

AQUILINO Q. PIMENTEL, JR., PETITIONER, VS. COMMISSION ON ELECTIONS, DOMINADOR MICO, DIONISIO CAOILI, OFELIA PASTOR, FLOR MERCADO, AND MARVELYN RAMIRO, RESPONDENT.

G.R. No. 126394. April 24, 1998

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

The Commission on Elections or COMELEC, acting as a National Canvassing Board for the May 8, 1995 elections, while canvassing the returns in the senatorial race, found a discrepancy between the Provincial Certificate of Canvas for Ilocos Norte and its supporting Statement of Votes per precinct or municipality for the province, such that the votes for candidates Juan Ponce Enrile, Franklin M. Drilon, Ramon V. Mitra, as appearing in the Provincial Certificate of Canvass[1] were more than the votes tallied as appearing in the Statement of Votes,[2] thus:

Candidate Votes appearing in the Votes appearing in the Increase

Statement of Votes Provincial Certificate

of Canvas

Enrile 65,343 95,343 30,000

Drilon 48,726 78,726 30,000

Mitra 42,959 62,959 20,000

On the basis of such discrepancy, the COMELEC motu proprio ordered an investigation and referred the matter to its Law Department.[3]

Petitioner Aquilino Pimentel, Jr., himself a senatorial candidate in the May 8, 1995 elections, filed his own complaint with the COMELEC's Law Department, docketed as E.O. Case No.95-294 against Atty. Dominador Mico,[4] Atty. Dionisio Caoili and Dr. Ofelia T. Pastor, Chairman, Vice-Chairman and Member-Secretary, respectively, of the Provincial Board of Canvassers of Ilocos Norte, Marvelyn Ramiro, Election Assistant for the COMELEC for San Nicolas, Ilocos Norte and member of the support staff of the Provincial Board of Canvassers, and Flor Mercado, Elementary School Principal of the Department of Education, Culture and Sports, Ilocos Norte and also a member of the support staff of the Provincial Board of Canvassers.[5]

Petitioner charged respondents with violation of Section 27 of Republic Act No. 6646, otherwise known as the Electoral Reforms Law of 1987, which provides:

x x x the following shall be guilty of an election offense:

x x x

(b) Any member of the board of election inspectors or board of canvassers who tampers, increases or decreases the votes received by a candidate in any election or any member of the board who refuses, after proper verification and hearing, to credit the correct votes or deduct such tampered votes.

Specifically, petitioner alleged in his affidavit-complaint that:

2. A comparison between the Provincial Certificate of Canvass and the Supporting Statement of Votes per Municipality for the Province of Ilocos Norte show an increase in the vote totals for senatorial candidate Enrile from 65, 343 as indicated in the Statement of Votes by Municipality to 95,343 in words and figures in the Provincial Certificate of Canvass; senatorial candidate Drilon, from 48,726 to 78,726, and senatorial candidate Mitra, from 42,959 to 62,959.

3. The said respondents acting together and conspiring with one another were responsible for the falsification of the tallies for senatorial candidates Enrile, Drilon and Mitra above mentioned in that as members of the Provincial Board of Canvassers, the respondents Mico, Caoili and Pastor certified to the correctness of the said tallies despite the fact those tallies had been padded, added to and falsified and the respondents Ramiro and Mercado as members of the staff of the respondent Provincial Board of Canvassers confabulating with each other caused the false tallies to be recorded in favor of Enrile, Drilon and Mitra in the said Provincial Certificates of Canvass of Ilocos Norte.

