as such, their number, constituting the majority of the members of the Board of Directors cannot just easily be ignored.<sup>23</sup>

Petitioners allege that the decision of the Court of Appeals in declaring as valid the removal of the eight directors as early as October 5, 2006, when the questioned decision was issued, is rather misplaced under an erroneous application of the questioned rules of NEA which directly contravene the express provision of Presidential Decree No. 269. As such, its eventual declaration that only seven of the 15 directors were in office on October 9, 2006, suffers legal infirmity for having been based on an erroneous premise.<sup>24</sup>

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<sup>20</sup> *Rollo* (G.R. No. 175736), p. 13.

<sup>21</sup> *Id.* at 14.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 15.

<sup>24</sup> *Id.* at 15-16.



Petitioners pray for the reversal of the Court of Appeals' decision and a declaration that its interpretation of Section 15 of the NEA Rules of Procedures is contrary to the dictates of Presidential Decree No. 269. Petitioners further pray for the annulment of the Order of the NEA dated October 5, 2006 and that of respondent Bueno dated October 9, 2006 for being violative of the law and applicable rules, including Rule 52, Section 4 of the 1997 Rules of Civil Procedure. Finally, petitioners pray for a declaration that Section 15 of the NEA Rules of Procedures is unlawful as it directly violates Sections 58 and 59 of Presidential Decree No. 269, which it seeks to implement.<sup>25</sup>

In its **Comment**,<sup>26</sup> the NEA presented its version of the facts:

On May 12, 2005, a complaint, which was sufficient in form and substance, was filed by member-consumers of BATELEC II against the Petitioners before the National Electrification Administrative Committee and was docketed as NEA Administrative Case No. 01-05-05.

On August 29, 2006, Petitioners in the instant case filed its Petition for Certiorari with prayer for the Issuance of Temporary Restraining Order/ or Preliminary Injunction before the third (3<sup>rd</sup>) Division of the Honorable Court [of] Appeals docketed as CA-G.R. SP No. 95902 ["First Petition"]. This is a special civil action for Certiorari under Rule 65 of the Rules of Court, assailing the NEA Orders dated 25 May 2006 and 14 July 2006 in the NEA Administrative Case No. 01-05-05 on ground of grave abuse of discretion amounting to lack or excess of jurisdiction.

On September 7, 2006, the First Petition x x x was DISMISSED by the Honorable Third Division of the Court of Appeals for non-compliance of Petitioners of the Rules on Non-forum Shopping in violation of Section 3, Rule 46 in relation to Section 1, Rule 65 of the 1997 Rules of Civil Procedure and in violation of Section 13, Rule 13 of the 1997 Rules of Civil Procedure.

Unable to acquire the desired result, Petitioners on September 21, 2006, filed [their] Petition for Certiorari with Prayer for the Issuance of Temporary Restraining Order/ or Preliminary Injunction before the [14<sup>th</sup>] Division of the Honorable Court of Appeals docketed as CA-G.R. No. 96214 [the "Second Petition"]. This is a special civil action under Rule 65 of the Rules of Court assailing the three (3) NEA Orders dated [May 25, 2006, June 25, 2006, and July 29, 2006, respectively] in NEA Administrative Case No. 01-05-05 on the ground of grave abuse of discretion amounting to lack or excess of jurisdiction.

On October 2, 2006, the Honorable Fourteenth Division of the Court of Appeals in CA-G.R. No. 96214 issued a Resolution which HELD IN ABEYANCE the prayer for issuance of the Temporary Restraining Order of Petitioners.

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<sup>25</sup> Id. at 20-21.

<sup>26</sup> Id. at 339-384.



On October 5, 2006, the NEA promulgated its Decision in the NEA Administrative Case No. 01-05-05 x x x.

x x x x

The above NEA Decision is premised on the following [findings of fact] by the NEA Administrative Committee (ADCOM) as supported by substantial evidence which resulted to their dismissal and perpetual disqualification as members of the Board of Directors of BATELEC II, to wit:

1. The herein Petitioners were charged by the member-consumers of BATELEC II for gross mismanagement of the cooperative and corruption for awarding the SEVENTY-FIVE MILLION PESOS (Php 75,000,000.00) computerization contract without the requisite bidding to an undercapitalized bidder (I-SOLV Technologies), whose paid-up capitalization is SIXTY-TWO THOUSAND FIVE HUNDRED PESOS (Php 62,500,00) only;
2. The herein Petitioners unjustifiably authorized the unprogrammed purchase of ten (10) units boom trucks at 100% overprice after an apparently rigged bidding;
3. As regards the Php 75 Million computerization project, the herein Petitioners were found to have grossly mismanaged the cooperative which resulted to the huge financial losses of BATELEC II;
4. In spite of NEA Administrator Bueno's letter advisory dated August 2, 2006, to conduct a comprehensive system study prior to the implementation of the computerization project, herein Petitioners as members of the Board of Directors in open defiance to said letter implemented the Php 75 million computerization project;
5. Contrary to NEA Rules, regulations, and policies and without the NEA Approval as required by Section 24(a) of P.D. No. 269 as amended by Section 7 of P.D. No. 1645, the herein Petitioners defiantly implemented the computerization program.

x x x [P]etitioners on October 12, 2006, filed a Petition for Certiorari with Prayer for the Issuance of Temporary Restraining Order/or Preliminary Injunction before the Special Second Division of the Honorable Court of Appeals docketed as CA-G.R. SP No. 96486 [THIRD PETITION]. This is a Special Civil Action for Certiorari under Rule 65 of the Rules of Court this time assailing the Order of Execution by public respondent Bueno pursuant to the above NEA Decision dated October 5, 2006 on the ground of grave abuse of discretion amounting to lack or excess of jurisdiction.<sup>27</sup>

<sup>27</sup>

Id. at 341-344.

*mtw*

The NEA contends that on November 17, 2006, petitioners registered BATELEC II to the Cooperative Development Authority (CDA)<sup>28</sup> “in their vile attempt to escape the imposition of administrative sanctions of NEA” based on its Administrative Case No. 01-05-05. However, the Court of Appeals found that the NEA did not commit grave abuse of discretion in immediately executing its decision. It is the third petition filed that is the subject of this appeal by *certiorari*.

## **PUBLIC RESPONDENT NEA’S ARGUMENTS:**

### **A. ON PROCEDURAL GROUNDS:**

- I. THE PETITION DOES NOT REFLECT THE TRUE FACTS WHEN [IT] STATED THAT NEA HURRIEDLY ISSUED ITS DECISION ORDERING THE REMOVAL OF THE PETITIONERS.<sup>29</sup>

The NEA avers that the ADM. Case No. 01-05-05 was filed on May 12, 2005 by member-consumers of BATELEC II against the petitioners before the NEA Committee, while the decision was promulgated on October 5, 2006. On the other hand, the move of the petitioners herein to register BATELEC II with the Cooperative Development Authority (CDA) was done on November 17, 2006, which was primarily designed to escape the imposition of administrative sanctions by NEA.<sup>30</sup> The BATELEC II Certificate of Registration<sup>31</sup> with the CDA stated that BATELEC II “shall operate within its original franchise areas” and it is entitled to rights and privileges granted by Republic Act No. 6938, Cooperative Code of the Philippines, and Republic Act No. 6939, an act creating the CDA, and other laws. On December 2006, the **CDA Board of Administrators** issued **Resolution No. 311, S-2006**, which states that the Board resolved to set aside the effectivity of the Certificate of Registration issued to BATELEC II “*pending a conduct of an exhaustive investigation to ascertain whether or not fraud or misrepresentation was committed by the ousted members of the BATELEC II Board of Directors when they applied for permanent registration with the CDA.*”<sup>32</sup>

- II. THE PETITION DOES NOT REFLECT THE TRUE FACTS WHEN [PETITIONERS] STATED THAT NEA THRU ADMINISTRATOR EDITA S. BUENO ISSUED AN ORDER OF EXECUTION DATED 9 OCTOBER 2006 DESPITE PENDENCY OF THEIR MOTION FOR RECONSIDERATION OF

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<sup>28</sup> Id. at 636-637.

<sup>29</sup> Id. at 347.

<sup>30</sup> Id. at 349.

<sup>31</sup> Id. at 636.

<sup>32</sup> Id. at 637.

*mt*

THE DECISION DATED 5 OCTOBER  
2006.<sup>33</sup>

The NEA argues that petitioners are estopped and can neither allege nor assail in this petition the fact that respondent Bueno issued an Order of Execution dated October 9, 2006 because they filed a petition for *certiorari* under Rule 65 and justified the fact of elevating the matter directly to the Court of Appeals without waiting for the resolution of their motion for reconsideration and should be deemed to have abandoned the latter.

III. PETITIONERS VIOLATED SECTION 2,  
RULE 42 OF THE 1997 RULES OF  
COURT ON NON-FORUM SHOPPING  
RIGHT FROM THE VERY START OF  
FILING THIS INSTANT PETITION FOR  
REVIEW ON *CERTIORARI* UNDER RULE  
45.<sup>34</sup>

The NEA alleges that there are commonalities or similarities of the three petitions successively filed with three different Divisions of the Court of Appeals, one of which was elevated and now pending before the Supreme Court by way of Petition for Review under Rule 45.<sup>35</sup> The cases are:

- 1) CA-G.R. No. 95902 – August 29, 2006 - **dismissed** on September 7, 2006;<sup>36</sup>
- 2) CA-G.R. No. 96214 – September 21, 2006 – dismissed; and
- 3) CA-G.R. SP No. 96486 – Decision is now the subject matter of this petition.

