

BIENVENIDO O. MARQUEZ, JR., PETITIONER, VS. COMMISSION ON ELECTIONS AND EDUARDO T. RODRIGUEZ, RESPONDENTS.

G.R. No. 112889. April 18, 1995

Ponente: VITUG, J.

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VITUG, J.:

The Court is called upon, in this petition for certiorari, to resolve the conflicting claims of the parties on the meaning of the term "fugitive from justice" as that phrase is so used under the provisions of Section 40(e) of the Local Government Code (Republic Act No. 7160). That law states:

"SEC. 40. Disqualifications. - The following persons are disqualified from running for any elective local position:

"xxx xxx xxx

"(e) Fugitive from justice in criminal or non-political cases here or abroad (.)"

Bienvenido Marquez, a defeated candidate for the elective position of Governor in the Province of Quezon in the 11th May 1992 elections filed this petition for certiorari praying for the reversal of the resolution of the Commission on Elections ("COMELEC") which dismissed his petition for quo warranto against the winning candidate, herein private respondent Eduardo Rodriguez, for being allegedly a fugitive from justice.

It is averred that at the time private respondent filed his certificate of candidacy, a criminal charge against him for ten (10) counts of insurance fraud or grand theft of personal property was still pending before the Municipal Court of Los Angeles Judicial District, County of Los Angeles, State of California, U.S.A. A warrant issued by said court for his arrest, it is claimed, has yet to be served on private respondent on account of his alleged "flight" from that country.

Before the 11th May 1992 elections, a petition for cancellation (SPA 92-065) of respondent's certificate of candidacy, on the ground of the candidate's disqualification under Section 40(e) of the Local Government Code, was filed by petitioner with the COMELEC. On 08 May 1992, the COMELEC dismissed the petition.

Petitioner's subsequent recourse to this Court (in G.R. No. 105310) from the 08th May 1992 resolution of COMELEC was dismissed without prejudice, however, to the filing in due time of a possible post-election quo warranto proceeding against private respondent. The Court, in its resolution of 02 June 1992, held:

"Evidently, the matter elevated to this Court was a pre-proclamation controversy. Since the private respondent had already been proclaimed as the duly elected Governor of the Province of Quezon, the petition below for disqualification has ceased to be a pre-proclamation controversy. In *Casimiro vs. Commission on Elections*, G.R. Nos. 84462-63 and *Antonio vs. Commission on Elections*, G.R. Nos. 84678-79, jointly decided on 29 March 1989, 171 SCRA 468, this court held that a pre-proclamation controversy is no longer viable at this point of time and should be dismissed. The proper remedy of the petitioner is to pursue the disqualification suit in a separate proceeding.

"ACCORDINGLY, the Court Resolved to DISMISS the petition, without prejudice to the filing of the appropriate proceedings in the proper forum, if so desired, within ten (10) days from notice." [1]

Private respondent was proclaimed Governor-elect of Quezon on 29 May 1992. Forthwith, petitioner instituted quo warranto proceedings (EPC 92-28) against private respondent before the COMELEC. In its 02 February 1993 resolution, the COMELEC (Second Division) dismissed the petition. The COMELEC En Banc, on 02 December 1993, denied a reconsideration of the resolution.

Hence, this petition for certiorari, the core issue of which, such as to be expected, focuses on whether private respondent who, at the time of the filing of his certificate of candidacy (and to date), is said to be facing a criminal charge before a foreign court and evading a warrant for his arrest comes within the term "fugitive from justice" contemplated by Section 40(e) of the Local Government Code and, therefore, disqualified from being a candidate for, and thereby ineligible from holding on to, an elective local office.

Petitioner's position is perspicuous and to the point. The law, he asseverates, needs no further interpretation and construction. Section 40(e) of Republic Act No. 7160, is rather clear, he submits, and it disqualifies "fugitives from justice in criminal or non-political cases here or abroad" from seeking any elective local office. The Solicitor General, taking the side of petitioner, expresses a like opinion and concludes that the phrase "fugitive from justice" includes not only those who flee after conviction to avoid punishment but likewise those who, after being charged, flee to avoid prosecution. This definition truly finds support from jurisprudence (Philippine Law Dictionary, Third Edition, p. 399, by F.B. Moreno; Black's Law Dictionary, Sixth Edition, p. 671; *King vs. Noe*, 244 S.C. 344, 137 S.E. 2d 102, 103; *Hughes vs. Pflanz*, 138 Federal Reporter 980; *Tobin vs. Casaus*, 275 Pacific Reporter, 2d., p. 792), and it may be so conceded as expressing the general and ordinary connotation of the term.

