

**ANTONIO GALLARDO, ANTONIO AREVALO, CRESENCIO ECHAVES,
EMMANUEL ARANAS, PALERMO SIA, RONNIE RAMBUYON, PRIMO
NAVARRO, AND NOEL NAVARRO, PETITIONERS, VS. HON.
SINFOROSO V. TABAMO, ...**

G.R. No. 104848. January 29, 1993

Ponente: DAVIDE JR., J.

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DAVIDE JR., J.:

This is a petition for certiorari and prohibition under Rule 65 of the Revised Rules of Court. Petitioners would have Us prohibit, restrain and enjoin public respondent Sinforoso V. Tabamo, Jr., Presiding Judge of Branch 28 of the Regional Trial Court (RTC) of Mambajao, Camiguin, from continuing with the proceedings in a petition for injunction, prohibition and mandamus with a prayer for a writ of preliminary injunction and restraining order filed as a taxpayer's suit, docketed therein as Special Civil Action No. 465 and entitled "Pedro P. Romualdo, Jr. versus Gov. Antonio Gallardo, et al." Petitioners likewise seek to prohibit the enforcement of the Temporary Restraining Order (TRO), issued by the respondent Judge on 10 April 1992, on the ground that the latter acted whimsically, capriciously and without jurisdiction when he took cognizance of the case and issued the said order. It is the petitioners' thesis that the said case principally involves an alleged violation of the provisions of the Omnibus Election Code the jurisdiction over which is exclusively vested in the Commission on Elections (COMELEC). It is additionally averred that the action is completely baseless, that the private respondent is not a real party in interest and that the public respondent acted with undue haste, manifest partiality and evident bias in favor of the private respondent in issuing the TRO.

In Our Resolution of 20 April 1992, We required the respondents to comment on the petition and issued a Temporary Restraining Order directing the respondent Judge to cease and desist from implementing and enforcing the challenged Order of 10 April 1992, and from continuing with the proceedings in Special Civil Action No. 465.

At the time of the filing of both the special civil action and the instant petition, petitioner Antonio Gallardo was the incumbent Governor of the Province of Camiguin and was seeking re-election in the 11 May 1992 synchronized elections. Petitioners Antonio Arevalo, Cresencio Echaves, Emmanuel Aranas and Palermo Sia are the provincial treasurer, provincial auditor, provincial engineer and provincial budget officer of Camiguin, respectively. Their co-petitioners Ronnie Rambuyon, Primo Navarro and Noel Navarro are all government project laborers. On the other hand, the private respondent was the incumbent Congressman of the lone Congressional District of Camiguin, a candidate for the same office in the said synchronized elections and the Regional Chairman of the Laban ng Demokratikong Pilipino (LDP) in Region X.

The antecedents of this case are not complicated.

On 10 April 1992, private respondent filed his Petition^[1] (Special Civil Action No. 465) before the court a quo against petitioners Gallardo, Arevalo, Echaves, Aranas and Sia to prohibit and restrain them from pursuing or prosecuting certain public works projects; from releasing, disbursing and/or spending any public funds for such

projects; and from issuing, using or availing of treasury warrants or any device for the future delivery of money, goods and other things of value chargeable against public funds in connection with the said projects as (1) said projects were undertaken in violation of the 45-day ban on public works imposed by the Omnibus Election Code (Batas Pambansa Blg. 881) because although they were initiated a few days before 27 March 1992, the date the ban took effect, they were not covered by detailed engineering plans, specifications or a program of work which are preconditions for the commencement of any public works project; hence, they could not have been lawfully and validly undertaken; (2) the hiring of hundreds of laborers in the different projects continues unabated in flagrant violation of paragraphs (a), (b), (v) and (w), Section 261 of the Omnibus Election Code; (3) the projects were undertaken in violation of the provisions of the Local Government Code[2] governing the use and expenditure of the twenty percent (20%) development fund of the Province of Camiguin; (4) these projects, which are "Locally-Funded", were pursued without the requisite approval of the provincial budget by the Regional Office of Budget and Management as required by Section 326 of the Local Government Code; (5) some of the projects which are "Foreign-Assisted" and funded by the Spanish Assistance for Integrated Livelihood Program (SAIL) lack the required building permits and are without any relevance to those livelihood projects envisioned by the SAIL; and (6) more importantly, as alleged in paragraph VII of his Petition:[3]