The NEA claims that the ultimate purpose or objective of petitioners in all their petitions was to prevent their eventual removal as members of the board of BATELEC II. Petitioners misled the Court of Appeals and made a mockery of the judicial system by splitting interrelated and inseparable issues but seeking a common objective or relief (restraining the NEA from removing them as members of the Board of BATELEC II) from the different fora (the Court of Appeals and the Supreme Court). This was a clear case of forum shopping. They filed the Certification of Non-Forum Shopping but circumvented the rule. There is forum shopping when the litigant sues the same party against whom another action or actions for the alleged violation of the same right and the enforcement of the same relief is/are still pending.

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<sup>33</sup> Id. at 351.

<sup>34</sup> Id. at 352.

<sup>35</sup> Id. at 353-356.

<sup>36</sup> Id. at 523-524.

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IV. PETITIONERS' FILING OF THE PETITION FOR *CERTIORARI* UNDER RULE 65 AT THE HONORABLE COURT OF APPEALS WILL NOT STOP THE RUNNING OF THE REGLEMENTARY PERIOD TO FILE AN APPEAL UNDER RULE 43.<sup>37</sup>

The NEA asserts that the wrong mode of appeal in the Court of Appeals cannot be corrected by another wrong remedy. The October 5, 2006 NEA decision is final and executory and should have been appealed. Resultantly, this Petition for Review under Rule 45 before this Honorable Court must be dismissed.

NEA points at that petitioners should have from the very start availed of the ordinary appeals from quasi-judicial bodies to the Court of Appeals under Rule 43 of the Rules of Court and not an extraordinary remedy of Petition for *Certiorari* under Rule 65 of the 1997 Rules of Court on account that a plain and speedy remedy is available.

For NEA, the Court of Appeals in fact, found no grave abuse of discretion. NEA contends that there is an available, plain, speedy and adequate remedy in the ordinary course of law which should have been used by petitioners under Rule 43, so the NEA Decision dated October 5, 2006 and its Order of Execution dated October 6, 2006 are not correctible by Petition for *Certiorari* under Rule 65. The NEA Rules of Procedures proscribe the filing of Petition for *Certiorari*.<sup>38</sup> A special civil action of *certiorari* under Rule 65 of the Rules of Court is a special remedy which cannot be a substitute for lapsed or forgotten appeal. The mere filing of a Petition for Review on *Certiorari* under Rule 43, provided it has form and substance, would stay the execution of judgment, whereas a Petition for *Certiorari* under Rule 65 would stay the execution unless a temporary restraining order or preliminary injunction is issued. The October 5, 2006 Decision of the NEA Board of Administrators is now *finis* for failure of petitioners to appeal within 15 days from receipt. This petition for review under Rule 45 must be dismissed.

**B. PUBLIC RESPONDENT NEA'S  
ARGUMENTS ON SUBSTANTIVE  
GROUNDS**

I. THERE IS NO GRAVE AND PALPABLE ERROR COMMITTED BY THE HONORABLE COURT OF APPEALS WHEN IT APPLIED SECTION 15 OF THE NEW ADMINISTRATIVE RULES OF NEA IN RELATION TO SECTION 58 OF PRESIDENTIAL DECREE NO. 269.<sup>39</sup>

<sup>37</sup> Id. at 361,

<sup>38</sup> Section 4(e), Rule III.

<sup>39</sup> *Rollo* (G.R. No. 175736), p. 367.

The NEA asserts that there is no conflict between the NEA Rules of Procedures and the provisions of law, but a mere confusion on the part of petitioners on which remedy they should avail of. Section 58, Chapter IV of Presidential Decree No. 269 does not expressly preclude the NEA from immediately executing its Administrative Decision pending a Motion for Reconsideration. The NEA Rules of Procedures did not rise above Presidential Decree No. 269. The NEA Charter allows for judicial review and there is no dispute about that. Presidential Decree No. 269, as amended, does not prohibit the NEA from promulgating Rules which would allow immediate execution of its decision pending a Motion for Reconsideration, unless otherwise stayed by the Court of Appeals. The filing of a Motion for Reconsideration is not a requisite for judicial review. Petitioners availed of the wrong remedy of Petition for *Certiorari*, which necessarily requires the filing of a Motion for Reconsideration. Petitioners obstinately misread the provisions in order to suit their own favor, but they contradict themselves as they had already availed of and obtained the TRO from the Court of Appeals for 60 days restraining the effect of the adverted NEA Decision.

In order to defeat the principle of presumption of regularity of official acts or orders of government officials and its agents, petitioners should have clear and factual grounds convincing enough to show that there was grave abuse of discretion committed by the NEA amounting to lack or excess of jurisdiction. This they failed to show as correctly ruled by the Special Second Division of the Court of Appeals.

The NEA Decision removed the petitioners; hence, the remaining board members constituted the "board of directors in office," and majority of seven constitutes a quorum. The issues in this petition for review were already resolved on the merits by the Court of Appeals.

II. THERE IS NO GRAVE AND PALPABLE  
ERROR COMMITTED BY THE  
HONORABLE COURT OF APPEALS IN  
APPLYING SECTION 24(D) OF  
PRESIDENTIAL DECREE NO. 269<sup>40</sup>

The NEA alleges that petitioners misread Section 24(D) of Presidential Decree No. 269 regarding what constitutes a quorum, considering that as of the time the questioned letter dated October 9, 2006 was issued, the October 5, 2006 Decision removing the petitioners as members of the Board of Directors was being executed. The NEA asserts that in effect, petitioners were no longer "Board of Directors in office" and that only the seven remaining directors shall be considered as such. The NEA argues that logically, a majority of seven shall constitute a quorum. The NEA states that when the Court of Appeals issued the TRO on October

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<sup>40</sup>

Id. at 373.



16, 2006, restraining the October 5, 2006 NEA decision for sixty (60) days, the petitioners were temporarily installed back as members of the Board of Directors for 60 days until the TRO was automatically dissolved and the Petition for *Certiorari* was dismissed. This, according to the NEA, is why petitioners filed this Petition for Review before this Court, raising issues which have already been resolved on the merits by the Court of Appeals.<sup>41</sup>

III. PETITIONERS' ALLEGATION OF  
QUESTION OF LAW IN THIS INSTANT  
PETITION IS UNFOUNDED BUT A  
PRETEXT IN ORDER TO TAKE SIEGE  
OVER BATELEC II.<sup>42</sup>

BATELEC II is one of the largest, if not the largest electric cooperative in the country, with more than 190,000 member-consumers and an average of Php300 million monthly gross revenue. The law mandates the NEA to supervise and control the operation of BATELEC II. As a cooperative, the ownership of BATELEC II does not belong to its Board of Directors but to its member-consumers, under the NEA's supervision and control.

The NEA is mandated to take cognizance over all administrative cases against erring Board of Directors and General Managers of electric cooperatives. Presidential Decree No. 269, as amended by Presidential Decree No. 1645, empowers the NEA to discipline and even remove erring Board of Directors that electric cooperatives found to be administratively liable. The NEA Charter empowers the NEA to promulgate its own rules of procedure and policies. Thus, the NEA issued and published its Rules of Procedures. The Board of Directors hastily sought refuge to the CDA without the requisite protocol of subjecting such choice in a referendum by the general assembly of member-consumers. They did this to escape administrative liability and still remain in power over the affairs of BATELEC II.

The NEA avers that in administrative proceedings, the Rules of Court are not strictly followed.

**GROUND TO LIFT *STATUS QUO ANTE* ORDER**

1. There is an urgent need to lift the *status quo ante* order and to dismiss the petition.

The continued presence of the petitioners as members of the Board of Directors poses a great threat to BATELEC II's welfare and to the operation of the electric cooperative as a whole considering that member-consumers and employees have lost confidence on petitioners who continue to squander

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<sup>41</sup> Id. at 374-375.

<sup>42</sup> Id. at 375.

*mn*



the cooperative funds. Just like when they filed for the TRO issued by the Court of Appeals, petitioners came before this Court with unclean hands, seeking for protection or relief of TRO or injunction, in order to escape liability and be able to continue their caprices as they remain in control of the affairs and funds of BATELEC II. As a result of the TRO issued by the Court of Appeals on October 16, 2006 in CA-G.R. SP No. 96486, petitioners “took siege” of the Cooperative by conducting “massive suspension” of its employees and officers resulting to a “magnified unrest” in the Cooperative. These acts are *indicia* of petitioners’ bad faith.<sup>43</sup>

Even during the effectivity of the Court of Appeals-issued TRO, petitioners withdrew Php256,000.00 from BATELEC II funds without being supported by a valid voucher and not used for the benefit of the cooperative. Therefore, the NEA, pursuant to its regulatory power, without necessarily violating the TRO, to protect the interests of the member-consumers of BATELEC II and to protect the cooperative from running bankrupt, exercised its enforcement powers provided under Section 5 of Presidential Decree No. 1645 by immediately installing a Project Supervisor who will act as overseer over and above the Board of Directors.

