

MAYOR RICARDO M. ANGOBUNG, PETITIONER, VS. COMMISSION ON ELECTIONS EN BANC, AND ATTY. AURORA S. DE ALBAN, RESPONDENTS.

G.R. No. 126576. March 05, 1997

Ponente: HERMOSISIMA, JR., J.

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HERMOSISIMA, JR., J.:

Before us on certiorari is a petition seeking to annul and set aside Resolution No. 96-2951[1] dated October 15, 1996 issued by public respondent Commission on Elections (COMELEC) which (1) approved the Petition for Recall filed and signed by only one registered voter - herein private respondent Ma. Aurora Siccuan de Alban, against petitioner - incumbent Mayor Ricardo Angobung; (2) set the further signing of said petition by the rest of the registered voters of Tumauni, Isabela on November 9, 1996; and (3) in case the said petition is signed by at least 25% of the total number of registered votes in Tumauni, Isabela, scheduled the recall election on December 2, 1996.

On October 25, 1996, this court issued a Temporary Restraining Order[2] enjoining public respondent COMELEC from implementing and enforcing Resolution No. 96-2951.

The facts of this case are not disputed.

Petitioner won as the duly elected Mayor of the Municipality of Tumauni, Isabela in the local elections of 1995. He garnered 55% of all the votes cast. Private respondent de Alban was also a candidate in said elections.

Sometime in early September, 1996, private respondent filed with the Local Election Registrar in Tumauni, Isabela, a Petition for Recall[3] against petitioner. On September 12, 1996, petitioner received a copy of this petition. Subsequently said petition was forwarded to the Regional Office in Tuguegarao, Cagayan and then to the main office of COMELEC in Manila, for approval.

Acting on the petition, Deputy Executive Director for Operations Pio Jose Joson submitted to the COMELEC En Banc, a Memorandum[4] dated October 8, 1996 recommending approval of the petition for recall filed by private respondent and its signing by other qualified voters in order to garner at least 25% of the total number of registered voters as required by Section 69(d) of the Local Government code of 1991.

In turn acting on the abovementioned Memorandum of Deputy Executive Director Joson, the COMELEC en banc issued the herein assailed Resolution No. 96-2951.

Petitioner now attacks the aforementioned resolution as being unconstitutional and therefore invalid, on two main grounds: (1) that the resolution approved the Petition for Recall albeit same was signed by just one person in violation of the statutory 25% minimum requirement as to the number of signatures supporting and petition for recall; and (2) that the resolution scheduled the recall election within one (1) year from the May 12, 1997 Barangay Elections.

In at least three (3) urgent motions, private respondent has sought the lifting of the Temporary Retraining Order issued last October 25, 1996 on the twin grounds (1) that the issue of the one-year bar on recall elections has been resolved in the case of *Paras v. COMELEC*[5] promulgated on November 4, 1996; and (2) that the procedure prescribed by Resolution No. 96-2951 involving petition signing upon initiation of even just one person, is no different from that provided for in COMELEC Resolution No. 2272 which was upheld as constitutional in the 1991 cases of *Sanches, et al. v. COMELEC*[6] and *Evardone v. COMELEC*[7]

Private respondent is correct in saying that in the light of our pronouncement in *Paras v. COMELEC*[8], the recall election scheduled on December 2, 1996 in the instant case cannot be said to be barred by the May 12, 1997 Barangay Elections. In construing the meaning of the term, “regular local election” in Section 74 of the Local Government Code of 1991 which provides that “no recall shall take place within one (1) year x x x immediately preceding a regular local election,” we ruled that for the time bar to apply, the approaching regular local election must be one where the position of the official to be recalled, is to be actually contested and filled by the electorate. Thus, in the instant case where the time bar is being invoked by petitioner mayor in view of the approaching Barangay Elections in May 1997, there can be no application of the one year bar, hence no invalidity may be ascribed to Resolution No. 96-2951 on this ground.

We, however, find petitioner’s second ground to be impressed with merit.

Before the enactment of the 1991 Local Government Code, the recall of public officials voted for in popular elections, was governed by Sections 54 to 59 of Batas Pambansa Blg. 337, otherwise known as the Local Government Code of 1983. Pursuant to Section 59 thereof, which states that “the Commission on Elections shall conduct and supervise the process of and election on recall x x x and, in pursuance thereof, promulgate the necessary rules and regulations,” the COMELEC promulgated Resolution No. 2272 Sections 4 and 5 of which provide as follows:

“Sec. 4. How instituted. - The recall of an elective provincial, city or municipal official shall be commenced by the filing of a duly verified notice of recall containing the address and precinct number of the voter filing the notice, and the name of the official sought to be recalled, his position, and the ground(s) for the recall. Each notice shall refer to only one official.lex

The notice shall be filed in triplicate with the local Election Registrar if the recall involves a city or municipal official, or with the Provincial Election Supervisor if it involves a provincial official, one copy of which shall be posted upon receipt thereof on the bulletin board in the city/municipal hall.