In turn, private respondent would have the Court respect the conclusions of the Oversight Committee which, conformably with Section 533[2] of R.A. 7160, was convened by the President to "formulate and issue the appropriate rules and regulations necessary for the efficient and effective implementation of any and all provisions of the Code to ensure compliance with the principles of Local Autonomy."

Here are some excerpts from the committee's deliberations:

"CHAIRMAN MERCADO. Session is resumed.

'So, we are in agreement to retain Line 12, Page 36, as is. So next, Page 39.

'CHAIRMAN DE PEDRO. Kay Benny Marquez.

'REP. CUENCO. What does he want?

'CHAIRMAN DE PEDRO. Kung puwede i-retain lang iyan. Bahala na kung kuwestiyunin ang constitutionality nito before the Supreme Court later on.

'REP. CUENCO. Anong nakalagay diyan?

'CHAIRMAN DE PEDRO. Iyong disqualification to run for public office.

'Any person who is a fugitive from justice in criminal or nonpolitical cases here or abroad."

'Mabigat yung abroad.' One who is facing criminal charges with the warrant of arrest pending, unserved...

'HONORABLE SAGUISAG. I think that is even a good point, ano - what is a fugitive? It is not defined. We have loose understanding...

'CHAIRMAN DE PEDRO. So isingit na rin sa definition of terms iyong 'fugitive.'

"Si Benny umalis na, with the understanding na okay na sa atin ito."

"THE CHAIRMAN. Whether we have this rule or not she can run. She is not a fugitive from justice. Mrs. Marcos can run at this point and I have held that for a long time ago. So can. . .

"MS. DOCTOR. Mr. Chairman . . .

"THE CHAIRMAN. Yes.

"MS. DOCTOR. Let's move to

"THE CHAIRMAN. Wait, wait, wait. Can we just agree on the wording, this is very important. Manny, can you come up?

"MR. REYES. Let's use the word conviction by final judgment.

"THE CHAIRMAN. Fugitive means somebody who is convicted by final judgment. Okay,. Fugitive means a person convicted by final judgment. Insert that on Line 43 after the semi-colon. Is that approved? No objection, approved" (TSN, Oversight Committee, 07 May 1991).

"xxx xxx xxx

"THE CHAIRMAN. Andy, saan ba naman itong amendment on page 2? Sino ba ang gumawa nito? Okay, on page 2, lines 43 and 44, 'fugitive from justice.' What 'fugitive?' Sino ba ang gumawa nito, ha?

"MR. SANCHEZ. Yes, I think, well, last time, Mr. Chairman, we agree to clarify the word — what is meant by the word 'fugitive.'

"THE CHAIRMAN. 'Fugitive from justice means a person' ba ito, ha?

"MR. SANCHEZ. Means a person...

"THE CHAIRMAN. Ha?

"HON. REYES. A person who has been convicted.

"THE CHAIRMAN. Yes, fugitive from justice, oo. Fugitive from justice shall mean or means one who has been convicted by final judgment. It means one who has been convicted by final judgment.

"HON. DE PEDRO. Kulang pa rin ang ibig sabihin niyan.

"THE CHAIRMAN. Ano? Sig, tingnan natin.

"HON. DE PEDRO. Kung nasa loob ng presuhan, fugitive pa rin siya?