BATELEC II employees conducted a strike calling for the removal of the petitioners due to rampant abuse of power and malversation or conversion of cooperative funds. Petitioners sought relief of injunction in order to escape penalty from the very offense or violation they have committed against the cooperative. The very purpose of the NEA order or Decision commanding for petitioners’ removal as members of the Board of Directors of BATELEC II was for the protection of the Electric Cooperative’s funds and its member-consumers.<sup>44</sup>

In its **COMMENT**,<sup>45</sup> the Office of the Solicitor General (OSG) wrote:

1. The Court of Appeals correctly ruled that the Decision of the NEA Board of Administrators is immediately executory despite a Motion for Reconsideration duly filed, pursuant to Section 15 of the New Administrative Rules of NEA.

x x x x

In this jurisdiction, well-settled is the rule that the procedure to be followed before administrative agencies is generally not that prescribed for ordinary civil actions. The procedure may be prescribed in the statute creating the agency, or in the rules promulgated by the agency itself.

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<sup>43</sup> Id. at 378.

<sup>44</sup> BATELEC II’s Member-Consumers’ Demonstration: NO to CDA; Stop power abuse (Id. at 642-656); Complaint for grave threats filed by BATELEC II employees against Remo, Tagle, *et al.* (Id. at 661-663).

<sup>45</sup> Id. at 666-686.

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x x x x

Indeed by its very nature as an administrative agency exercising quasi-judicial functions, NEA is not strictly bound by the rules of procedure in ordinary civil actions. In fact, PD 269, which created the NEA, empowered NEA to adopt its own rules to govern the conduct of hearings and investigations of cases brought before it. Besides, the provisions of PD 269 reveal the intention of its framers for NEA to adopt xxx relaxed rules of procedure.<sup>46</sup>

The OSG avers that Section 15 of the New Administrative Rules of Procedures of the NEA and its Administrative Committee is within the power of the NEA to enact. It is valid and not contrary to Presidential Decree No. 269. “Contrary to petitioners’ contention, Section 15 did not preclude a judicial review of NEA decisions. That a decision is immediately executory does not prevent a party from questioning the decision before a court of law.”<sup>47</sup>

Section 15 is only a take-off from Section 60 of Presidential Decree No. 269.

SECTION 60. *No Stay*. — The institution of a writ of *certiorari* or other special remedies in the Supreme Court shall in no case supersede or stay any order, ruling, or decision of the NEA unless the Court shall so direct, and the appellant may be required by the Court to give bond in such form and of such amount as may be deemed proper.

It is clear from the foregoing that the NEA decisions may not be stayed by the institution of remedies before this Court (now before the Court of Appeals),<sup>48</sup> unless the Court shall so direct. This implies no less than that NEA decisions are immediately executory. Therefore, if the law itself creating the NEA, through Section 60, sanctions the immediately executory nature of NEA decisions, it may not be said that Section 15 of the NEA Rules “rises above its source,” as petitioners contend. If petitioners find the rule absurd, they should question the legality of the law itself.<sup>49</sup>

Finally, petitioners’ assertion that in our jurisdiction the filing of a motion for reconsideration stays the motion for execution of the decision, citing Section 4, Rule 52 of the 1997 Rules of Civil Procedure, is misplaced. The Court of Appeals correctly ruled that the Decision of the NEA Board of Administrators is immediately executory despite a Motion for Reconsideration duly filed, pursuant to Section 15.<sup>50</sup> That a decision is immediately executory does not prevent a party from questioning the decision before a court of law.

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<sup>46</sup> Id. at 672-675.

<sup>47</sup> Id. at 676.

<sup>48</sup> Under the NEA Administrative Rules of Procedures of 2013.

<sup>49</sup> Id. at 677.

<sup>50</sup> Id.



2. The Court of Appeals correctly ruled that the remaining seven of the fifteen members of the BATELEC II Board of Directors can constitute a quorum.<sup>51</sup>

The OSG claims that since there is now no existing restraining order to hold in abeyance the implementation of said Decision, petitioners are considered removed from office as directors of BATELEC II. As a result of the removal of petitioners, there remain only seven members of the BATELEC II Board of Directors in office, a majority of whom constitutes a quorum to do business.

3. The Court of Appeals correctly held that respondent NEA Administrator Edita Bueno did not act with grave abuse of discretion in issuing the subject October 9, 2006 letter.<sup>52</sup>

The OSG reasons that there was no showing that respondent Bueno supposedly exercised her power in a despotic, capricious or whimsical manner.

In their **Joint Reply**<sup>53</sup> to NEA and OSG, petitioners declare that there is no forum shopping in this case. This is a petition for review of the Court of Appeals Decision on pure questions of law. The Court of Appeals has not dismissed the other cases before it on such ground.

To show non-forum shopping, petitioners explain that CA-G.R. No. 95902 was filed to question the action of NEA under May 25, 2006 order, violating its own rules of procedures which requires the payment of filing fee and the submission of a certificate of non-forum shopping before it can take cognizance of any complaint. This was filed against the administrative cases filed by the Municipal Mayors under NEA ADM. Case No. 02-02-06 and another administrative case filed by the Employees Association docketed as NEA ADM. Case No. 01-02-06. CA-G.R. No. 96214 is the second petition filed for the Administrative case filed by the Member-Consumers under NEA ADM. Case No. 01-05-05. Finally, CA-G.R. SP No. 96486 was filed relative to the decision of Administrator Edita S. Bueno, regarding NEA ADM. Case No. 01-05-05, which prematurely executes the decision of the NEA Board of Administrators dated October 5, 2006.

Petitioners cannot file an appeal pending a Motion for Reconsideration. This case and CA-G.R. SP No. 96486 center on an *interlocutory order* of respondent Bueno dated October 9, 2006 executing the decision of the Board of Administrators on October 5, 2006. This order cannot be a subject of appeal, but only corrected by a petition for *certiorari* under Rule 65. This is why petitioners filed the case before the Court of

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<sup>51</sup> Id. at 679.

<sup>52</sup> Id. at 682.

<sup>53</sup> Id. at 692-710.

*mtw*

Appeals, which is now the subject of this petition for review. When the motion for reconsideration was filed on October 12, 2006 no appeal could be made on the questioned decision pending such motion as the same would be premature. Furthermore, considering that one of the issues in this case is the propriety of the NEA Administrative Rules for its direct violation of Presidential Decree No. 269 which it seeks to implement, the provision of such rules proscribing the filing of a petition for *certiorari* cannot apply as it would undermine the jurisdiction of this Court to decide on such legal question.

Petitioners conclude that the Court of Appeals decision upholding the order of the NEA pursuant to Section 15 of the NEA Administrative Rules is improper and violated Presidential Decree No. 269.

### THE COURT OF APPEALS' RULING

The Court of Appeals found petitioners' stance that the NEA decision cannot be executed pending a motion for reconsideration to be without merit. The Court of Appeals said that petitioners' position is not supported by Section 15, Rule V of the New Administrative Rules of Procedures of the NEA and its Administrative Committee, the very Section they are relying on, as the said provision states that decisions of the NEA are immediately executory.<sup>54</sup>

The Court of Appeals also found nothing irregular with respondent Bueno's orders to have the remaining members of the board of BATELEC II reorganize and elect a new set of officers. Citing Section 24(d) of Presidential Decree No. 269, the Court of Appeals said that a mere majority of directors in an office is sufficient to constitute a quorum and since the petitioners were removed from office, they could no longer claim any right over their positions when respondent Bueno issued such directive.<sup>55</sup> The Court of Appeals held as follows:

In sum, We hold that public respondent Edita Bueno did not commit abuse of discretion much less grave in issuing the assailed letter of October 9, 2006. Grave abuse of discretion implies capricious and whimsical exercise of judgment amounting to lack of jurisdiction or arbitrary and despotic exercise of power because of passion or personal hostility. The word "capricious," usually held in tandem with the term "arbitrary," conveys the notion of willful and unreasoning action. Thus, when seeking the corrective remedy of *certiorari*, a clear showing of caprice and arbitrariness in the exercise of discretion is imperative. It is also required that the grave abuse of discretion must be so patent and gross as to amount to an evasion or refusal to perform a duty enjoined by law.<sup>56</sup> (Citations omitted.)

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<sup>54</sup> Id. at 34-35.

<sup>55</sup> Id. at 35-37.

<sup>56</sup> Id. at 37-38.

In denying petitioners' motion to cite respondents in contempt of court, the Court of Appeals quoted Section 4, Rule 71 of the Rules of Court and held that a charge of indirect contempt should be commenced through a verified petition and not by a mere motion.<sup>57</sup>

On February 7, 2007, the NEA issued Guidelines<sup>58</sup> in the implementation of the Supreme Court *Status Quo Ante* Order in G.R. No. 175736. It states that "All members of the Board of Directors shall be allowed entry to the premises of BATELEC II during Board meetings duly called for the purpose and upon proper notice."

Public respondents filed their **MEMORANDUM**<sup>59</sup> on June 4, 2007.

On June 12, 2007, the Court resolved to grant petitioners' Manifestation and Motion dated March 31, 2007 praying, among others, for the enforcement of the *Status Quo Ante* Order anew and ordering the Chief of the Philippine National Police, the Chief of Staff of the Armed Forces of the Philippines, and the Director of the National Bureau of Investigation or other law enforcement agencies to serve and ensure the enforcement of the subject order.

Petitioners filed a Very Urgent Ex Parte Manifestation and Motion<sup>60</sup> on June 25, 2007 stating that respondents were trying to pre-empt the *Status Quo Ante* Order dated December 29, 2006 by calling for the replacement of petitioners, directors of BATELEC II, through self-serving proclamations and calling for another election, even before the actual and effective implantation of the subject *Status Quo Ante* Order. Petitioners prayed anew for the enforcement of said *Status Quo Ante* order, and for an order clearly defining and enumerating all the actions that need to be enforced by the law enforcement agencies.

