

REYNALDO O. MALONZO, PETITIONER, VS. THE HONORABLE COMMISSION ON ELECTIONS AND THE LIGA NG MGA BARANGAY (CALOOCAN CHAPTER) AND ALEX L. DAVID, CONRADO G. CRUZ, TRINIDAD REPUNO, G...*G.R. No. 127066. March 11, 1997*

Ponente: TORRES, JR., J.

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The Court is called upon to strike down Resolution 96-026,[1] dated November 18, 1996, of the respondent Commission on Elections (COMELEC) calling for an Election for the Recall of the Petitioner Reynaldo O. Malonzo, the incumbent Mayor of Caloocan City.

Petitioner was duly elected as Mayor in the elections held on May 8, 1995, winning over former Mayor Macario Asistio, Jr. Barely one year into his term, petitioner's office as Mayor was put to serious question when on July 7, 1996, 1,057 Punong Barangays and Sangguniang Barangay members and Sangguniang Kabataan chairmen, constituting a majority of the members of the Preparatory Recall Assembly of the City of Caloocan, met, and upon deliberation and election, voted for the approval of Preparatory Recall Assembly Resolution No. 01-96, expressing loss of confidence in Mayor Malonzo, and calling for the initiation of recall proceedings against him.

Together with relevant documents, PRA Resolution No. 01-96 was filed with the COMELEC for appropriate action. In response, Mayor Malonzo filed a Petition with the respondent Commission alleging, principally, that the recall process was deficient in form and substance, and therefore, illegally initiated. The COMELEC found the petition devoid of merit and declared the recall proceedings to be in order. The COMELEC's Resolution on the petition states pertinently:

"WHEREFORE, in view of the foregoing, the Commission En Banc hereby RESOLVES to DISMISS the Petition. We approve and give DUE COURSE to PRA Resolution No. 01-96 entitled RESOLUTION TO INITIATE RECALL OF REYNALDO O. MALONZO AS MAYOR OF KALOOCAN CITY FOR LOSS OF CONFIDENCE. Accordingly and conformably with Section 71 R.A. 7160, the Commission SETS the date of the Election on Recall on December 14, 1996. We shall, by separate resolution, issue a calendar of activities involved in said exercise.

SO ORDERED."[2]

On November 28, 1996, Mayor Malonzo came to us on a "Petition for Certiorari With Prayer For Temporary Restraining Order and Application for Writ of Preliminary Injunction", assailing the COMELEC's resolution as having been issued with grave abuse of discretion. The Petition, in the main, raises the issue of the validity of the institution and proceedings of the recall, putting to fore the propriety of the service of notices to the members of the Preparatory Recall Assembly, and the proceedings held, resulting in the issuance of the questioned Resolution.

Due to the importance of the matters in issue, and the proximity of the Recall Election date declared by the

COMELEC, the Court, on November 29, 1996, issued a Resolution[3] ordering the respondent COMELEC to cease and desist from proceeding with the recall election projected on December 14, 1996, and directing the respondents to file their respective Comments.

Private respondents Liga ng mga Barangay (Caloocan Chapter), Alex L. David, Conrado G. Cruz, Trinidad Repuno, Gloria M. Cruz, Mirali M. Durr, Fermin Jimenez, Aurelio Biluan, Rogelio Saraza, Helene Valbuena and Higino Rullepa, filed their Comment[4] on December 6, 1996, alleging that all the requirements for the holding of a recall election were duly complied with and that the petition is therefore without basis. On the other hand, the Office of the Solicitor General filed a Manifestation in lieu of Comment[5] on February 7, 1997, with the surprising submission that the COMELEC was amiss in its duties as enforcer of election laws.

According to the Solicitor General, the veracity of notices sent to 42 members of the Preparatory Recall Assembly were not directly passed upon by the COMELEC before it issued the questioned Resolution. It thus submits that the propriety of notices sent to said PRA members must first be determined by the COMELEC, after giving private respondents the chance to prove the same, otherwise, a discussion of the other issues in the present petition would be premature.