"x x x the illegal prosecution of these public work projects requiring massive outlay of public funds during this election period has been and is being done maliciously and intentionally for the purpose of corrupting the voters and inducing them to support the candidacy of Respondent Gallardo and his candidates in the coming May 11, 1992 election."

In support of his prayer for a restraining order to be issued upon the filing of the petition and a writ of preliminary injunction immediately thereafter, herein private respondent alleges in paragraph XV of his Petition:

"That unless the illegal acts of Respondents are enjoined or restrained immediately first by the issuance of the restraining order upon the filing of this Petition and immediately after that a Writ of Preliminary Injunction, great or irreparable loss and injury shall be caused not only to Petitioner himself, as a candidate and as a taxpayer, but also to the entire LDP slate of candidates, whose supporters are being corrupted and illegally induced to vote for Respondent Antonio A. Gallardo and his candidates in consideration of their employment in these projects, but (sic) most of all the greatest and most irreparable loss, damage, and injury, in terms of wanton, irresponsible, excessive, abusive and flagrant waste of public money, is now being caused and shall continue to be caused, primarily and principally to the sixty-thousand or more taxpayers of the Province of Camiguin, whom Petitioner represents as Congressman and whose interests Petitioner is sworn to uphold, promote and protect."[4]

The questioned projects are classified into two (2) categories: (a) those that are Locally-Funded, consisting of twenty-nine (29) different projects for the maintenance or concreting of various roads, the rehabilitation of the Katibawasan Falls and the construction of the Capitol Building, and (b) those designated as Foreign-Assisted, consisting of fifteen (15) projects which include the construction of the Human Resource Development Center, various Day Care cum Production Centers and waterworks systems; the extension and renovation of various buildings; the acquisition of hospital and laboratory equipment; and the rehabilitation of office and equipment.[5]

On the same day that the private respondent filed his petition, public respondent Judge issued the questioned TRO,[6] the pertinent portion of which reads:

"It appearing from the verified petition in this case that great and irreparable damage and/or injury shall be caused to the petitioner as candidate and taxpayer, such damage and injury taking the form and shape occasioned by the alleged wanton, excessive, abusive and flagrant waste of public money, before the matter can be heard on notice, the respondents are hereby Temporarily Restrained from pursuing or prosecuting the projects itemized in Annexes "A" and "A-1" of the petition; from releasing, disbursing and/or spending any

public funds for such projects; from issuing, using or availing of treasury warrants or any device undertaking future delivery of money, goods or other things of value chargeable against public funds in connection with said projects." (Emphasis supplied).

In the same order, the public respondent directed the petitioners to file their Answer within ten (10) days from receipt of notice and set the hearing on the application for the issuance of the writ of preliminary injunction for 24 April 1992. Instead of filing their Answer, the petitioners filed the instant special civil action for certiorari and prohibition, with a prayer for a writ of preliminary injunction and/or temporary restraining order, alleging as grounds therefor the following:

"I

PUBLIC RESPONDENT HAS NO JURISDICTION OVER SPECIAL CIVIL ACTION NO. 465, BEING (sic) A SUIT INTENDED TO ENJOIN AN ALLEGED VIOLATION OF THE OMNIBUS ELECTION CODE.

II

THE REGIONAL TRIAL COURT'S JURISDICTION IS LIMITED TO CRIMINAL ACTIONS FOR VIOLATION OF THE OMNIBUS ELECTION CODE.