This was followed by an Addendum to the Very Urgent Ex Parte Manifestation and Motion<sup>61</sup> alleging that respondents have refused to follow the *Status Quo Ante* Order and to reinstate petitioners as directors, and even called for a special election to replace such directors who were ordered reinstated by this Court. Such special election was approved by the "minority" Board of Directors, without the participation of the eight members of the BATELEC II Board constituting the majority, through its Board Resolution No. 3, Series of 2007. Petitioners prayed that "such illegal call for an election be expressly included in the list of the activities that was restrained by this Most Honorable Court in a *STATUS QUO ANTE* that was

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<sup>57</sup> Id. at 38-39.

<sup>58</sup> Id. at 715-721.

<sup>59</sup> Id. at 747-783.

<sup>60</sup> Id. at 814-827.

<sup>61</sup> Id. at 829-843.

*mt*

issued last December [29, 2006] and confirmed *NUNC PRO TUNC* in an order dated January 16, 2007.”<sup>62</sup>

On July 31, 2007, acting on the ADDENDUM TO THE VERY URGENT *EX-PARTE* MANIFESTATION AND MOTION, the Court resolved as follows:

- 1) To reiterate the *status quo ante* order issued on December 29, 2006;
- 2) To deputize x x x the Chief of the Philippine National Police and National Bureau of Investigation to enforce the aforesaid *status quo ante* order to ensure the faithful compliance therewith;
- 3) To require the respondents to comment within ten (10) days from notice on the aforementioned ADDENDUM x x x; and
- 4) To enjoin the respondents as of August 4, 2007 from calling/ conducting any election of Directors to the Board of BATELEC II.<sup>63</sup>

On August 1, 2007, a Motion for Intervention with Prayer to Admit Attached Comment in Intervention<sup>64</sup> was filed by Rupert H. Manalo, Natalio M. Panganiban, Dakila P. Atienza, Leovino S. Hidalgo, Adrian C. Ramos, Michael Angelo C. Rivera, and Gonzalo O. Bantugon (Movants-Intervenors) in their capacity as incumbent Board of Directors of BATELEC II. Movants-Intervenors allege that they are the remaining directors of BATELEC II after the October 5, 2006 NEA decision removed petitioners as members of the Board of Directors. They claim that the act of not impleading them as respondents in the two petitions filed by petitioners with the Court of Appeals and this Court is arbitrary and whimsical and betray petitioners’ agenda, tainted with malice and bad faith, to deny them the full opportunity to address squarely the issues raised in their Petitions.

Movants-Intervenors claim an outstanding legal interest in the subject matter of the controversy which can be characterized as direct and immediate in the sense that they will stand to lose or benefit in any Decision that this Court will render, in their capacity as Board of Directors, as the Decision will determine if there will be a reorganization and election of officers in BATELEC II. There is no denying that petitioners are seeking the nullification of the NEA’s Decision dated October 5, 2006. Assuming *ex gratia argumenti* that this Court would rule in favor of the petitioners, this would in effect render nugatory the valid reorganization and election of new officers undertaken by the remaining members of the Board of Directors of BATELEC II.

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<sup>62</sup> Id. at 832.

<sup>63</sup> Id., Vol. II, p. 844.

<sup>64</sup> Id. at 862-886.

Movants-Intervenors allege that majority of the members of the Board of Directors in office is sufficient to constitute a quorum according to Section 24 of Presidential Decree No. 269 and Section 4, Article V of BATELEC II's By-laws. The latter reads as follows:

ARTIKULO V – PULONG LUPON

SEKSIYON 4. ANG NAKAKARAMI SA LUPON AY BUBUO NG [KORUM], pasubali, na kung sa nakakarami sa lupon ay dumalo sa naturang pulong, ang nakakarami sa dumalong lupon ay maaaring magtindig ng pulong sa pana-panahon; at sa pasubali pa rin, na pagtatalastasan ng kalihim ang mga hindi dumalong kagawad ng lupon ng tungkol sa oras at pook ng naturang ititindig na pulong.

Ang mga Gawain ng nakakaraming dumalong kagawad ng lupon sa isang pulong na may korum ay siyang magiging Gawain ng lupon, maliban kung may naiibang itinakda sa alituntuning panloob nito.<sup>65</sup>

Movants-Intervenors allege that petitioners Gutierrez, Panaligan, Remo and Casalme are only holding their positions in a hold-over capacity in view of the expiration of their respective terms of office. The *Status Quo Ante* Order cannot stop the expiration of the term of office of petitioners or the holding of District elections. The petitioners' act of registering with the CDA on November 17, 2006 violated the *Status Quo Ante* Order since the *status quo* prior to the October 5, 2006 Decision was that BATELEC II was not yet registered with the CDA. The laws were therefore not observed in said CDA registration.<sup>66</sup>

Movants-Intervenors submit that they were not impelled or motivated to delay the speedy disposition of the instant case but basically just wanted to protect their legal interest - that when they reorganized and elected a new set of officers on October 12, 2006 pursuant to the October 5, 2006 decision of NEA and the October 9, 2006 directive of respondent Bueno, their number validly constituted a quorum, and that their acts as the incumbent Board of Directors were valid.

Movants-Intervenors interpose additional facts, claiming that on May 12, 2005, concerned member-consumers of BATELEC II filed with the NEA an administrative complaint<sup>67</sup> against petitioners as members of the Board of Directors of BATELEC II based on the Comprehensive Audit Report of NEA dated March 18, 2005 covering the period April 1, 2004-September 30, 2004 for gross mismanagement and corruption, for awarding without bidding the Seventy-Five Million Pesos (₱75,000,000.00) contract of the computerization project of BATELEC II to I-SOLV Technologies, Inc. with Sixty-Two Thousand Five Hundred Pesos (₱62,500.00) paid-up capital, and authorizing, after a questionable bidding process, the purchase

<sup>65</sup> Id. at 980.

<sup>66</sup> Id. at 874-877.

<sup>67</sup> Id. at 892-896.

*mn*



of ten (10) units of boom trucks at an amount of Six Million One Hundred Thousand Pesos (₱6,100,000.00).

Movants-Intervenors aver that on November 17, 2006, petitioners registered BATELEC II with the CDA without the knowledge of movants-intervenors, employees, and members-consumers. This registration was meant to remove the regulatory and supervisory power of the NEA over BATELEC II. Aside from the fact that the registration was done by petitioners who were already dismissed by the NEA as members of the Board of Directors of BATELEC II at the time of registration, it did not also go through the procedure as required by law.<sup>68</sup>

Movants-Intervenors allege that on February 8, 2007, a mediation proceeding was conducted at Southern Police Headquarters Region 4 headed by Gen. Nicassio Radovan and on February 9, 2007, respondent Bueno issued Guidelines in the Implementation of the *Status Quo Ante* Order.<sup>69</sup>

In their **COMMENT IN INTERVENTION**,<sup>70</sup> movants-intervenors aver that:

1. The Court of Appeals did not err in ruling that the 5 October 2006 Decision of the National Electrification Administration (NEA) is executory even pending a Motion for Reconsideration filed by petitioners.<sup>71</sup>

Movants-Intervenors claim that petitioners' assertion that the Court of Appeals erred in its interpretation of Section 15 of the NEA Rules in relation to Section 58 of Presidential Decree No. 269 is devoid of merit. A cursory reading of Section 15 of the NEA Rules is very categorical, too plain to be mistaken that NEA's Decision is immediately executory regardless of the pendency of a Motion for Reconsideration filed by petitioners. The rule is also clear that although the NEA Decision is immediately executory this should not prejudice petitioners from filing a Motion for Reconsideration, which remedy in fact they availed of. Movants-Intervenors point out that not only Section 58 but also Section 59 of Presidential Decree No. 269 provides judicial review of the NEA's Decision.

Movants-Intervenors lament the absurdity in petitioners' claim that "[w]hile the law allows judicial review of its decision, NEA under its issued rules expressly disallowed the same by stating in its rules that its decision is immediately executory." They assert that petitioners believe that while their Motion for Reconsideration of the NEA Decision is pending, they should remain as members of the Board until the time their Motion for

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<sup>68</sup> Id. at 868.

<sup>69</sup> Id. at 1003-1009.

<sup>70</sup> Id. at 971-984.

<sup>71</sup> Id. at 971.

*mn*



Reconsideration attains finality. Contrary to petitioners' claim, Section 15 of the NEA Rules is not inconsistent with Section 58 of Presidential Decree No 269; hence, the Court of Appeals correctly interpreted those two provisions of law. The former law did not supplant the latter law; the two complement each other.<sup>72</sup>

Movants-Intervenors allege that while petitioners' motion for reconsideration was pending resolution at the NEA, they availed of another remedy and that is a petition for review on *certiorari* under Rule 65 of the Rules of Court with the Court of Appeals assailing the NEA Decision. In doing so, petitioners are deemed to have abandoned their Motion for Reconsideration and cannot fault the NEA from no longer acting on the same.