"THE CHAIRMAN. O, tama na yan, fugitive from justice. He has been convicted by final judgment, meaning that if he is simply in jail and because he put up, post bail, but the case is still being reviewed, that is not yet conviction by final judgment." [3]

The Oversight Committee evidently entertained serious apprehensions on the possible constitutional infirmity of Section 40(e) of Republic Act No. 7160 if the disqualification therein meant were to be so taken as to embrace those who merely were facing criminal charges. A similar concern was expressed by Senator R.A.V. Saguisag who, during the bicameral conference committee of the Senate and the House of Representatives, made this reservation:

"x x x de ipa-refine lang natin 'yung language especially 'yung, the scope of fugitive. Medyo bothered ako doon, a." [4]

The Oversight Committee finally came out with Article 73 of the Rules and Regulations Implementing the Local Government Code of 1991. It provided:

"Art. 73. Disqualifications. - The following persons shall be disqualified from running for any elective local position:

"(a) xxx xxx xxx

"(e) Fugitives from justice in criminal or non-political cases here or abroad. Fugitive from justice refers to a person who has been convicted by final judgment.[5] (Emphasis supplied)

Private respondent reminds us that the construction placed upon a law by the officials in charge of its enforcement deserves great and considerable weight (*Atlas Consolidated Mining and Development Corp. vs. CA*, 182 SCRA 166, 181). The Court certainly agrees; however, when there clearly is no obscurity and ambiguity in an enabling law, it must merely be made to apply as it is so written. An administrative rule or regulation can neither expand nor constrict the law but must remain congruent to it. The Court believes and thus holds, albeit with some personal reservations of the ponente (expressed during the Court's en banc deliberations), that Article 73 of the Rules and Regulations Implementing the Local Government Code of 1991, to the extent that it confines the term "fugitive from justice" to refer only to a person (the fugitive) "who has been convicted by final judgment," is an inordinate and undue circumscription of the law.

Unfortunately, the COMELEC did not make any definite finding on whether or not, in fact, private respondent is a "fugitive from justice" as such term must be interpreted and applied in the light of the Court's opinion. The omission is understandable since the COMELEC dismissed outrightly the petition for quo warranto on the basis instead of Rule 73 of the Rules and Regulations promulgated by the Oversight Committee. The Court itself, not being a trier of facts, is thus constrained to remand the case to the COMELEC for a determination of this unresolved factual matter.

WHEREFORE, the questioned resolutions of the Commission on Elections are REVERSED and SET ASIDE, and the case is hereby REMANDED to the Commission which is DIRECTED to proceed and resolve the case with dispatch conformably with the foregoing opinion. No special pronouncement on costs.
SO ORDERED.

Feliciano, Padilla, Regalado, Melo, Quiason, Puno, Kapunan, and Francisco, JJ., concur.

Narvasa, C.J., Romero, Bellosillo, and Mendoza, JJ., joins J. Davide, Jr., in his separate opinion.

[1] Rollo, p. 31.

[2] SEC. 533. Formulation of Implementing Rules and Regulations. - (a) Within one (1) month after the approval of this Code, the President shall convene the Oversight Committee as herein provided for. The said Committee shall formulate and issue the appropriate rules and regulations necessary for the efficient and effective implementation of any and all provisions of this Code, thereby ensuring compliance with the principles of local autonomy as defined under the Constitution.

(b)

The Committee shall be composed of the following:

(1)

The Executive Secretary, who shall be the Chairman;

(2)

Three (3) members of the Senate to be appointed by the President of the Senate, to include the Chairman of the Committee on Local Government;

(3)

Three (3) members of the House of Representatives to be appointed by the Speaker, to include the Chairman of the Committee on Local Government;

(4)

The Cabinet, represented by the following:

(i)

Secretary of the Interior and Local Government;

(ii)

Secretary of Finance;

(iii)

Secretary of Budget and Management; and

(5)

One (1) representative from each of the following:

(i)

The League of Provinces;

(ii)

The League of Cities;

(iii)

The League of Municipalities; and

(iv)

The Liga ng mga Barangay.

(c)

The Committee shall submit its report and recommendation to the President within two (2) months after its organization. If the President fails to act within thirty (30) days from receipt thereof, the recommendation of the Oversight Committee shall be deemed approved. Thereafter, the Committee shall supervise the transfer of such powers and functions mandated under this Code to the local government units, together with the corresponding personnel, properties, assets and liabilities of the offices or agencies concerned, with the least possible disruptions to existing programs and projects. The Committee shall likewise recommend the corresponding appropriations necessary to effect the said transfer.

For this purpose, the services of a technical staff shall be enlisted from among the qualified employees of Congress, the government offices, and the leagues constituting the Committee.

(d)

The funding requirements and the secretariat of the Committee shall be provided by the Office of the Executive Secretary.