4. By these illegal acts, the respondents willfully, feloniously and intentionally committed an election offense. The discrepancies were so glaring that under no circumstance can we say that these were mere "honest error".[6]

The respondents filed their respective counter-affidavits.[7] Subsequently, the parties filed their respective Memoranda.[8]

In Minute Resolution No. 96-1497 dated May 14, 1996, the COMELEC en banc resolved to file criminal as well as administrative charges against respondent for violation of Section 27 (b) of Republic Act No. 6646, thus:

In the matter of prosecuting Comelec field officials and deputies involved in certain irregularities as discovered by the Commission of Elections sitting as the National Board of Canvassers for the 1995 Senatorial Canvass. Considering the study dated 9 May 1996 of the Law Department in the case, Aquilino Pimentel, Jr. vs. Provincial Board of Canvassers, et al. Ilocos Norte (E.O. Case No. 95-294), for alleged violation of Sec. 27(b) of Republic Act No. 6646 (any member of the board of canvassers who tampers, increases or decreases the vote received by a candidate in any election), that respondents, Dominador Micu, Chairman, Dionisio Caoili, Vice Chairman and Ofelia Pastor, Member, PBC, Ilocos Norte, did not dispute the fact that there was really an irregular increase of votes for some senatorial candidates in the Certificate of Canvass namely: Enrile, from 65,343 to 95,343; Drilon, from 48,726 to 78,726 and Mitra, from 42,959 to 62,959; considering, further, that complainant Mr. Pimentel, Jr. filed an amended complaint on December 13, 1995 charging Mrs. Marvelyn Ramiro, Election Assistant of San Nicolas, Ilocos Norte who dictated and prepared the entries, respectively, from the statement of votes to the certificate of canvass,

"RESOLVED:

1) To file criminal charges against respondents Atty. Dominador, Micu, Assistant Regional Election Director, Region I, Atty. Dionisio Caoili, Provincial Prosecutor and Dr. Ofelia Pastor, Division Superintendent of School, Chairman, Vice Chairman and member-secretary respectively of the PBC of Ilocos Norte, for alleged violation of Section 27(b) of Rep. Act. 6646 during the May 8, 1995 elections;

2) To file criminal charges against the other respondents Mrs. Marvelyn Ramiro, Election Assistant of San Nicolas, Ilocos Norte and Flor Mercado, Elementary School Principal of DECS, for the same offense (violation of Section 27(b) of Rep. Act 6646 during the May 8, 1995 elections); and

3) To initiate administrative proceedings against the foregoing respondents and thereafter, to suspend them for a period of ninety (90) days without pay; if no administrative case is filed against the three other respondents, namely Atty. Dionisio Caoili, Dr. Ofelia Pastor and Ms. Flor Mercado, to recommend to the agencies concerned to file administrative cases against them, with suspension and without pay for the period of suspension.[9]

Respondents filed a motion for reconsideration,[10] to which petitioner filed his comment.[11]

On August 13, 1996, the COMELEC en banc issued the assailed Minute Resolution No. 96-2333 where it was resolved to dismiss the complaint “for lack of sufficient evidence to establish probable cause” and, in the administrative case, “to reprimand respondents with stern warning that a repetition of the same act in the future shall be dealt with accordingly.”[12]

It is from the COMELEC’s dismissal of his complaint that petitioner files the instant petition for certiorari asserting that :

[t]he COMELEC committed grave abuse of discretion when they flip-flopped from their earlier issued Minute Resolution No. 96-1497 in E.O. Case No. 95-294 where they found the existence of probable cause and ordered the filing of a criminal information against the private respondents and then in the subject Minute Resolution No. 96-2333, without giving any substantial justification for the same, ordered the dismissal of the charges against all of the private respondents for insufficiency of evidence, despite the absence of any newly discovered evidence or of any new legal arguments raised in private respondents’ motion for reconsideration - this clearly shows an arbitrary and capricious exercise of discretion by the COMELEC amounting to lack of jurisdiction.[13]

The Solicitor General filed a Manifestation and Motion (In Lieu of Comment) where he prayed for the nullification and setting aside of COMELEC’s Minute Resolution No. 96-2333 dated August 13, 1996.