2. The Court of Appeals did not err in interpreting Section 24(d) of PD No. 26 and ruling that the remaining members of the Board of Directors of BATELEC can constitute a quorum to elect officers and conduct business in the cooperative.<sup>73</sup>

As regards petitioners' claim that since their Motion for Reconsideration is pending, their office cannot be considered vacant and they are still considered the majority in determining quorum of the Board of Directors of BATELEC II, movants-intervenors aver that petitioners were validly terminated under the assailed NEA Decision which is immediately executory and was not stalled by the Motion for Reconsideration. The NEA is a quasi-judicial body not strictly bound by technical rules of procedure and administrative agencies are endowed with delegated rule-making powers. NEA's function as the supervisory and regulatory agency of electric cooperatives like BATELEC II is invested with public interest.

The NEA filed its COMMENT and MANIFESTATION WITH MOTION FOR RECALL on August 13, 2007.<sup>74</sup>

The NEA contends that petitioners' prayer to remove Evangelito S. Estaca as project supervisor of BATELEC II in its Addendum to the very urgent manifestation and motion is off-tangent, if not a usurpation of NEA's power to exercise supervision and control over electric cooperatives, and out of context in the October 5, 2006 NEA Decision and the December 29, 2006 Minute Resolution.

The NEA further contends that Estaca's appointment was by virtue of Office Order No. 2006-131, Series of 2006.<sup>75</sup> It is an administrative remedial measure and instrument for the abatement of "mass actions" of

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<sup>72</sup> Id. at 973.

<sup>73</sup> Id. at 975.

<sup>74</sup> Id. at 985-1002.

<sup>75</sup> Id. at 1010.



employees and member-consumers, who are more or less 190,000, that were disrupting the operation of the distribution utility. Aside from reinstating petitioners as Directors, NEA voluntarily complied with the *Status Quo Ante* Order in its NEA-GUIDELINES dated February 7, 2007. The NEA is not prohibited from appointing a project supervisor in the exercise of its administrative remedial measure. The project supervisor is vested to exercise management control.

**G.R. No. 175898**

In their **VERIFIED PETITION FOR INDIRECT CONTEMPT**<sup>76</sup> filed on January 10, 2007, petitioners claim that the *Status Quo Ante* Order was served on respondents and their counsel by the process server of the Supreme Court on December 29, 2006. However, on January 2, 2007, petitioners requested the Chief of Police of Lipa City to cause the service of the said order to the representative of the NEA in the person of Project Supervisor Estaca who was holding office in the BATELEC II Compound.

After said service of order, petitioners Remo, Gutierrez, Tagle, Roxas, and Casalme, armed with the Order, attempted to enter the premises of BATELEC II to assume their respective posts, but they were refused entry by the security guards of the compound, who in turn said they were given specific orders by NEA, through its Project Supervisor Estaca as well as by the Acting General Manager of BATELEC II, Marilyn Caguimbal, not to let petitioners in. Their pictures were even posted near the gate of the compound so as to ensure said orders. Petitioners attached photographs of these events as annex "B" and the collective affidavit of petitioners as annex "A."<sup>77</sup>

**RESPONDENT MARILYN  
CAGUIMBAL'S COMMENT TO  
THE PETITION filed on February  
27, 2007**<sup>78</sup>

Respondent Caguimbal asserts that she never intended to bring disrepute or disrespect to the Court through a willful and obstinate disobedience of its *Status Quo Ante* Order of December 29, 2006. Respondent Caguimbal contends that petitioners' charge is unkind and wanting of basis in fact and in law and the accusation is plainly predicated on hearsay information and self-serving conclusions. The Petition and their Collective Affidavit are devoid of any evidence to prove the fact that respondent Caguimbal had indeed ordered the security guards not to honor the Court's order. Petitioners' allegations and submissions merely indicate a

<sup>76</sup> Rollo (G.R. No. 175898), pp. 3-11.

<sup>77</sup> Id. at 14-23.

<sup>78</sup> Id. at 47-62.

*MNL*

supposed discussion that transpired between them and the security guards; out of the said exchange sprung the identity of the alleged architects of the contumacious act.

Claiming that mere allegation is not evidence, respondent Caguimbal strongly takes exception to petitioners' asseverations and vile allusions that she antedated the questionable appointment of caretaker directors in order to defy this Court's *Status Quo Ante* Order. Save for a self-serving and *non sequitur* conclusion that the antedating evidenced by the "Stamp receipt of the said order which reflects the date of its promulgation,"<sup>79</sup> there is nothing that supports their claim of date-meddling. Neither BATELEC II nor respondent Caguimbal were impleaded as party-respondents in G.R. No. 175736. Consequently, the *Status Quo Ante* Order is inapplicable to her, as neither she nor the company she serves was personally directed to implement said Order.

Respondent Caguimbal undertook measures in good faith and having in mind the need to avoid occurrence of any untoward incident that may arise from the implementation of the *Status Quo Ante* Order. The tension between the petitioners and employees and members of BATELEC II had been on an all-time high. Members of BATELEC II were the complainants against petitioners who ultimately caused the latter's removal from their posts as directors of BATELEC II.

On November 24, 2006, a violent encounter between the petitioners and the employee-members of BATELEC II ensued. This culminated in the filing of criminal charges against said petitioners. At the time petitioners attempted to enter the premises, there was no scheduled board meeting. Under NEA Bulletin No. 35 dated June 18, 1990, members of the Board of Directors of an electric cooperative should not hold regular office hours in the cooperative. Petitioners had no right to demand that they be allowed entry into the premises on the ostensible reason that they were imposing the *Status Quo Ante* Order of this Court. The NEA guidelines state how they are to assume their post, and it clearly does not entail them entering the premises at will, to the detriment of the peace and order situation in the BATELEC II compound.

Respondent Caguimbal claimed good faith, a sincere desire to forestall any unpleasant incident in the implementation of this Court's *Status Quo Ante* Order, and total lack of intention to impede, obstruct or degrade the administration of justice.

The **COMMENT**<sup>80</sup> of public respondents Department of Energy Secretary Raphael Lotilla, NEA Administrator Bueno, NEA Board Member

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<sup>79</sup> Id. at 51.

<sup>80</sup> Id. at 90-123.

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Wilfredo Villena, NEA Board Member Jose Victor Lobrigo, and Project Supervisor Evangelito Estaca was filed on April 10, 2007.

Public respondents aver that they may not be held guilty of indirect contempt and the petition should be dismissed. NEA Bulletin No. 35 limits and delineates the Board members' authority to avoid conflicts with REC management and staff. Thus, as Board members of BATELEC II, petitioners can only exercise authority when the Board is in session and when any of them has a special assigned duty.

Public respondents further aver that petitioners failed to show that the Board had a session on January 2, 2007 requiring their attendance. Similarly, petitioners did not allege that any of them had a special assigned duty justifying their presence in BATELEC II premises. Considering that Board members are specifically prohibited from involving themselves in management functions, intruding in the day-to-day management and operations of the cooperative and holding regular office hours therein, the *status quo* prevailing prior to October 5, 2006 is that petitioners as members of BATELEC II Board of Directors may enter the premises only when there is a board session or when a Board member has a special assigned duty.

#### **PETITIONERS' MEMORANDUM<sup>81</sup>**

In **Petitioners' Memorandum** filed on May 21, 2007, the issues according to petitioners are as follows:

1. May the Honorable Court of Appeals be permitted to allow an administrative office created by law to declare its decision as final and executory despite the provision of the same law subjecting its decisions to judicial review?
2. May the Honorable Court of Appeals be permitted to allow a Public Officer to execute a decision while the same is pending consideration of its office?
3. May the Honorable Court of Appeals be permitted to allow a minority of the Board of Directors of a Cooperative to constitute a quorum, while an order dismissing the majority of the Board is still under reconsideration?<sup>82</sup>

In the **Consolidated Memorandum<sup>83</sup>** filed by the **Office of the Solicitor General** on September 21, 2007, they claim that public respondents may not be held guilty of indirect contempt and the petition should be dismissed. Petitioners' allegations are bare and unsubstantiated. The Court's *Status Quo Ante* Order issued in G.R. No. 175736 was specifically addressed to the parties in that case, namely, herein petitioners,

<sup>81</sup> *Rollo* (G.R. No. 175736), pp. 793-813.

<sup>82</sup> *Id.* at 794-795.

<sup>83</sup> *Id.*, Vol. II, pp. 1091-1125.



Administrator Edita S. Bueno, NEA Board of Administrators and Member-Consumers of BATELEC II. Respondents Caguimbal and Estaca are not parties to the said case and they did not act in any of the parties' place or stead.

On January 7, 2007, the day petitioners claim that the *Status Quo Ante* order was being served on BATELEC II, respondent Estaca did not receive the Order on the belief that he did not have authority to do so as he was not a party to the case wherein it was issued, and consequently, he was not among those enjoined by the Honorable Court's Order to maintain the *status quo*. Estaca was designated by the NEA Board of Administrators, through its Resolution No. 124<sup>84</sup> passed in its November 30, 2006 meeting, as BATELEC II Project Supervisor pursuant to Section 7 of Presidential Decree No. 1645 and NEA BATELEC II Loan and Mortgage Agreements. As such, his functions are only the following:

1. Oversee the operations and management of BATELEC II;
2. Review, approve/disapprove Board Resolutions and Policies;  
and
3. Sign checks, withdrawal slips and other banking transactions.

Estaca's honest belief that he had no authority to receive the Order based on his specific functions enumerated above, coupled with the fact that he is not a party to the case where the *Status Quo Ante* Order was issued, negate any intention on his part to disobey the Honorable Court's Order.

As regards respondents NEA Administrator Edita Bueno, DOE Secretary Raphael Lotilla, Wilfredo Billena and Jose Victor Lobrigo, petitioners failed to demonstrate how they are guilty of disobeying or resisting the Court's *Status Quo Ante* Order, or that they even knew of the January 2, 2007 incident.