At this juncture, the Court finds that there is no need to refer the matter of the veracity of the questioned notices sent to certain members of the Preparatory Recall Assembly back to the COMELEC, for the reason that the COMELEC has already conducted an investigation into the same, and has found the proceedings instituting the recall to be in accord with law.

The Solicitor General's observation that the issue of veracity of the notices was not directly passed upon by the COMELEC is incorrect. On the contrary, the matter of validity of notices to the members of the Preparatory Recall Assembly was sufficiently considered by the respondent Commission, as in response to petitioner's request for a technical examination of the recall documents, the COMELEC directed its Election Records and Statistics Department (ERSD) to resolve the matter of notices sent to the Preparatory Recall Assembly members. The ERSD in turn performed its task and reported its findings to the COMELEC. The following excerpts from Resolution UND 96-026 of the COMELEC reflect the results of the ERSD's investigation, and the resulting action of the COMELEC:

"The ERSD Report gave the following information:

Three (3) lists of elected Barangay officials were used as reference, namely: COMELEC list; DILG list and Caloocan City list.

According to the COMELEC listing, of the 188 barangays in Kalookan City, there should have been 1,692 members of the PRA. However, one barangay, Barangay 94, did not elect an SK Chairman, thus, there are of record, 1,691 elected barangay officials of Kalookan City, broken down as follows:

Punong Barangay - 188

Barangay Kagawads - 1,316

SK Chairmen - 187

(One Barangay, Barangay 94 did not elect its SK Chairman)

The DILG registry is incomplete, showing only a listing of 1,390 barangay officials. The Kalookan City Talaan ng mga Barangay tallies with the COMELEC List. From the records, the following data is found: Of the 1,691 barangay officials, forty (40) had resigned. In the stead of twenty-eight (28) resignees, replacements were appointed. Twelve (12) positions however, remained vacant, there being no successors named therein.

Twenty-two (22) barangay officials are deceased. Twelve (12) vacancies caused by such death were filled up by appointing replacements. Ten (10) vacant positions were however not filled up. There being twenty-two (22) unfilled posts, the total number of Barangay officials of Kalookan City at the time of the constitution of the Preparatory Recall Assembly was initiated is 1,669.

ERSD reported that there were a total of 1,927 notices sent, some members being served two or three notices. The Notices were sent in three modes; Personal, registered mail and by courier and they were in the name of the PRA member, and addressed at his residence or office of record.

In its initial report, the Department stated that six persons listed in the COMELEC record as barangay officials were not duly notified. These were: Jose de Chavez, listed as Barangay kagawad of Barangay 6; Enrico Marasigan, listed as Barangay kagawad of Barangay 65; Pablo Musngi, listed as Barangay kagawad of Barangay 119; Rolando Ang, listed as Barangay kagawad of Barangay 109; and Pilar Pilares, Barangay Kagawad of Barangay 162 and Teresita Calayo, listed as kagawad of Barangay 182. Respondents explained the absence of notice to these persons thus:

'1. Jose de Chavez has been removed from office as Barangay kagawad of Barangay 6 by virtue of Resolution No. 95-011 passed on July 16, 1995, and has been replaced by Corazon Obusan by virtue of Resolution No. 95-016 passed on August 1995, both promulgated by the Barangay Council of said barangay. In view of the fact that it is Corazon Obusan who is the recognized Barangay kagawad of the aforementioned barangay, as it appears in the official roster of the Department of Interior and Local Government (DILG) the notice of the July 7, 1996 PRA session was duly served on her and not on Mr. de Chavez.

2. Enrico Marasigan has resigned as Barangay kagawad of Barangay 65 as evidenced by his resignation letter dated March 24, 1995. He was replaced by Ronio de la Cruz, by virtue of a Resolution passed by the Barangay Council of Barangay 65 dated August 10, 1995. Accordingly, the notice of the July 7, 1996 PRA session was duly served on Mr. de la Cruz and not on Mr. Marasigan.