If the recall involves a provincial official, two additional copies of the notice shall also be furnished by the voter filing the notice to the Election Registrar of each city and municipality in the province, one copy of which shall be posted upon receipt thereof on the bulletin board in the city/municipal hall.

In every case, the voter filing the notice of recall shall furnish a copy thereof to the official sought to be recalled, the Commission on Elections in Manila and the Election Records and Statistics Department of the Commission.

Section 5. Schedule and place of signing of the petition. - The Election Registrar shall submit to the Commission on Elections, not later than ten days from filing of the notice of recall, the schedule of the signing of the petition to recall for approval and funding x x x.”[9]

In the case of *Sanchez v. COMELEC*[10], petitioners therein contended that the foregoing “Resolution No. 2272 is unconstitutional there being no legislative enactment yet on [the] mechanism of recall as mandated under Sec. 3, Art. X of the Constitution”[11] It is true, as private respondent asseverates, that we upheld the constitutionality of Resolution No. 2272, but not because we found nothing constitutionally infirm about the procedure of allowing

the initiatory recall petition to be filed by only one person. The issue in Sanchez was not this questioned procedure but the legal basis for the exercise by the COMELEC of its rule-making power in the alleged absence of a grant of such power by an enabling statute on recall. Thus we ruled:

While it is true that Sec. 3, Art. X of the Constitution mandates the Congress to enact a local government code providing among others for an effective mechanism of recall, nothing in said provision could be inferred the repeal of BP 337, the local government code existing prior to the adoption of the 1987 Constitution. Sec. 3, Art. X of the Constitution merely provides that the local government code to be enacted by Congress shall be 'more responsive' than the one existing at present. Until such time that a more responsive and effective local government code is enacted, the present code shall remain in full force and effect. Thus, under Sec. 3, Art. XVIII, '(a)ll existing laws, decrees, executive orders, proclamations, letters of instructions and other executive issuances not inconsistent with this Constitution shall remain operative until amended, repealed, or revoked.'

Considering that the present local government code (BP 337) is still in effect, respondent COMELEC's promulgation of Resolution No. 2272 is therefore valid and constitutional, the same having been issued pursuant to Sec. 59 of BP 337. It reads:

'Sec. 59. Supervision by the Commission on Elections. - The Commission on Elections shall conduct and supervise the process of and election on recall x x x and, in pursuance thereof, promulgate the necessary rules and regulations.'"[12]

We reiterated the foregoing ruling in the case of *Evardone v. COMELEC*[13] in this wise:

"Article XVIII, Section 3 of the 1987 Constitution expressly provides that all existing laws not inconsistent with the 1987 Constitution shall remain operative, until amended, repealed or revoked. Republic Act No. 7160 providing for the Local Government Code of 1991, approved by the President on 10 October 1991, specifically repeals B.P. Blg. 337 as provided in Sec. 534, Title Four of said Act. But the Local Government Code of 1991 will take effect only on 1 January 1992 and therefore the old Local Government Code (B.P. Blg. 337) is still the law applicable to the present case.

x x x

Chapter (Sections 54 to 59) of B.P. Blg. 337 provides for the mechanism for recall of local elective officials. Section 59 expressly authorizes the respondent COMELEC to conduct and supervise the process of and election on recall and in the exercise of such powers, promulgate the necessary rules and regulations. x x x Thus, pursuant to the rule-making power vested in respondent COMELEC, it promulgated Resolution No. 2272 on 23 May 1990.

We therefore rule that Resolution No. 2272 promulgated by respondent COMELEC is valid and constitutional. Consequently, the respondent COMELEC had the authority to approve the petition for recall and set the date for the signing of said petition.'"[14]

In *Sanchez* and *Evardone*, the COMELEC prescribed procedure of (1) allowing the recall petition to be filed by at least one person or by less than 25% of the total number of registered voters and then (2) inviting voters to sign said petition on a date set for that purpose, was never put to issue. As this is the crux of the present constitutional challenge, the proper time has come for this court to issue a definitive ruling on the matter.