As a collegial body, respondents-members of the NEA Board of Administrators did not perform any act that would contravene the *Status Quo Ante* Order. Aside from the alleged refusal of respondent Estaca to receive the service of the said Order, nowhere in the petition were there alleged circumstances that would show that the other respondents willfully disregarded the Honorable Court's Order that would tend to bring its authority and the administration of law into disrepute or impede the administration of justice. It appears that the acts of respondents Caguimbal and Estaca were deemed by petitioners to be the acts of the other respondents, which is illogical and unfair.

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Rollo (G.R. No. 175898), pp. 103-104.

The OSG attached as Annex "D" a copy of the letter dated December 28, 2006 of respondents Caguimbal and Estaca to Mayor Felipe A. Marquez of Rosario, Batangas, informing him of the NEA directive to designate caretaker-directors to take the place of the eight (8) ousted members of the BATELEC II Board of Directors, herein petitioners, pending the scheduled election and organization of the Multi-sectoral Electrification Advisory Council. The claim that said letter was antedated was preposterous.

On February 20, 2013, Movants-Intervenors filed a motion asking this Court to clarify the scope of the *Status Quo Ante* Order, *i.e.*, if the proscription on the calling/conduct of an election for BATELEC II's Board of Directors includes a proscription on the appointment and designation of a member to the BATELEC II Board. This Court's resolution dated July 23, 2013 reads in part:

"*Status Quo Ante*" is a Latin term for "the way things were before." An order of this nature is imposed to maintain the existing state of things before the controversy. In this case, the STATUS QUO ANTE ORDER was issued to maintain the condition prevailing before the National Electrification Administration issued the assailed Order dated October 5, 2006. This naturally includes changes in the composition of the Board of BATELEC II, whether by election, appointment, or designation.

Acting on the Motion for Clarification dated February 4, 2013, filed by Movant-Intervenors, this Court holds that the Status Quo Ante Order includes a proscription on the appointment or designation of a member to the BATELEC Board.<sup>85</sup>

### THIS COURT'S RULING

The petition in **G.R. No. 175736** is devoid of merit as the Court of Appeals did not commit reversible error in its assailed Decision. Thus, petition is hereby **DENIED**.

The petition in **G.R. No. 175898** for indirect contempt has no leg to stand on and is based on empty and baseless averments and is hereby **DISMISSED**.

### DISCUSSION

The Court of Appeals did not commit reversible error in holding that there was no abuse of discretion on respondent Bueno's part when she issued her October 9, 2006 order, as such was done in the legitimate exercise of her mandate under Presidential Decree No. 269, and pursuant to Section 15 of the NEA Rules of Procedures.

<sup>85</sup>

*Rollo* (G.R. No. 175736), Vol. III, pp. 1399-1400.

In furtherance of its authority to adopt its own rules of procedure, the NEA Board of Administrators approved on May 19, 2005 the Rules of Procedure. Pertinent provisions of the NEA Rules of Procedures are quoted below:

THE NEW ADMINISTRATIVE RULES OF PROCEDURES OF  
THE NATIONAL ELECTRIFICATION ADMINISTRATION and its  
ADMINISTRATIVE COMMITTEE

Rule V: SECTION 15. Execution of Decision. — The Decision of the NEA shall be immediately executory although the respondent(s) is not precluded from filing a Motion for Reconsideration unless a restraining order or an injunction is issued by the Court of Appeals in which case the execution of the Decision shall be held in abeyance.<sup>86</sup>

On the other hand, the NEA Decree, Presidential Decree No. 269 (1973) contains the following provisions:

SECTION 24. *Board of Directors.* — (a) The business of a cooperative shall be managed by a board of not less than five directors, each of whom shall be a member of the cooperative or of another which is a member thereof. The by-laws shall prescribe the number of directors, their qualifications other than those prescribed in this Decree, the manner of holding meetings of the board and of electing successors to directors who shall resign, die or otherwise be incapable of acting. The by-laws may also provide for the removal of directors from office and for the election of their successors. Directors shall not receive any salaries for their services as such and, except in emergencies, shall not receive any salaries for their services to the cooperative in any other capacity without the approval of the members. The by-laws may, however, prescribe a fixed fee for attendance at each meeting of the board and may provide for reimbursement of actual expenses of such attendance and of any other actual expenses incurred in the due performance of a director's duties.

(b) The directors of a cooperative named in any articles of incorporation, consolidation, merger or conversion shall hold office until the next annual meeting of the members and until their successors are elected and qualify. At each annual meeting of, in case of failure to hold the annual meeting as specified in the by-laws, at a special meeting called for that purpose, the members shall elect directors to hold office until the next annual meeting of the members, except as otherwise provided in this Decree. Each director shall hold office for the term for which he is elected and until his successor is elected and qualifies.

(c) Instead of electing all the directors annually, the by-laws may provide that each year half of them or one-third of them, or a number as near thereto as possible, shall be elected on a staggered term basis to serve two-year terms or three-year terms, as the case may be.

(d) A majority of the board of directors in office shall constitute a quorum.

<sup>86</sup>

Approved by the NEA Board of Directors on May 19, 2005.





(e) The board shall exercise all of the powers of a cooperative not conferred upon or reserved to the members by this Decree or by its articles of incorporation or by-laws.

SECTION 49. *NEA Rules and Regulations.* — The NEA shall establish appropriate rules and regulations to carry out the provisions of this Chapter IV, including rules for the conduct of NEA investigations, proceedings and hearing; and shall timely publish the same when adopted or amended to the end that all persons affected thereby shall be given reasonable notice thereof.

SECTION 58. *Reconsideration.* — Any interested party may request the reconsideration of any order, ruling, or decision of the NEA by means of a petition filed not later than fifteen (15) days after the date of the notice of the order, ruling, or decision in question. The grounds on which the request for reconsideration is based shall be clearly and specifically stated in the petition. Copies of said petition shall be served on all parties interested in the matter. It shall be the duty of the NEA to decide the same within thirty (30) days, either denying the petition or revoking or modifying the order, ruling, or decision under consideration. If no petition for reconsideration is filed, no review by the Supreme Court as hereinafter provided shall be allowed.

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

We are one with all the respondents, and, more importantly, the Court of Appeals, in ruling against the strained interpretation petitioners assign to Section 15 of the NEA Rules of Procedures so as to make it inconsistent with Presidential Decree No. 269.

That NEA has quasi-judicial functions is recognized by Rule 43 of the 1997 Revised Rules of Civil Procedure, regarding appeals from the Court of Tax Appeals and Quasi-Judicial Agencies to the Court of Appeals:

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SEC. 1. *Scope.* — This Rule shall apply to appeals from judgments or final orders of the Court of Tax Appeals and from awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions. Among these agencies are the Civil Service Commission, Central Board of Assessment Appeals, Securities and Exchange Commission, Office of the President, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, **National Electrification Administration**, Energy Regulatory Board, National Telecommunications Commission, Department of Agrarian Reform under Republic Act No. 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Inventions Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, Construction Industry Arbitration Commission, and voluntary arbitrators authorized by law.

In *United Coconut Planters Bank v. E. Ganzon, Inc.*,<sup>87</sup> we held that:

A quasi-judicial agency or body is an organ of government other than a court and other than a legislature, which affects the rights of private parties through either adjudication or rule-making. The very definition of an administrative agency includes its being vested with quasi-judicial powers. The ever increasing variety of powers and functions given to administrative agencies recognizes the need for the active intervention of administrative agencies in matters calling for technical knowledge and speed in countless controversies which cannot possibly be handled by regular courts. A **“quasi-judicial function” is a term which applies to the action, discretion, etc., of public administrative officers or bodies, who are required to investigate facts, or ascertain the existence of facts, hold hearings, and draw conclusions from them, as a basis for their official action and to exercise discretion of a judicial nature.** (Citations omitted. Emphasis added.)

The October 9, 2006 Order of respondent Bueno implementing the October 5, 2006 Decision of the NEA Board of Administrators was found by the Court of Appeals to be a valid exercise of both the NEA’s Administrator, in charge of the supervision and control aspect, and the Board, in charge of the quasi-judicial function. There was no grave abuse of discretion on respondent Bueno’s part. Neither do we find error in the Court of Appeals’ appreciation of the facts and the applicable rules and laws.

Very recently, this Court had occasion to review the powers and functions of the NEA. In *Zambales II Electric Cooperative, Inc. Board of Directors v. Castillejos Consumers Association, Inc.*,<sup>88</sup> we held:

**A. The NEA’s creation and disciplinary jurisdiction**

The present NEA was created in 1973 under P.D. No. 269 to administer the country’s total electrification on an area coverage basis, by organizing, financing and regulating electric cooperatives throughout the

<sup>87</sup> 609 Phil. 104, 122 (2009).

<sup>88</sup> G.R. Nos. 176935-36 (Resolution), October 20, 2014.

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country. The NEA's enforcement powers under P.D. No. 269, however, was limited.