(e)

The sum of Five million pesos (P5,000,000.00), which shall be charged against the Contingent Fund, is hereby allotted to the Committee to fund the undertaking of an information campaign on this Code. The Committee shall formulate the guidelines governing the conduct of said campaign, and shall determine the national agencies or offices to be involved for this purpose.

[3] Rollo, pp. 221-223.

[4] Rollo, p. 220.

[5] Art. 73, Rule XIV, Rules and Regulations Implementing the Local Government Code of 1991.

SEPARATE OPINION

DAVIDE, JR., J.:

Section 65 of the Omnibus Election Code (B.P. Blg. 881) states that the qualifications for elective provincial, city, municipal, and barangay officials shall be those provided for in the Local Government Code. The quondam Local Government Code was B.P. Blg. 337, which was superseded by R.A. No. 7160, otherwise known as the Local Government Code of 1991. Section 39 of the latter provides for the qualifications and election of local elective officials. Section 40 enumerates those who are disqualified from running for any elective local position, among whom is a:

(e) Fugitive from justice in criminal or non-political cases here or abroad.

The term "fugitive from justice" refers not only to those who flee after conviction to avoid punishment but also to those who, after being charged, flee to avoid prosecution. In his ponencia, Mr. Justice Jose C. Vitug finds the definition given to it by the Oversight Committee, i.e., "a person who has been convicted by final judgment," as appearing in Article 73 of the Rules and Regulations Implementing the Local Government Code of 1991, as inordinate and an undue circumscription of the law. I agree.

But this is only one side of the coin. I further submit that it also unreasonably expands the scope of the disqualification in the 1991 Local Government Code because it disqualifies all those who have been convicted by final judgment, regardless of the extent of the penalty imposed and of whether they have served or are serving their sentences or have evaded service of sentence by jumping bail or leaving for another country. The definition thus disregards the true and accepted meaning of the word fugitive. This new definition is unwarranted for nothing in the legislative debates has been shown to sustain it and the clear language of the law leaves no room for a re-examination of the meaning of the term.

I do not share the doubt of Mr. Justice Vitug on the constitutionality of the disqualification based on the presumption of innocence clause of the Bill of Rights. There are certain fundamental considerations which do not support the application of the presumption.

Firstly, Section 1, Article V of the Constitution recognizes the authority of Congress to determine who are disqualified from exercising the right of suffrage. Since the minimum requirement of a candidate for a public office is that he must be a qualified voter, it logically follows that Congress has the plenary power to determine who are disqualified to seek election for public office.

Secondly, a public office is a public trust. Section 1, Article XI of the Constitution expressly provides:

SEC. 1. Public office is public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead

modest lives.

A public office is not property. (ISAGANI A. CRUZ, Constitutional Law, 1993 ed., 101; JOAQUIN BERNAS, The Constitution of the Republic of the Philippines, A Commentary, 1987 ed., 40, citing *Cornejo vs. Gabriel*, 41 Phil. 188 [1920]). Accordingly, stricter qualifications for public office may thus be required by law.

Thirdly, the disqualification in question does not, in reality, involve the issue of presumption of innocence. Elsewise stated, one is not disqualified because he is presumed guilty by the filing of an information or criminal complaint against him. He is disqualified because he is a "fugitive from justice," i.e., he was not brought within the jurisdiction of the court because he had successfully evaded arrest; or if he was brought within the jurisdiction of the court and was tried and convicted, he has successfully evaded service of sentence because he had jumped bail or escaped. The disqualification then is based on his flight from justice. In the face of the settled doctrine that flight is an indication of guilt, it may even be truly said that it is not the challenged disqualifying provision which overcomes the presumption of innocence but rather the disqualified person himself who has proven his guilt.

Finally, *Dumlao vs. COMELEC* (95 SCRA 392 [1980]) cannot be invoked to cast doubt on the validity of the challenged disqualification. *Dumlao* struck out as violative of the constitutional presumption of innocence that portion of the second paragraph, Section 4 of B.P. Blg. 52 providing that "the filing of charges for the commission of such crimes before a civil court or military tribunal after preliminary investigation shall be prima facie evidence of such fact." It is clear that the law challenged therein did in fact establish a presumption of guilt from the mere filing of the information or criminal complaint, in violation of the constitutional right to presumption of innocence.

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