3. Pablo Musngi ceased to be a Barangay kagawad of Barangay 119 by reason of his death on April 12, 1996. He has been replaced by Sylvia Saberola on whom notice of the July 7, 1996 PRA session has been duly served.

4. Notices, both by personal delivery and by registered mail, were served on Mr. Rolando Ang at his official address at Barangay 109 Zone 10 East Grace Park, Caloocan City. The returns of the said service of notice, however, disclosed that he can no longer be located in the said address. He has, however, not informed the DILG of any change in his official address.

5. Pilar Pilares had been served notice by personal delivery but refused to sign acknowledgment receipt. She has likewise been served notice by registered mail as evidenced by the receipt in her behalf by a certain Ricardo Pilares III.' (Respondents' Comment, dated October 14, 1996.

As to Teresita Calayo, respondent defends lack of notice to her, thus:

'Teresita Calayo is not a duly elected kagawad of Barangay 182, Zone 16.

Per certification issued by the Board of Election Tellers, Ms. Calayo did not win in the May 1994 Barangay Election. Records would show that it should be Kagawad Fermin Quintos who should be recognized as legitimate barangay kagawad of the said barangay having placed no. 7 in the election and not Ms. Calayo who appears to be a loser/9th place. There appears to be an apparent oversight in placing the name of Calayo in the subject PRA Resolution for signature, wherein it shows that both the names of Fermin Quintos and Teresita Calayo are included.' (Respondents' Compliance dated November 13, 1996, p. 6)

In the ERSD's final and complete report, two (2) additional names were reflected as not having been served notices and these were Lino Ramos and Teodulfo Abenoja, listed as kagawads of Barangay 174.

Commenting on this report, respondents stated:

'1. As regards Tomas Daep and Teodulfo Abenoja (not Agenoja);

Notice by registered mail was served on, and acknowledged by Tomas Daep, who personally signed the return card.

There was actually an error committed by the ERSD when it concluded that Tomas Daep has already resigned and was replaced by Ernesto Taupa. Official records would show that Tomas Daep and Ernesto Taupa are still both presently holding the position of Kagawad of Barangay 174 Zone 15.

Ernesto Taupa was officially appointed to the position vacated by Teodulfo Abenoja by virtue of the latter's resignation on 15 March 1996. Teodulfo Abenoja, on the other hand, was appointed to the position vacated by Lino Ramos and Teodulfo Abenoja - they, having resigned and, the latter, having been already replaced by Ernesto Taupa.

Ernesto Taupa on the other, as correctly determined by the ERSD, was validly served with the notice of the PRA session two (2) days before the scheduled PRA meeting.'

Respondents' submission, being substantiated by documents and uncontroverted by Petitioner are hereby accepted as meritorious.

In addition to the aforementioned, three persons; Pablo de Castro, Ruben Ballega, and Jesus Tan claiming to be the Barangay captains of Barangay 116, Barangay 148 and Barangay 156, respectively, and therefore members of the Preparatory Recall Assembly, came before the Commission and manifested that they were not duly notified about the PRA session.

The records in custody of the Commission, however, revealed that there was no truth to their allegations.

Pablo de Castro was served notice by registered mail on July 1, 1996, and this he received on July 3, 1996, as shown in the return card duly signed in acknowledgment. The same notice was served on him by courier (LBC) on July 5, 1996.

Ruben Ballega was notified by personal service on July 1, 1996, the receipt of which was duly acknowledged and by registered mail on July 2, 1996.

Jesus Tan Sr. was served notice personally and by registered mail. The personal service was completed on July 1, 1996, as shown by the receipt signed by his daughter, one Analiza T. Asque. The same notice was sent him by registered mail, received by the same daughter on July 2, 1996.