We first deal with the assertion of the COMELEC[14] that the Solicitor General’s Manifestation be stricken from the record as it “is a plain and actual comment indubitably supporting the petition of petitioner Pimentel who is a private person, thus beyond the powers and functions of the Office of the Solicitor General.”[15]

True, the Solicitor General is mandated to represent the Government, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of a lawyer.[16] However, the Solicitor General may, as it has in instances[17] take a position adverse and contrary to that of the Government on the reasoning that it is incumbent upon him to present to the court what he considers would legally uphold the best interest of the government although it may run counter to a client’s position.[18]

In the instant case, it is the position of the Solicitor General that the COMELEC’s assailed resolution “has no basis and does not conform to the evidence which establish probable cause to indict private respondents for an election offense.”[19] We take such position into serious consideration and do not, as the COMELEC does, dismiss the same as “entirely misplaced.”[20] As we commented on the role of the Solicitor General in cases pending before this Court:

This Court does not expect the Solicitor General to waver in the performance of his duty. As a matter of fact, the Court appreciates the participation of the Solicitor General in many proceedings and his continued fealty to his assigned task. He should not therefore desist from appearing before this Court even in those cases he finds his opinion inconsistent with the Government or any of its agents he is expected to represent. The Court must be advised of his position just as well.[21]

The COMELEC also argues that petitioner’s remedy is inappropriate. This argument is easily disposed of. When filed, the petition was denominated as a “petition for review on certiorari.” Petitioner, however, filed a Motion to

Treat Petition as a Special Civil Action Under Rule 65 of the Rules of Court where he pointed out that “[t]he petition was filed within the 30-day period to file a petition for certiorari from the Resolution of the COMELEC”[22] and that [t]he arguments raised therein make out the same grounds for the issuance of the extraordinary writ of certiorari.”[23] We noted the Motion in En Banc Resolution dated November 12, 1996.[24]

We now come to the heart of the matter at hand. As summarized by the Solicitor General, the issue here in “WHETHER OR NOT PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION IN REVERSING ITS EARLIER RESOLUTION BY DISMISSING THE COMPLAINT AGAINST PRIVATE RESPONDENTS FOR VIOLATION OF SECTION 27(B) OF RA NO. 6646, ON THE GROUND OF ‘LACK OF SUFFICIENT EVIDENCE TO ESTABLISH PROBABLE CAUSE.’”[25]

We are here asked to determine whether the COMELEC, in including that probable cause did not exist to warrant prosecution of the respondents, committed grave abuse of discretion. We emphasize that we do so take cognizance of the case exceptionally under Rule 65 of the Revised Rules of Court pursuant to Section I, Article VIII of the 1987 Constitution, as we recognize that the COMELEC must be accorded full discretion whether or not to initiate a criminal case, pursuant to its power to investigate and prosecute election offenses.[26] We note that when investigating and prosecuting election offenses, the COMELEC is acting analogous to the Ombudsman with its investigatory and prosecutory powers. We have no occasion looked into the Ombudsman’s action upon the allegation of grave abuse of discretion.[27]

The COMELEC in its Comment maintained that no probable cause exists there being no evidence showing that “petitioner prior to his filing of the complaint against the board members x x x called the attention of the latter to what he claimed were incorrect or tampered votes” and that “respondents were given the chance to verify and be heard on the claim but refused to rectify when asked,” arguing that “[t]he clear meaning of [Section 27(b), R.A. No. 6646] is that the erring board member must first be given the chance to credit the correct votes or deduct the tampered votes and the refusal to do so gives rise to his criminal responsibility.”[28]

We find the COMELEC’s view askant. We examine the provision under which respondents are charged. Section 27(b) of R.A. No. 6646, reads:

x x x the following shall be guilty of an election offense:

x x x

(b) Any member of the board of election inspectors or board of canvassers who tampers, increases or decreases the votes received by a candidate in any election or any member of the board who refuses, after proper verification and hearing, to credit the correct votes or deduct such tampered votes.