III

THE REGIONAL TRIAL COURT HAS NO JURISDICTION TO TAKE COGNIZANCE OF COMPLAINTS/PETITION BASED ON ELECTION OFFENSES PRIOR TO THE CONDUCT OF PRELIMINARY INVESTIGATION BY THE COMMISSION ON ELECTIONS; FURTHER, PRIVATE RESPONDENT HAS NO RIGHT TO FILE SPECIAL CIVIL ACTION NO. 465 SINCE THE AUTHORITY TO PROSECUTE ELECTION OFFENSES BELONGS TO THE COMMISSION ON ELECTIONS.

IV

PRIVATE RESPONDENT FAILED TO EXHAUST ALL HIS ADMINISTRATIVE REMEDIES.

V

THE PETITION DATED 09 APRIL 1992 FILED WITH PUBLIC RESPONDENT IS COMPLETELY BASELESS SINCE:

A. THE PUBLIC WORKS PROJECTS BEING UNDERTAKEN BY PETITIONERS ARE EXEMPTED FROM THE PUBLIC WORKS BAN ENFORCED BY THE COMELEC.

B. THE PUBLIC WORKS PROJECTS WERE COMMENCED ONLY AFTER APPROVAL OF THE DETAILED ENGINEERING PLANS AND SPECIFICATIONS AND PROGRAM OF WORK.

C. THE PUBLIC WORKS PROJECTS WERE PROPERLY SUPPORTED BY A BUDGET DULY PASSED AND APPROVED BY THE SANGGUNIANG PANLALAWIGAN.

D. THE DEVELOPMENT FUND MAY VALIDLY BE USED TO FINANCE THE MAINTENANCE OF PROVINCIAL ROADS.

VI

THE TAXPAYER'S SUIT FILED BY PRIVATE RESPONDENT IS IMPROPER SINCE HE IS NOT A REAL PARTY IN INTEREST.

VII

THE PUBLIC RESPONDENT ACTED WITH UNDUE HASTE, MANIFEST PARTIALITY AND EVIDENT BIAS IN FAVOR OF PRIVATE RESPONDENT AND AGAINST PETITIONERS IN ISSUING THE TEMPORARY RESTRAINING ORDER."[7]

As adverted to earlier, We issued a Temporary Restraining Order on 20 April 1992.

After considering the allegations, issues and arguments adduced in the Petition, the Comment thereto and the Reply to the Comment, We gave due course^[8] to this Petition and required the parties to submit their respective Memoranda which they complied with.

The main issue in this case is whether or not the trial court has jurisdiction over the subject matter of Special Civil Action No. 465. The material operative facts alleged in the petition therein inexorably link the private respondent's principal grievance to alleged violations of paragraphs (a), (b), (v) and (w), Section 261 of the Omnibus Election Code (Batas Pambansa Blg. 881). There is particular emphasis on the last two (2) paragraphs which read:

"SEC. 261. Prohibited Acts. -- The following shall be guilty of an election offense:

(a) Vote-buying and vote-selling. --

x x x

(b) Conspiracy to bribe voters. --

x x x

x x x

(v) Prohibition against release, disbursement or expenditure of public funds. Any public official or employee including barangay officials and those of government-owned or controlled corporations and their subsidiaries, who, during forty-five days before a regular election and thirty days before a special election, releases, disburses or expends any public funds for:

(1) Any and all kinds of public works, except the following:

x x x

(w) Prohibition against construction of public works, delivery of materials for public works and issuance of treasury warrants and similar devices. -- During the period of forty-five days preceding a regular election and thirty days before a special election, any person who (a) undertakes the construction of any public works, except for projects or works exempted in the preceding paragraph; or (b) issues, uses or avails of treasury warrants or any device undertaking future delivery of money, goods or other things of value chargeable against public funds."