The Commission however regards the sending of notice one thing, and the completion of service thereof another, for indeed, the requirement of notice can only be fully satisfied, if there was not only service, but also completion of service thereof. Thus, we were obliged to inquire more closely into the records and we found:

Personal services were acknowledged by receipts signed, if not by the addressee himself, then, as indicated thereon, by his or her spouse, nearest relative or a person of sufficient discretion in the member's residence or office. Service by registered mail was evinced by the return card duly signed by the addressee or by persons acting for him. There were instances when notices were served but were refused, this fact noted in the acknowledgment receipt by the server and his witnesses. The circumstances being thus, we hold that there was complete service of the notices as contemplated in Section 8, Rule 13 of the Rules of Court which provides:

'Section 8 - Completeness of Service - Personal service is complete upon delivery. Service by ordinary mail is complete upon the expiration of five (5) days after mailing, unless the court otherwise provides; Service by registered mail is complete upon actual receipt by the addressee; but if he fails to claim his mail from the post office within five (5) days from the date of first notice of the postmaster, service shall take effect at the expiration of such time.'

That it was Alex David, President of the LIGA ng mga Barangay who sent the notices is of no moment. We had earlier determined that as member of the PRA, he can legally exercise the prerogatives attached to his membership in the Preparatory Recall Assembly, sending notices to the other members of its scheduled convening.

It is evident from the foregoing and, therefore, the Commission so holds that the requirements of notice had been fully complied with."[6]

Needless to state, the issue of propriety of the notices sent to the PRA members is factual in nature, and the determination of the same is therefore a function of the COMELEC. In the absence of patent error, or serious inconsistencies in the findings, the Court should not disturb the same. The factual findings of the COMELEC, based on its own assessments and duly supported by gathered evidence, are conclusive upon the court, more so, in the absence of a substantiated attack on the validity of the same.

Moreover, to order the COMELEC to repeat the process of determining the notices' propriety would be sanctioning a recycling of administrative functions, entailing added cost and waste of effort.

Petitioner likewise attacks the COMELEC's ruling on the validity of the proceedings held by the Preparatory Recall Assembly, in that it allegedly ruled that the LIGA ng mga Barangay is authorized to initiate the recall and convene the Preparatory Recall Assembly. Petitioner likewise averred that the session held, and the adoption of the recall resolution, by the recall assembly were tainted with irregularities, violence, graft and corruption.

The pertinent provisions of law, as regards the initiation of the recall process, are Sections 69 and 70 of R.A. 7160:

"SEC. 69. By whom Exercised. - The power of recall for loss of confidence shall be exercised by the registered voters of a local government unit to which the local elective official subject to such recall belongs.

SEC. 70. Initiation of the Recall Process. -

(a) Recall may be initiated by a preparatory recall assembly or by the registered voters of the local government unit to which the local elective official subject to such recall belongs.

(b) There shall be a preparatory recall assembly in every province, city, district, and municipality which shall be composed of the following:

xxx

(2) City level. - All punong barangay and sangguniang barangay members in the city;

xxx

(c) A majority of all the preparatory recall assembly members may convene in session in a public place and initiate a recall proceeding against any elective official in the local government unit concerned. Recall of provincial, city, or municipal officials shall be validly initiated through a resolution adopted by a majority of all the members of the preparatory recall assembly concerned during its session called for the purpose.

(d) Recall of any elective provincial, city, municipal, or barangay official may also be validly initiated upon petition of at least 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.

(1) A written petition for recall duly signed before the election registrar or his representative, and in the presence of a representative of the petitioner and a representative of the official sought to be recalled, and in a public place in the province, city, municipality, or barangay, as the case may be, shall be filed with the COMELEC through its office in the local government unit concerned. The COMELEC or its duly authorized representative shall cause the publication of the petition in a public and conspicuous place for a period of not less than ten (10) days nor more than twenty (20) days, for the purpose of verifying the authenticity and genuineness of the petition and the required percentage of voters.

(2) Upon the lapse of the aforesaid period, the COMELEC or its duly authorized representative shall announce the acceptance of candidates to the position and thereafter prepare the list of candidates which shall include the name of the official sought to be recalled."