A rule in statutory construction is that the word “or” is disjunctive term signifying dissociation and independence of one thing from other things enumerated unless the context requires a different interpretation.[29] In criminal and penal statutes, like Section 27(b) of R.A. 6646, the word “and” cannot be read “or,” and conversely, as the rule of strict construction apply,[30] except when the spirit and reason of the law require it.[31]

From a reading of Section 27(b) of R.A. 6646 in its entire context, we cannot but conclude that giving a non-disjunctive meaning to the word “or” is not warranted.[32]

Thus, under the provision, two acts, not one, are penalized: first, the tampering, increasing or decreasing of votes received by a candidate in any election; and second, the refusal, after proper verification and hearing, to credit the correct votes or deduct such tampered votes. The second part of the provision cannot be conjoined with the first part and regarded as a mere element of one crime, as is the interpretation of the COMELEC. Such cannot be the intent of the framers of the law, and it is with grave abuse of discretion that the COMELEC gave Section 27(b) of

R.A. No. 6646 of interpretation it did.

Petitioner in paragraph 5 of his complaint-affidavit[33] categorically charged respondents with having “tamper[ed], increase[ed] the votes received by a candidate in any election.” The fact that the votes of candidates Enrile, Drilon and Mitra as appearing in the Certificate of Canvass were considerably more than that appearing in the Statement of Votes is not denied by respondents. Instead, they put forward the defenses of honest mistake, simple error, good faith, and the mere performance of ministerial duties.

In his counter-affidavit,[34] respondent Dominador Mico alleged that:

x x x there was no malice or deliberate intent to commit a crime, but that the discrepancy or error was the result of an honest mistake or oversight due to failure on our part to cross check the entries there was no malice or deliberate intent to commit a crime, but that from the Statement of Votes to the Certificate of Canvass thereby relying completely on our confidence and trust reposed on the support staff who did the typing of the entries from the Statement of Votes to the Certificate of Canvass who proved only human after all.

In a subsequent affidavit[35] denominated as “Discovery of the Discrepancy,” respondent Mico expounded on when and how he discovered the discrepancy in the Statement of Votes and the Certificate of Canvass thus:

As per instruction, the three (3) dominant political parties were to provide each of the other parties a xerox copy of the COC. It was only after such xerox copies were made but before the same were put in envelopes that I noted the unusually high number of votes credited to senatorial candidates Juan Ponce Enrile and Ramon Mitra at the same time discovering that said votes did not tally with the corresponding entries in the statement of votes. Upon noting the discrepancy, I remarked aloud that our attention will be called thereto and that we should expect trouble in connection therewith. I cannot however, remember whether when I made such statement the two other members of the Board were still inside the hall and were within hearing distance.

Since some of the other copies of the COC were already distributed and the rest already sealed in the envelopes, I considered it improper or irregular to reconvene the Board to make the correction, neither did I reflect the discrepancy in the minutes because the Board has already become functus de officio, and further because the certificate of canvass had to be submitted immediately, the 72 hours prescribed within which to finish the canvass having long lapsed.

Respondent Dionisio A. Caoili alleged in his Counter-affidavit:[36]

That the shown disparities in the results of the senatorial elections in Ilocos Norte, as reflected in the SOV and COC, were not deliberate but the outcome and congruence of mechanical as well as honest human error;

In her Counter-Affidavit,[37] respondent Ofelia T. Pastor alleged that:

x x x the discrepancies were purely human error and honest mistake yet done with due respect in good faith x x x.

Respondent Marvelyn R. Ramiro alleged in her Counter-Affidavit:[38]

Respondent Flor Mercado alleged in her Counter-Affidavit[39] that:

My participation in the preparation of the COC of Ilocos Norte was purely ministerial since I was merely directed by Atty. Dominador Mico, Chairman, PBC, Ilocos Norte, to record/type the entries in the COC;

We agree with the Solicitor General that the merit of respondents’ defenses are best ventilated in the trial proper than at the preliminary investigation.[40] For a preliminary investigation is essentially inquisitorial and is only the means to discover who may be charged with a crime, its function being merely to determine probable cause.[41]We emphasize that:

[a] finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed and was by the suspects. Probable cause need not be based on clear and convincing evidence of guilt, neither on evidence establishing absolute certainty of guilt. As well put in *Brinegar v. United States*, while probable cause demands more than “bare suspicion,” it requires “less than evidence which would justify x x x conviction.” A finding of probable cause merely binds over the suspect to stand trial. It is not a pronouncement of guilt.