In 1979, P.D. No. 1645 amended P.D. No. 269 and **broadened the NEA's regulatory powers**, among others. Specifically, the amendments **emphatically recognized the NEA's power of supervision and control over electric cooperatives; and gave it the power to conduct investigations, and impose preventive or disciplinary sanctions over the board of directors** of regulated entities. Section 10 of P.D. No. 269, as amended by P.D. No. 1645 reads:

Section 10. *Enforcement Powers and Remedies.* —  
**In the exercise of its power of supervision and control over electric cooperatives and other borrower, supervised or controlled entities, the NEA is empowered to issue orders, rules and regulations and *motu-proprio* or upon petition of third parties, to conduct investigations, referenda and other similar actions in all matters affecting said electric cooperatives and other borrower, or supervised or controlled entities.**

If the electric cooperative concerned or other similar entity fails after due notice to comply with the NEA orders, rules and regulations and/or decisions, or with any of the terms of the Loan Agreement, the NEA Board of Administrators may avail of any or all of the following remedies:

x x x x

**(e) 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 Cooperative, other borrower institutions or supervised or controlled entities as the NEA Board of Administrators may deem fit and necessary and to take any other remedial measures as the law or the Loan Agreement may provide. (Emphasis supplied.)**

Likewise, Section 24 of P.D. No. 269, as amended by P.D. No. 1645, stressed that the board of directors of a regulated electric cooperative is subject to the NEA's control and supervision. That provision reads:

Section 24. *Board of Directors.* — (a) **The Management of a Cooperative shall be vested in its Board, subject to the supervision and control of the NEA which shall have the right to be represented and to participate in all Board meetings and deliberations and to approve all policies and resolutions. [Emphasis supplied]**

The NEA's **disciplinary jurisdiction** over the petitioners stems from **its power of supervision and control over regulated electric cooperatives** and over the board of directors who manage their operation.

In the exercise of this broad power, the NEA may take preventive and/or disciplinary measures including the suspension, removal and replacement of any or all of the members of the board of directors, officers or employees of the cooperative.

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At any rate, the Court judicially notices that on February 4, 2013, Congress enacted R.A. No. 10531, known as the National Electrification Administration Reform Act of 2013. Aware of the effects of restructuring the electric power industry under the EPIRA on electric cooperatives under P.D. No. 269, as amended, and on the responsibilities of the appropriate government agencies, like the NEA and the CDA, Congress enacted R.A. No. 10531 with a declared threefold state policy: *first*, to empower and strengthen the NEA; *second*, to empower and enable electric cooperatives (organized under P.D. No. 269 and its amendments, and the Philippine Cooperative Code of 2008; and related laws) to cope with the changes brought about by the EPIRA; and *third*, to promote the sustainable development in the rural areas through rural electrification.

Towards these ends, Congress further authorized the NEA to “supervise the management and operations of all electric cooperatives.” Pursuant to its power of supervision, Congress granted it the following powers:

x x x x

(a) issue orders, rules and regulations, *motu proprio* or upon petition of third parties, **to conduct investigations, referenda and other similar actions on all matters affecting the electric cooperatives;**

(b) **issue preventive or disciplinary measures** including, but not limited to, suspension or removal and replacement of any or all of the members of the board of directors and officers of the electric cooperative, as the NEA may deem fit and necessary and to take any other remedial measures as the law or any agreement or arrangement with the NEA may provide, to attain the objectives of this Act: and [Emphasis supplied]

Also, R.A. No. 10531 reiterated Section 57 of the EPIRA, giving the electric cooperative the option either to remain as a non-stock, non-profit cooperative or convert into and register as a stock cooperative under the CDA or a stock corporation under the SEC in accordance with the law’s IRR. Unlike the EPIRA’s IRR, the IRR of R.A. No. 10531, which was drafted in coordination with the NEA and the CDA, among others, contains a more detailed enumeration of the requirements for conversion to be determined by the NEA itself. This enumeration still includes the conduct of a referendum.

More importantly, R.A. No. 10531 expressly provides that the NEA’s power of supervision applies whether an electric cooperative remains as a non-stock cooperative or opts to register with the CDA as a stock cooperative. This only means that even assuming *arguendo* that the

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petitioners validly registered ZAMECO II with the CDA in 2007, the NEA is not completely ousted of its supervisory jurisdiction over electric cooperatives under the R.A. No. 10531. This law may be considered as curative statute that is intended to address the impact of a restructured electric power industry under the EPIRA on electric cooperatives, which has not been fully addressed by the Philippine Cooperative Code of 2008. (Citations omitted.)

Even more recently, in *Philippine Federation of Electric Cooperatives (PHILFECO) v. Ermita*,<sup>89</sup> the Court clarified NEA's role, and held:

Republic Act No. 10531 does not distinguish between the electric cooperatives registered with the CDA, the NEA or the SEC, inasmuch as Section 5 expressly subjects *all* electric cooperatives to the supervisory powers of the NEA. The deliberation on the proposed bill made this legislative intention clear x x x.

x x x x

x x x As it now stands, the NEA is vested with the appropriate power of supervision and control over all electric cooperatives regardless of the manner of their creation and their option to be registered with the CDA or the SEC.

Supervision and Control are defined under the Administrative Code of 1987, Executive Order No. 292 (1987), to wit:

#### BOOK IV

##### Chapter 7 - Administrative Relationships

SECTION 38. *Definition of Administrative Relationship.* — Unless otherwise expressly stated in the Code or in other laws defining the special relationships of particular agencies, administrative relationships shall be categorized and defined as follows:

(1) *Supervision and Control.* — Supervision and control shall include authority to act directly whenever a specific function is entrusted by law or regulation to a subordinate; direct the performance of duty; restrain the commission of acts; review, approve, reverse or modify acts and decisions of subordinate officials or units; determine priorities in the execution of plans and programs; and prescribe standards, guidelines, plans and programs. Unless a different meaning is explicitly provided in the specific law governing the relationship of particular agencies, the word "control" shall encompass supervision and control as defined in this paragraph.

(2) *Administrative Supervision.* — (a) Administrative supervision which shall govern the administrative relationship between a department or its equivalent and regulatory agencies or other agencies as may be provided by law, shall be limited to the authority of the department or its equivalent to generally oversee the operations of such agencies and to

<sup>89</sup>. G.R. No. 178082 (Notice), January 27, 2015.



insure that they are managed effectively, efficiently and economically but without interference with day-to-day activities; or require the submission of reports and cause the conduct of management audit, performance evaluation and inspection to determine compliance with policies, standards and guidelines of the department; to take such action as may be necessary for the proper performance of official functions, including rectification of violations, abuses and other forms of maladministration; and to review and pass upon budget proposals of such agencies but may not increase or add to them;

(b) Such authority shall not, however, extend to: (1) appointments and other personnel actions in accordance with the decentralization of personnel functions under the Code, except appeal is made from an action of the appointing authority, in which case the appeal shall be initially sent to the department or its equivalent, subject to appeal in accordance with law; (2) contracts entered into by the agency in the pursuit of its objectives, the review of which and other procedures related thereto shall be governed by appropriate laws, rules and regulations; and (3) the power to review, reverse, revise, or modify the decisions of regulatory agencies in the exercise of their regulatory or quasi-judicial functions; and

(c) Unless a different meaning is explicitly provided in the specific law governing the relationship of particular agencies, the word "supervision" shall encompass administrative supervision as defined in this paragraph.

The NEA Rules of Procedures, in providing that the decisions are to be immediately executory, do not contradict the NEA Charter, as petitioner insists.

In much the same way, decisions of the Department of Agrarian Reform (DAR), an administrative agency cloaked with quasi-judicial functions, are immediately executory, as this Court explained in *Manuel v. Department of Agrarian Reform Adjudication Board (DARAB)*,<sup>90</sup> to wit:

Section 17. Quasi-Judicial Powers of the DAR — The DAR is hereby vested with quasi-judicial powers to determine and adjudicate agrarian reform matters, and shall have exclusive original jurisdiction over all matters involving implementation of agrarian reform, except those falling under the exclusive original jurisdiction of the DENR and the Department of Agriculture (DA).

The DAR shall have powers to punish for contempt and to issue *subpoena duces tecum* and writs to enforce its order or decisions.

The decisions of the DAR may, in proper cases, be appealed to the Regional Trial Courts but shall be **immediately executory** notwithstanding such appeal.

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555 Phil. 28, 34 (2007).



Furthermore, in *Springfield Development Corporation, Inc. v. Presiding Judge of RTC, Misamis Oriental, Br. 40*,<sup>91</sup> this Court ruled:

The DARAB is a quasi-judicial body created by Executive Order Nos. 229 and 129-A. R.A. No. 6657 delineated its adjudicatory powers and functions. The DARAB Revised Rules of Procedure adopted on December 26, 1988 **specifically** provides for the manner of judicial review of its decisions, orders, rulings, or awards. Rule XIV, Section 1 states:

SECTION 1. *Certiorari* to the Court of Appeals. Any decision, order, award or ruling by the Board or its Adjudicators on any agrarian dispute or on any matter pertaining to the application, implementation, enforcement or interpretation of agrarian reform laws or rules and regulations promulgated thereunder, may be brought within fifteen (15) days from receipt of a copy thereof, to the Court of Appeals by *certiorari*, except as provided in the next succeeding section. Notwithstanding an appeal to the Court of Appeals the decision of the Board or Adjudicator appealed from, shall be immediately executory.

Further, the prevailing 1997 Rules of Civil Procedure, as amended, expressly provides for an appeal from the DARAB decisions to the CA.