Petitioner's insistence, that the initiation of the recall proceedings was infirm since it was convened by the Liga ng mga Barangays, is misplaced. Petitioner observes that "respondent Liga is an organization of all barangays. It is not an organization of barangay captains and kagawads. The barangays are represented in the Liga by the barangay captains as provided under Section 492 of the Local Government Code. It also provides that the Kagawad may represent the barangay in the absence of the barangay chairman." [7] The Liga ng mga Barangay is undoubtedly an entity distinct from the Preparatory Recall Assembly. It just so happens that the personalities representing the barangays in the Liga are the very members of the Preparatory Recall Assembly, the majority of whom met on July 7, 1996, and voted in favor of the resolution calling for the recall of Mayor Malonzo, after deliberation reported in the record, in accordance with the existing law. Thus, the Punong Barangays and Sangguniang Barangay members convened and voted as members of the Preparatory Recall Assembly of the City of Caloocan, and not as members of the Liga ng mga Barangay. The recall proceedings, therefore, cannot be denied merit on this ground.

Any doubt as to the propriety of the proceedings held during the recall assembly should be laid to rest. As the respondent COMELEC pertinently observes:

"The Minutes of the session of the Preparatory Assembly indicated that there was a session held. Attendees constitute the majority of all the members of the Preparatory Assembly, as we shall later on establish. Rules of procedure, simple they may be were formulated. Deliberations were conducted on the main issue, which was that of petitioner's recall. The members were given the opportunity to articulate on their resolve about the matter. More importantly, their sentiments were expressed through their votes signified by their signatures and thumbmarks affixed to the Resolution. No proof was adduced by Petitioner to substantiate his claim that the signatures appearing thereon represented a cause other than that of adopting the resolution. The law on recall did not prescribe an elaborate proceeding. Neither did it demand a specific procedure. What is fundamental is compliance with the provision that there should be a session called for the purpose of initiating recall proceedings, attended by a majority of all the members of the preparatory recall assembly, in a public place and that the resolution resulting from such assembly be adopted by a majority of all the PRA members." [8]

The charges of graft and corruption, violence and irregularities, before and during the session of the preparatory recall assembly are largely uncorroborated, and cannot override the substantiated findings of the respondent COMELEC.

"In cases filed before administrative and quasi-judicial bodies, a fact may be deemed established if it is supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion." [9]

Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[10] It means such evidence which affords a substantial basis from which the fact in issue can be reasonably inferred.[11] To overturn the presumption of validity of performance of official duty, more than a mere scintilla of proof is needed, otherwise, one disgruntled fellow can destroy the foundations laid by the overwhelming majority, and this is not the scenario envisioned by our democratic system of government.

In sum, we are persuaded strongly by the principle that the findings of fact of administrative bodies charged with their specific field of expertise, are afforded great weight by the courts, and in the absence of substantial showing that such findings are made from an erroneous estimation of the evidence presented, they are conclusive, and in the interest of stability of the governmental structure, should not be disturbed.

ACCORDINGLY, the Court hereby RESOLVED to DISMISS the present petition, for lack of merit. The decision of the respondent Commission on Elections to GIVE DUE COURSE to PRA Resolution No. 01-96 is hereby AFFIRMED. The Commission on Elections is hereby ORDERED to set the date of the Election on Recall in the city of Caloocan, which date shall not be later than thirty days after receipt of notice of this Resolution, which is immediately executory.

SO ORDERED.

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

[1] Annex "A", Petition.

[2] p. 72, Rollo.

[3] p. 113, Ibid.

[4] p. 119, Ibid.

[5] p. 187, Ibid.

[6] pp. 62-67, Ibid.

[7] P. 31, Ibid.

[8] p. 68, Ibid.

[9] Section 5, Rule 133, Rules of Court.

[10] *Ang Tibay vs. Court of Industrial Relations*, 68 Phil 444.

[11] *Rubberworld (Phil.), Inc., vs. National Labor Relations Commission*, G. R. No. 75704, July 19, 1989, 175 SCRA 450.

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