To take the view, as that adopted by the COMELEC when it executed an about-face, that a member of the board of election inspectors or board of canvassers cannot be charged with the offense under Section 27(b) of R.A. 6646 unless his attention is first called to the tampering, increasing or decreasing of the votes of a candidate and unless he is first given the opportunity to rectify, correct or undo his illegal act, is to tolerate, if not abet, a massive tampering of votes by allowing the wrongdoer a built-in and sure-fire defense for his exoneration. In the face of accusations of “dagdag bawas” (tampering) of votes flying thick and fast in our electoral landscape, the COMELEC’s stand is starkly illogical and retrogressive and flies in the face of its mandated duty to protect the sanctity of the ballot.

Strangely, what is extant from the records is the admission of respondent Mico that early on he already noted the discrepancy in the votes for certain senators which did not tally with the corresponding entries and the statement of votes to which he promptly called the attention of the other members of the Provincial Board of Canvassers. Yet, absolutely nothing had been done by the members of the board to correct the glaring disparities in the results of the Senatorial votes in Ilocos Norte. This means that, even if we assume for the sake of argument, that Section 27(b) of R.A. 6646 penalizes only one act, still, the COMELEC’s dismissal of the case against the respondents is totally erroneous amounting to grave abuse of discretion.

The other issues raised by the COMELEC - whether the offenses punished under Section 27(b) of R.A. No. 6646, a special law, are *mala prohibita* or *mala in se*[42] and whether damage is an element of the offenses.[43] – are likewise matters which are properly raised in the trial court and threshed out in a judicial proceeding, being necessarily interconnected with the defense raised by respondents.

In sum, we find that the COMELEC acted with grave abuse of discretion in dismissing the complaint on the ground “lack of sufficient evidence to establish probable cause,” curiously after it had previously found probable cause on the basis of the same evidence. Moreover, significantly, it is on record that upon discovering the discrepancies while canvassing the returns in the senatorial race and in obvious and manifest recognition of the gravity of the occurrence, the COMELEC *motu proprio* initiated an investigation. Under the COMELEC Rules of Procedure, a complaint initiated *motu proprio* by the Commission is presumed to be based on sufficient probable cause for purposes of issuing subpoenas to the respondents.[44]

The grant to the COMELEC, as embodied in the 1987 Constitution, of the power to investigate and prosecute election offenses as an adjunct to the enforcement and administration of all election laws, is intended to enable the Commission to effectively insure to the people the free, orderly and honest conduct of elections, failure of which would result in the frustration of the true will of the people and make a mere idle ceremony of the sacred right and duty of every qualified citizen to vote.[45] The people expect from the COMELEC nothing less than perfect and undiminished fealty to this objective.

The finding of the existence or non-existence of probable cause in the prosecution of criminal cases brought before it, rests in the discretion of the COMELEC in the exercise of its Constitutional authority to investigate and, where appropriate, prosecute cases of violation of election laws, including acts or omissions constituting election frauds, offenses and malpractices.[46] The Court would normally not interfere with such finding of the COMELEC. However, in extreme situations, as in the case at bar, this Court will not hesitate to correct acts

committed by said body in grave abuse of discretion.

WHEREFORE, in view of the foregoing, the assailed Minute Resolution No. 96-2333 of the Commission on Elections dated August 3, 1996 is SET ASIDE and its Minute Resolution No. 96-1497 dated May 14, 1996 issued in E.O. No. 95-294 is REINSTATED.

SO ORDERED.