Apropos for starters is the following chronicle of the evolution of the mechanism of recall as a mode of removing a public officer by direction action of the people, essayed in the case of *Garcia v. COMELEC*: [15]

"Recall is a mode of removal of a public officer by the people before the end of his term of office. The people's prerogative to remove a public officer is an incident of their sovereign power and in the absence of constitutional restraint, the power is implied in all governmental operations. Such power has been held to be

indispensable for the proper administration of public affairs. Not undeservedly, it is frequently described as a fundamental right of the people in a representative democracy.

Recall as a mode of removal of elective local officials made its maiden appearance in section 2 of Article XI entitled Local Government, viz:

‘SEC. 2. The Batasang Pambansa shall enact a local government code which may not thereafter be amended except by a majority vote of all its Members, defining a more responsive and accountable local government structure with an effective system of recall x x x’

The Batasang Pambansa then enacted BP 337 entitled, ‘The Local Government Code of 1983’ Section 54 of its Chapter 3 provided only one mode of initiating the recall elections of local election officials, i.e., by petition of at least twenty-five percent (25%) of the total number of registered voters in the local government unit concerned x x x.

Our legal history does not reveal any instance when this power of recall as provided by BP 337 was exercised by our people.

In February , 1986, however, our people more than exercised their right of recall for they resorted to revolution and they booted out of office the highest elective officials of the land. The successful use of people power to remove public officials who have forfeited the trust of the electorate led to its firm institutionalization of the 1987 Constitution. Its Articles XIII expressly recognized the Role and Rights of People’s Organizations x x x.

Section 3 of its Article X also reiterated the mandate for Congress to enact a local government code which ‘shall provide for a more responsive and accountable local government structure instituted through a system of decentralization with effective mechanisms of recall, initiative and referendum x x x. In response to this constitutional call, Congress enacted R.A. 7160, otherwise known as the Local Government Code of 1991, which took effect on January 1, 1992.”[16]

Section 69(d) of the Local Government Code of 1991 expressly provides that “recall of any elective x x x municipal x x x official may also be validly initiated upon petition of at least twenty-five percent (25%) of the total number of registered voters in the local government unit concerned during the election in which the local official sought to be recalled was elected”. The law is plain and unequivocal as to what initiates recall proceedings: only a petition of at least 25% of the total number of registered voters, may validly initiate recall proceedings. We take careful note of the phrase, “petition of at least twenty-five percent (25%) and point out that the law does not state that the petition must be signed by at least 25% of the registered voters; rather, the petition must be “of” or by, at least 25% of the registered voters, i.e., the petition must be filed, not by one person only, but by at least 25% of the total number of registered voters. This is understandable, since the signing of the petition is statutorily required to be undertaken “before the election registrar or his representative, and in the presence of a representative of the official sought to be recalled, and in public place in the x x x municipality x x x”. [17] Hence, while the initiatory recall petition may not yet contain the signatures of at least 25% of the total number of registered voters, the petition must contain the names of at least 25% of the total number of registered voters in whose behalf only one person may sign the petition in the meantime.

We cannot sanction the procedure of the filing of the recall petition by a number of people less than the foregoing 25% statutory requirement, much less, the filing thereof by just one person, as in the instant case, since this is indubitably violative of clear and categorical provisions of subsisting law.

Our legislators did not peg the voter requirement at 25% out of caprice or in a vacuum. They knew that this is the requirement under a majority of the constitution and recall statutes in various American states to the same extent that they were aware of the rationale therefor. While recall was intended to be an effective and speedy remedy to

remove an official who is not giving satisfaction to the electorate regardless of whether or not he is discharging his full duty to the best of his ability and as his conscience dictates,[18] it is a power granted to the people who, in concert, desire to change their leaders for reasons only they, as a collective, can justify. In other words, recall must be pursued by the people, not just by one disgruntled loser in the elections or a small percentage of disenchanting electors. Otherwise, its purposes as a direct remedy of the people shall be defeated by the ill motives of a few among them whose selfish resort to recall would destabilize the community and seriously disrupt the running of government.