Private respondent likewise focuses on Resolution No. 2332 (not 2322 as erroneously stated in page 10 of his Petition) of the COMELEC, promulgated on 2 January 1992, implementing the aforesaid paragraphs (v) and (w) of Section 261 and fixing the duration of the 45-day ban for purposes of the synchronized elections from 27 March 1992 to 11 May 1992.

Essentially, therefore, Civil Case No. 465 before the trial court is for the enforcement of laws involving the conduct of elections; corollarily, the issue that is logically provoked is whether or not the trial court has jurisdiction over the same. If the respondent Judge had only hearkened to this Court's teaching about a quarter of a century earlier, this case would not have reached Us and taken away from more deserving cases so much precious time.

Zaldivar vs. Estenzo,^[9] decided by this Court on 3 May 1968, had squarely resolved the issue above posed. Speaking through then Associate Justice Enrique Fernando (who later became Chief Justice), this Court explicitly ruled that considering that the Commission on Elections is vested by the Constitution with exclusive charge of the

enforcement and administration of all laws relative to the conduct of elections, the assumption of jurisdiction by the trial court over a case involving the- enforcement of the Election Code "is at war with the plain constitutional command, the implementing statutory provisions, and the hospitable scope afforded such grant of authority so clear and unmistakable in recent decisions." [10]

Said case was decided under the aegis of the 1935 Constitution and R.A. No. 180, otherwise known as the Revised Election Code, which took effect on 21 June 1947. The present Constitution and extant election laws have further strengthened the foundation for the above doctrine; there can be no doubt that the present COMELEC has broader powers than its predecessors. While under the 1935 Constitution it had "exclusive charge of the enforcement and administration of all laws relative to the conduct of elections," exercised "all other functions x x x conferred upon it by law" [11] and had the power to deputize all law enforcement agencies and instrumentalities of the Government for the purpose of insuring free, orderly and honest elections, [12] and under the 1973 Constitution it had, inter alia, the power to (a) "[E]nforce and administer all laws relative to the conduct of elections" [13] (b) "[D]eputize, with the consent or at the instance of the Prime Minister, law enforcement agencies and instrumentalities of the Government, including the Armed Forces of the Philippines, for the purpose of ensuring free, orderly, and honest elections," [14] and (c) "[P]erform such other functions as may be provided by law," [15] it was not expressly vested with the power to promulgate regulations relative to the conduct of an election. That power could only originate from a special law enacted by Congress; this is the necessary implication of the above constitutional provision authorizing the Commission to "[P]erform such other functions as may be provided by law."

The present Constitution, however, implicitly grants the Commission the power to promulgate such rules and regulations. The pertinent portion of Section 2 of Article IX-C thereof reads as follows:

"SEC. 2. The Commission on Elections shall exercise the following powers and functions:

(1) Enforce and administer all laws and regulations relative to the conduct of an election, plebi-scite, initiative, referendum, and recall." (Emphasis supplied).

x x x

The word regulations is not found in either the 1935 or 1973 Constitutions. It is thus clear that its incorporation into the present Constitution took into account the Commission's power under the Omnibus Election Code (Batas Pambansa Blg. 881), which was already in force when the said Constitution was drafted and ratified, to:

x x x

"Promulgate rules and regulations implementing the provisions of this Code or other laws which the Commission is required to enforce and administer, x x x." [16]

Hence, the present Constitution upgraded to a constitutional status the aforesaid statutory authority to grant the Commission broader and more flexible powers to effectively perform its duties and to insulate it further from legislative intrusions. Doubtless, if its rule-making power is made to depend on statutes, Congress may withdraw the same at any time. Indeed, the present Constitution envisions a truly independent Commission on Elections committed to ensure free, orderly, honest, peaceful and credible elections, [17] and to serve as the guardian of the people's sacred right of suffrage -- the citizenry's vital weapon in effecting a peaceful change of government and in achieving and promoting political stability.