Rules of procedure of other administrative agencies with quasi-judicial functions likewise provide for immediately executory decisions without prejudice to petitioner's filing of a motion for reconsideration. The following are further examples:

Although the Order of the NTC dated May 3, 2000 granting provisional authority to Bayantel was immediately executory, it did not preclude the filing of a motion for reconsideration. Under the NTC Rules, a party adversely affected by a decision, order, ruling or resolution may within fifteen (15) days file a motion for reconsideration. That the Order of the NTC became immediately executory does not mean that the remedy of filing a motion for reconsideration is foreclosed to the petitioner.<sup>92</sup>

SECTION 5. *Stay of Execution*. The decision of the Administration shall be stayed during the pendency of the appeal; *Provided* that where the penalty imposed carries the maximum penalty of twelve months suspension or cancellation of license, the decision shall be immediately executory despite the pendency of the appeal.

*Provided further* that where the penalty imposed is suspension of license for one month or less, the decision shall be immediately executory and may only be appealed on ground of grave abuse of discretion.<sup>93</sup>

<sup>91</sup> 543 Phil. 298, 310-311 (2007).

<sup>92</sup> *Republic of the Philippines v. Express Telecommunication Co., Inc.*, 424 Phil. 372, 400 (2002).

<sup>93</sup> POEA Rules and Regulations Governing the Recruitment and Employment of Land-Based Overseas Workers, Part VI, Rule V.

Petitioners' contention that Section 15 of the NEA Rules of Procedures should be struck down for being invalid is absurd and would have this Court exercising judicial review and enforcing the same over a rule that does not even, in reality, deprive him of the remedy he wanted – a motion for reconsideration. Petitioner was, in fact, able to file a motion for reconsideration. There was no grave abuse of discretion on the part of the NEA Administrator in issuing the questioned Order, as it did not violate any rule or law and was done in the exercise of the authority granted to the NEA to supervise and control electric cooperatives, under its Charter.

The Court does not strike down rules as invalid on a whim. There is nothing pernicious about the provision allowing decisions of the NEA Administrative Board to be "immediately executory." After a careful study of our records, we rule that the petition in G.R. No. 175736 must fail.

With regard to G.R. No. 175898, we agree with respondents that petitioners failed to prove their bare allegations of indirect contempt. We find the following as instructive:

NEA BULLETIN NO. 35  
FUNCTIONS AND RESPONSIBILITIES OF THE RURAL ELECTRIC  
COOPERATIVES BOARD OF DIRECTORS

x x x x

PROHIBITIONS

**The position of director is a privilege granted by the members to a person whom they think can best represent and protect their interests in the cooperative. Directors have a moral responsibility to perform their jobs in furtherance of the best interests of the REC.** Thus, Board members, either collectively or individually -

x x x x

**3. Should not intrude in the day-to-day management and operations of the cooperative where sufficient policies have been enacted x x x.**

**4. Should not hold regular office hours in the cooperative.**<sup>94</sup>  
(Emphases ours.)

With regard to the assignment of a project supervisor, it is within the power of control and supervision of the NEA over BATELEC II as an electric cooperative organized and existing pursuant to Presidential Decree No. 269 as amended by Presidential Decree No. 1645.<sup>95</sup>

As correctly discussed by respondent Caguimbal:

<sup>94</sup> Rollo (G.R. No. 175898), pp. 77-82.

<sup>95</sup> *La Union Electric Cooperative, Inc. v. Yaranon*, 259 Phil. 457, 464 (1989).



The proceedings for punishment of indirect contempt are criminal in nature. The modes of procedure and rules of evidence adopted in contempt proceedings are similar in nature to those used in criminal prosecutions. Thus, any liberal construction of the rules governing contempt proceedings should favor the accused. It can be argued that Soriano has essentially been afforded the right to be heard, as he did comment on the charge of indirect contempt against him. Yet, **since an indirect contempt charge partakes the nature of a criminal charge, conviction cannot be had merely on the basis of written pleadings.** x x x.<sup>96</sup> (Citations omitted.)

As pointed out by all the respondents and discussed above, petitioners failed to clearly demonstrate how exactly respondents committed indirect contempt. Thus, we dismiss the petition.

On September 15, 2015, the Court issued a resolution<sup>97</sup> reiterating its earlier resolution, dated March 17, 2015, directing the Director of the National Bureau of Investigation to (i) arrest and detain counsel for private respondents Atty. Erwin M. Layog until the latter shall have filed the explanation and comment required in the Court's resolution dated August 19, 2014 and (ii) submit a report of NBI's compliance with the resolution within ten (10) days from notice hereof.

Since this case is now being disposed of, and it appearing on record that Atty. Layog has, to this date, failed to comply with the filing of explanation and comment on the letter dated January 3, 2012 of Hon. Nicanor M. Briones, Representative, AGAP Party List, and Vice-Chairperson, Committee on Cooperative Development, which comment has been required of him since January 31, 2012, the Court resolves to INFORM Atty. Layog that he is deemed to have waived the filing of the comment.<sup>98</sup> Counsel for private respondents is likewise informed that his payment of the fine imposed upon him is not equivalent to the filing of the required comment, which he twice did without submitting any explanation for his failure to file such comment, and his actions constitute contumacious violation of a lawful order of this Court.

It appears, based on counsel for respondent Bueno and the NEA Board of Administrators' Compliance, that Hon. Nicanor Briones through his lawyer Atty. Joel C. Aguilar, was able to obtain copies of the pleadings, orders and other documents relative to these cases from NEA's legal services office, which was the subject of the letter dated January 3, 2012.<sup>99</sup>

<sup>96</sup> *Soriano v. Court of Appeals*, 474 Phil. 741, 750 (2004).

<sup>97</sup> *Rollo* (G.R. No. 175736), Vol. III, pp. 1458-1459.

<sup>98</sup> *Id.* at 1400-A.

<sup>99</sup> *Id.* at 1418-1419.

mtw




**WHEREFORE**, in view of the foregoing, we hereby:

1. **DENY** the petition in G.R. No. 175736 and **AFFIRM** the Decision of the Court of Appeals in CA-G.R. SP No. 96486 as well as the October 9, 2006 Order of Respondent Edita S. Bueno;
2. **LIFT** the *Status Quo Ante* Order issued on December 29, 2006 in G.R. No. 175736; and
3. **DISMISS** the petition for indirect contempt in G.R. No. 175898 for lack of merit.

**SO ORDERED.**

  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice


WE CONCUR:

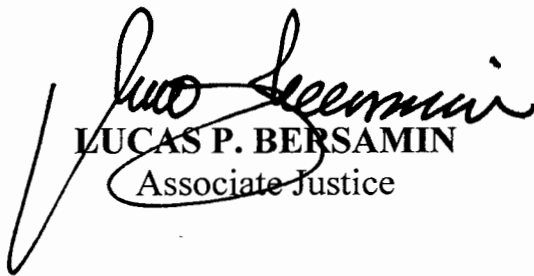
  
**MA. LOURDES P. A. SERENO**  
Chief Justice

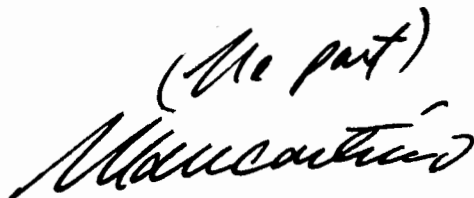
  
**ANTONIO T. CARPIO**  
Associate Justice

  
**PRESBITERO J. VELASCO, JR.**  
Associate Justice

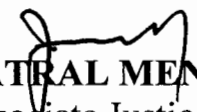
  
**ARTURO D. BRION**  
Associate Justice


*on official leave?*  
  
**DIOSDADO M. PERALTA**  
Associate Justice


  
**LUCAS P. BERSAMIN**  
Associate Justice

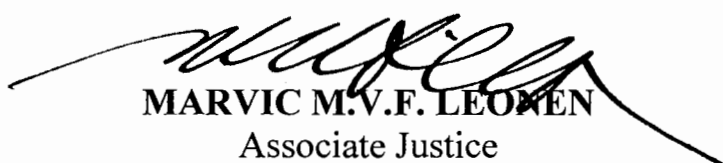
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**MARIANO C. DEL CASTILLO**  
Associate Justice

  
**JOSE PORTUGAL PEREZ**  
Associate Justice

  
**JOSE CATRAL MENDOZA**  
Associate Justice

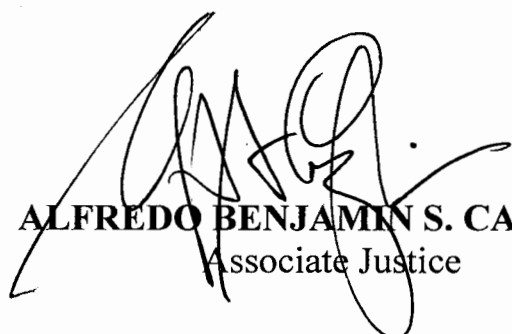
  
**BIENVENIDO L. REYES**  
Associate Justice

  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

  
**MARVIC M.V.F. LEONEN**  
Associate Justice

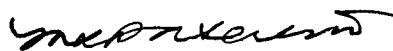
  
**FRANCIS H. JARDELEZA**  
Associate Justice

*No part  
prior O&A  
action*

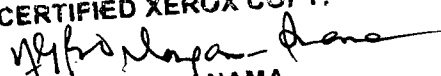
  
**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

**CERTIFICATION**

Pursuant to Article VIII, Section 13 of the Constitution, 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.

  
**MA. LOURDES P. A. SERENO**  
Chief Justice

CERTIFIED XEROX COPY:

  
**FELIPA B. ANAMA**  
CLERK OF COURT, EN BANC  
SUPREME COURT