A scrutiny of the rationale underlying the time bar provisions and the percentage of minimum voter requirement in American recall statutes, unmistakably reveals the vigilance of lawmakers against the abuse of the power of recall. For instance, the Supreme Court of Illinois held in the case of *In Re Bower*[19] that:

“[t]he only logical reasons which we can ascribe for requiring the electors to wait one year before petitioning for a recall election is to prevent premature action on their parting voting to remove a newly elected official before having had sufficient time to evaluate the soundness of his political policies and decisions. We view the statutory provision requiring the number of petition signers to equal at least 45% of the total votes cast in the last general election for mayor as a further attempt to insure that an official will not have to defend his policies against frivolous attacks launched by a small percentage of disenchanting electors.”[20]

Along the same lines, the Supreme Court of Colorado held in the case of *Bernzen v. City of Boulder*[21] that:

“[t]he framers, by requiring that a recall petition contain the signatures of at least 25% of all votes cast in the last election for all candidates for the position which the person sought to be recalled occupies, assured that a recall election will not be held in response to the wishes of a small and unrepresentative minority. However, once at least 25% of the electorate have expressed their dissatisfaction, the constitution reserves the recall power to the will of the electorate.”[22]

And in the case of *Wallace v. Tripp*[23], the Supreme Court of Michigan, echoed the foregoing posturings in this wise:

“Much of what has been said to justify a limit upon recall clearly not provided or contemplated by the Constitution has revealed fears about an irresponsible electorate xxx. A much cited Nebraska case pertaining to a Nebraska recall statute provides some answers which are equally applicable to the Michigan constitutional right of recall:

‘xxx Doubtless the provision requiring 30 per cent of the electors to sign the petition before the council [is] compelled to act was designed to avoid such a contingency. The legislature apparently assumed that nearly one-third of the electorate would not entail upon the taxpayers the cost of an election unless the charges made approved themselves to their understanding and they were seriously dissatisfied with the services of the incumbent of the office.’”[24]

In the instant case, this Court is confronted with a procedure that is unabashedly repugnant to the applicable law and no less such to the spirit underlying that law. Private respondent who is a lawyer, knows that Section 69(d) of the Local Government Code plainly provides that recall is validly initiated by a petition of 25% of the total number of registered voters. Notwithstanding such awareness, private respondent proceeded to file the petition for recall with only herself as the filer and initiator. She claims in her petition that she has, together with many others in Tumauni, Isabela, lost confidence in the leadership of petitioner. But the petition does not bear the names of all these other citizens of Tumauni who have reportedly also become anxious to oust petitioner from the post of mayor. There is no doubt that private respondent is truly earnest in her cause, and the very fact that she affixed her name in the petition shows that she claims responsibility for the seeming affront to petitioner’s continuance in office. But the same cannot be said of all the other people whom private respondent claims to have sentiments

similar to hers. While the people are vested with the power to recall their elected officials, the same power is accompanied by the concomitant responsibility to see through all the consequences of the exercise of such power, including rising above anonymity, confronting the official sought to be recalled, his family, his friends, and his supporters, and seeing the recall election to its ultimate end. The procedure of allowing just one person to file the initiatory recall petition and then setting a date for the signing of the petition, which amounts to inviting and courting the public which may have not, in the first place, even entertained any displeasure in the performance of the official sought to be recalled, is not only violative of statutory law but also tainted with an attempt to go around the law. We can not and must not, under any and all circumstances, countenance a circumvention of the explicit 25% minimum voter requirement in the initiation of the recall process.

WHEREFORE, premises considered, the PETITION FOR CERTIORARI is hereby GRANTED. COMELEC Resolution No. 96-2951 is hereby DECLARED NULL and VOID and accordingly SET ASIDE.

The RESTRAINING ORDER heretofore issued is hereby made permanent.

Costs against private respondent.

SO ORDERED.

Narvasa, C.J. (Chairman), Padilla, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Francisco, Panganiban, and Torres, Jr., JJ., concur.

[1] Certified True Copy of Excerpt from the Minutes of the Regular En Banc Meeting on the Commission on Elections held on October 15, 1996, Rollo, p. 34.

[2] Rollo, p. 44.

[3] Rollo, pp. 26-32.

[4] Rollo, pp. 39-42.

[5] G.R. No. 123169.

[6] 193 SCRA 317.

[7] 204 SCRA 464.

[8] G.R. No. 123169, promulgated on November 4, 1996.

[9] Comment of the Solicitor General dated November 15, 1996, pp. 6-7, Rollo, pp. 105-106.

[10] 193 SCRA 317.

[11] *Id.*, p. 320.

[12] *Ibid.*

[13] 204 SCRA 464.

[14] *Id.*, p. 470.

[15] 227 SCRA 100 [1993].

[16] Id., pp. 108-110.

[17] Sec. 69 (d) (I), Local Government Code of 1991.

[18] Dunham v. Ardery, 43 Okl. 619, 143 P. 331.

[19] 41 Ill, 777, 242 Ne 2D, 252.

[20] Id., p. 255.

[21] 186 Colo, 81, 525 P. 2d 416.

[22] Id., p. 419.

[23] 358 Mich. 668, 101 N.W. 2d 312.

[24] Id., pp. 314-315.

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