Additionally, by statutory mandate, the present Commission on Elections possesses, inter alia, the following powers:

"1) Exercise direct and immediate supervision and control over national and local officials or employees, including members of any national or local law enforcement agency and instrumentality of the government required by law to perform duties relative to the conduct of elections. In addition, it may authorize CMT cadets eighteen years of age and above to act as its deputies for the purpose of enforcing its orders.

The Commission may relieve any officer or employee referred to in the preceding paragraph from the performance of his duties relating to electoral processes who violates the election law or fails to comply with its instructions, orders, decisions or rulings, and appoint his substitute. Upon recommendation of the Commission, the corresponding proper authority shall suspend or remove from office any or all of such officers or employees who may, after due process, be found guilty of such violation or failure.[18]

2) To stop any illegal election activity, or confiscate, tear down, and stop any unlawful, libelous, misleading or false election propaganda, after due notice and hearing."[19]

Needless to say, the acts sought to be restrained in Special Civil Action No. 465 before the court a quo are matters falling within the exclusive jurisdiction of the Commission. As a matter of fact, the specific allegations in the petition therein of violations of paragraphs (a), (b), (v) and (w), Section 261 of the Omnibus Election Code provide a stronger basis and reason for the application of the Zaldivar doctrine. At most, the facts in the latter case do not illustrate as clearly the announced doctrine as the facts in this case do. In Zaldivar, no specific provision of the Revised Election Code then in force was alleged to have been violated. What was sought to be enjoined was the alleged wielding by Zaldivar, then a municipal mayor, of the power, by virtue of his office, to appoint special policemen or agents to terrorize voters into supporting the congressional candidate of his choice. In holding that the then Court of First Instance did not have jurisdiction over the case, this Court considered the constitutional power of the Commission on Elections to have exclusive charge of the enforcement and administration of all laws relative to the conduct of elections and to exercise all other functions which may be conferred by law. We likewise relied on the provisions of the Revised Election Code vesting upon the COMELEC (a) direct and immediate supervision over municipal, city and provincial officials designated by law to perform duties relative to the conduct of elections and (b) authority to suspend them from the performance of such duties for failure to comply with its instructions, orders, decisions or rulings and recommend to the President their removal if found guilty of non-feasance, malfeasance or misfeasance in connection with the performance of their duties relative to the conduct of elections.[20]

Under the present law, however, except in case of urgent need, the appointment or hiring of new employees or the creation or filling up of new positions in any government office, agency or instrumentality, whether national or local, including government-owned or controlled corporations, is banned during the period of forty-five (45) days before a regular election and thirty (30) days before a special election if made without the prior authority of the Commission on Elections. A violation thereof constitutes an election offense.[21] Then too, no less than the present Constitution -- and not just the Election Law as was the case at the time of Zaldivar -- expressly provides that the Commission may "[R]ecommend to the President the removal of any officer or employee it has deputized, or the imposition of any other disciplinary action, for violation or disregard of, or disobedience to its directive, order, or decision."[22]

Moreover, the present Constitution also invests the Commission with the power to "investigate and, where appropriate, prosecute cases of violations of election laws, including acts or omissions constituting election frauds, offenses, and malpractices.[23]

It may thus be said without fear of contradiction that this vast array of powers and functions now enjoyed by the Commission under the present Constitution provides a stronger foundation for, and adds vigor and vitality to, the Zaldivar doctrine.

The rationale of the said doctrine needs to be stressed here so that henceforth, no judge will lose his bearings when confronted with the same issue. Otherwise, he should be held to account for either the sheer ignorance of the law or the callous disregard of pronouncements by this Court to accommodate partisan political feelings. We declared in the said case:

"The question may be asked: Why should not the judiciary be a co-participant in this particular instance of enforcing the Election Code as its authority was invoked? The obvious answer is the literal language of the Constitution which empowers the Commission on Elections to 'have exclusive charge of the enforcement and administration of all laws relative to the conduct of the elections.' Moreover, as was so aptly observed by the then Justice Frankfurter, although the situation confronting the United States Supreme Court was of a different character: 'Nothing is clearer than that this controversy concerns matters that bring courts into immediate and active relations with party contests. From the determination of such issues this Court has traditionally held aloof. It is hostile to a democratic system to involve the judiciary in the politics of the people. And it is not less pernicious if such judicial intervention in an essentially political contest be dressed up in the abstract phrases of the law.' [24] Then, too, reference by analogy may be made to the principle that sustains *Albano v. Arranz*. For even without the express constitutional prescription that only this Court may review the decisions, orders and rulings of the Commission on Elections, it is easy to understand why no interference whatsoever with the performance of the Commission on Elections of its functions should be allowed unless emanating from this Court. The observation of Acting Chief Justice J.B.L. Reyes in *Albano v. Arranz*, [25] while not precisely in point, indicates the proper approach. Thus: 'It is easy to realize the chaos that would ensue if the Court of First Instance of each and every province were to arrogate unto itself the power to disregard, suspend, or contradict any order of the Commission on Elections; that constitutional body would be speedily reduced to impotence.'

This conclusion finds support from a consideration of weight and influence. What happened in this case could be repeated elsewhere. It is not improbable that courts of first instance would be resorted to by leaders of candidates or political factions entertaining the belief whether rightly or wrongly that local officials would employ all the power at their command to assure the victory of their candidates. Even if greater care and circumspection, than did exist in this case, would be employed by judges thus appealed to, it is not unlikely that the shadow of suspicion as to alleged partisanship would fall on their actuations, whichever way the matter before them is decided. It is imperative that the faith in the impartiality of the judiciary be preserved unimpaired. Whenever, therefore, the fear may be plausibly entertained that an assumption of jurisdiction would lead to a lessening of the undiminished trust that should be reposed in the courts and the absence of authority discernible from the wording of applicable statutory provisions and the trend of judicial decisions, even if no constitutional mandate as that present in this case could be relied upon, there should be no hesitancy in declining to act." [26]

The foregoing disquisitions should have rendered unnecessary the resolution of the remaining collateral issues raised in this petition. In view, however, of their importance, they will be dealt with in a general way.

It is not true that, as contended by the petitioners, the jurisdiction of the Regional Trial Court under the election laws is limited to criminal actions for violations of the Omnibus Election Code. The Constitution itself grants to it exclusive original jurisdiction over contests involving elective municipal officials. [27] Neither can we agree with the petitioners' assertion that the Special Civil Action filed in the court below involves the prosecution of election offenses; the said action seeks some reliefs incident to or in connection with alleged election offenses; specifically, what is sought is the prevention of the further commission of these offenses which, by their alleged nature, are continuing.

There is as well no merit in the petitioners' claim that the private respondent has no legal standing to initiate the filing of a complaint for a violation of the Omnibus Election Code. There is nothing in the law to prevent any citizen from exposing the commission of an election offense and from filing a complaint in connection therewith.

On the contrary, under the COMELEC Rules of Procedure, initiation of complaints for election offenses may be done *motu proprio* by the Commission on Elections or upon written complaint by any citizen, candidate or registered political party or organization under the party-list system or any of the accredited citizens arms of the Commission.[28] However, such written complaints should be filed with the "Law Department of the Commission; or with the offices of the Election Registrars, Provincial Election Supervisors or Regional Election Directors, or the State Prosecutor, Provincial Fiscal or City Fiscal." [29] As earlier intimated, the private respondent was not seriously concerned with the criminal aspect of his alleged grievances. He merely sought a stoppage of the public works projects because of their alleged adverse effect on his candidacy. Indeed, while he may have had reason to fear and may have even done the right thing, he committed a serious procedural misstep and invoked the wrong authority.