Narvasa, C.J., Regalado, Davide, Jr., Romero, Bellosillo, Melo, Puno, Vitug, Mendoza, Panganiban, Martinez, Quisumbing, and Purisima, JJ., concur.

[1] Rollo, p. 26.

[2] Id., at 27.

[3] Petition, p. 4; Rollo, p. 11.

[4] Sometimes appearing in the record as Micu.

[5] Complaint-Affidavit dated June 27, 1995, Rollo, pp. 29 -31 and Amended Complaint-Affidavit dated December 13, 1995, Rollo, pp. 65 – 66.

[6] Rollo, p. 65; Underscoring in the original.

[7] Annexes “E,” “F,” “G,” “J” and “K” of the petition.

[8] Annexes “L,” “M,” and “N” of the petition.

[9] Rollo, p. 98.

[10] Id., at 100, 108.

[11] Id., at 110.

[12] Id., at 25.

[13] Id., at 114.

[14] Through Atty. Jose P. Balbuena.

[15] Rollo, p. 152.

[16] Section 1 of Presidential Decree No. 478. See also Section 35, Chapter 12 of the Administrative Code of 1987.

[17] See note 18, *infra*.

[18] *Orbos v. Civil Service Commission*, 189 SCRA 459 (1990); *Martinez v. Court of Appeals*, 237 SCRA 575 (1994).

[19] Rollo, p. 147.

[20] Id., at 172.

[21] *Orbos v. Civil Service Commission*, *supra*.

[22] Rollo, p. 113.

[23] Ibid.

[24] Rollo, p. 117.

[25] Rollo, p. 141.

[26] See *People v. Delgado*, 189 SCRA 715 (199) on the trial court acquiring jurisdiction over a criminal case charging an election offense filed by the COMELEC after conducting a preliminary investigation and finding probable cause, where we emphasized that after the information is filed in the trial court, the subsequent disposition of the case must be subject to the approval of the court.

[27] *Leonila Garcia-Rueda v. Pascasio*, G.R. No. 118141, September 5, 1997, citing *Yabut v. Office of the Ombudsman*, 233 SCRA 310 (1994) and *Young v. Office of the Ombudsman*, 228 SCRA 718 (1993).

[28] Rollo, p. 171.

[29] *People v. Martin*, 39 SCRA 340 (1971)

[30] Sibal, *Statutory Construction*, 1994 ed., pp. 100-101, citing *State v. Tiffany*, 87 Fla. 932.

[31] Ibid., citing *Fulghum v. Bleakley*, 177 S.C. 286, 181 S.E. 30, also Crawford, *Statutory Construction*, p. 323.

[32] See Ibid., citing *State v. Brandt*, 41 Iowa 593. Substitution of one for the other is permissible only when the context or other provisions of the statute require it, or when that is necessary to avoid an absurd or impossible consequence, and to carry out the evident intention of the legislature.

[33] Rollo, p. 65.

[34] Dated December 4, 1995; Rollo, p. 33.

[35] Dated July 20, 1995; Rollo, p. 39.

[36] Dated January 29, 1996; Rollo, p. 34.

[37] Dated January 29, 1996; Rollo, p. 36.

[38] Dated January 29, 1996; Rollo, p. 67.

[39] Dated January 29, 1996; Rollo, p. 68.

[40] Citing *Olivarez v. Sandiganbayan*, 248 SCRA 700 (1995) and *Webb v. De Leon*, 247 SCRA 652 (1995). Also *Garcia-Rueda v. Pascasio*, *supra*.

[41] *Garcia-Rueda v. Pascasio*, *supra*, citing *Panganiban v. Casar*, 159 SCRA 599 (1988).

[42] Rollo, p. 157.

[43] *Id.*, at 165.

[44] Section 7, Rule 34.

[45] *De Jesus v. People of the Philippines*, 120 SCRA 760 (1983).

[46] Sec. 2(6), Art. IX©, 1987 Constitution.

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