We have, therefore, no alternative but to grant this petition on the basis of Our resolution of the principal issue. Nevertheless, it must be strongly emphasized that in so holding that the trial court has no jurisdiction over the subject matter of Special Civil Action No. 465, We are not to be understood as approving of the acts complained of by the private respondent. If his charges for the violation of paragraphs (a), (b), (v) and (w), Section 261 of the Omnibus Election Code are true, then no one should be spared from the full force of the law. No government official should flout laws designed to ensure the holding of free, orderly, honest, peaceful and credible elections or make a mockery of our electoral processes. The bitter lessons of the past have shown that only elections of that nature or character can guarantee a peaceful and orderly change. It is then his duty to respect, preserve and enhance an institution which is vital in any democratic society.

WHEREFORE, the instant Petition is hereby GRANTED. The challenged order of respondent Judge of 10 April 1992 in Special Civil Action No. 465 is SET ASIDE and said Civil Case is hereby ordered DISMISSED, without prejudice on the part of the private respondent to file, if he is so minded, the appropriate complaint for an election offense pursuant to the COMELEC Rules of Procedure.

Costs against the private respondent.

SO ORDERED.

Feliciano, Padilla, Bidin, Griño-Aquino, Regalado, Romero, Nocon, Bellosillo, Melo, and Campos, Jr., JJ., concur.

Narvasa, C.J., and Gutierrez, Jr., J., join J. Cruz in his separate opinion.

[1] Annex "D" of Petition; Rollo, 45-59.

[2] R.A. No. 7160.

[3] Rollo, 49.

[4] Rollo, 54.

[5] Annexes "A" and "A-1" of Petition in Special Civil Action No. 465; Id., 60-61.

[6] Rollo, 39.

[7] Rollo, 10-12.

[8] Id., 134.

[9] 23 SCRA 533 [1968].

[10] At page 534.

[11] Section 2, Article X.

[12] Third sentence, Id.

[13] Section 2(1), Article XII-C.

[14] Section 2(4), Id.

[15] Section 2(8), Id.

[16] Section 52(c), Article VII, Omnibus Election Code.

[17] Section 2(4), Article IX-C, 1987 Constitution.

[18] Section 52(a), Article VII, Omnibus Election Code.

[19] Section 57(2), Id.

[20] Section 3, R.A. No. 180.

[21] Section 261(g), Omnibus Election Code.

[22] Section 2(8), Article IX-C.

[23] Section 2(6), Id.

[24] Citing *Colegrove vs. Green*, 328 U.S. 549, 553-550 [1946].

[25] G.R. No. L-19260, 31 January 1962, 4 SCRA 386.

[26] At pages 540-541.

[27] Section 2(2), Article IX-C of the 1987 Constitution and Section 251 of the Omnibus Election Code. Also under the former section, courts of limited jurisdiction (Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts) have exclusive original jurisdiction over contests involving elective barangay officials. These courts likewise have jurisdiction in inclusion and exclusion cases (Section 138, Omnibus Election Code).

[28] Section 3, Rule 34, COMELEC Rules of Procedure.

[29] Section 4, Id.

CONCURRING AND DISSENTING OPINION

CRUZ, J.:

I concur but, regrettably, not with the statement that the Commission on Elections now derives the power to promulgate resolutions directly from Article IX-C, Section 2(1) of the Constitution, to wit:

SEC. 2. The Commission on Elections shall exercise the following powers and functions:

(1) Enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall. (Emphasis supplied)

x x x

With all due respect, I submit that what the COMELEC is authorized to do under that provision is only to "enforce and administer" such laws and regulations, not to promulgate them. The addition of the word "regulations" in the new subsection does not empower it now to promulgate regulations any more than it can promulgate laws. As I read it, all that the change imports is that the scope of the measures the COMELEC may enforce and administer has been expressly widened, to include "regulations."

Regulations are mainly intended to implement or supplement a law and may be generally issued only pursuant to a valid delegation of legislative power. That is why they are known as "subordinate legislation." In the case of the COMELEC, I see no constitutional vesture in it of the power to promulgate regulations, much less laws. There does not seem to be even an "implicit" grant of that authority, as the ponencia suggests.

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