

JESUS A. JARIOL, MUNICIPAL MAYOR OF BASILISA, SURIGAO DEL NORTE; ROMEO P. ECLEO, VICE MAYOR OF BASILISA, SURIGAO DEL NORTE; ANIANO BUSMEON, ALBERTO TUBO, JUAN DIGAL, JR., GENE...

G.R. No. 127456. March 20, 1997

Ponente: DAVIDE, JR. J.

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DAVIDE, JR. J.:

This is a special civil action for certiorari under Rule 65 of the Rules of Court to annul and set aside Resolution No. 2879 of the Commission on Elections (COMELEC) of 12 December 1996, which adopted the calendar of activities for the recall election of the Mayor, Vice Mayor and six (6) members of Sangguniang Bayan of the Municipality of Basilisa, Province of Surigao del Norte, and scheduled said recall election on 25 January 1997.

Petitioners, as the officials sought to be recalled, submit that:

1. Not all the members of the Preparatory Recall Assembly were notified of the meeting for the recall of said municipal officials;
2. The notice of the meeting did not state the purpose thereof, much less, that it was for the recall of the Mayor, Vice Mayor and six Sangguniang Bayan members;
3. The meeting was not open to the public, but behind closed doors; and
4. The recall election is scheduled on January 25, 1997, within one year immediately preceding a regular election of barangay officials in May, 1997.

As regards the first, petitioners allege that seven (7) of the twenty-seven (27) Barangay Captains of the Municipality of Basilisa and fifty-five (55) members of the different Sangguniang Barangays (SB) thereof did not receive notice of the Preparatory Recall Assembly (PRA) Meeting held on 24 August 1996 and which passed the resolution of recall. These 7 Barangay Captains and 55 SB members executed affidavits to this effect which were attached to the petition.

As to the notice of meeting, petitioners allege that it was in the form reproduced on page 8 of the petition[1] and carried the following heading:

ASSOCIATION OF BARANGAY COUNCILS

Basilisa, Surigao del Norte

MUNICIPAL PREPARATORY RECALL ASSEMBLY

It did not contain a statement of the purpose of the meeting which was to be held in the remote barangay of Sering at a school building located about one-half kilometer away from the barangay proper. The meeting was likewise held behind closed doors. Affidavits of witnesses to such fact were also attached to the petition.

Petitioners then contend that the meeting was held in violation of Section 70 of the Local Government Code of 1991 (R.A. No. 7160), which reads as follows:

SEC. 74. Limitations on Recall. - (a) Any elective local official may be the subject of a recall election only once during his term of office for loss of confidence.

(b) No recall shall take place within one (1) year from the date of the official's assumption to office or one (1) year immediately preceding a regular local election.

As to the last ground, petitioners contend that under Section 74(b) of RA No. 7160, no recall should take place within one (1) year from the date of the official's assumption to office or one (1) year immediately preceding a regular local election. Under Section 43(c) of the same Code, the term of office of barangay officials and members of the Sangguniang Kabataan shall be for three (3) years, which shall begin after the regular election of barangay officials on the second Monday of May, 1994. Per Resolution No. 2880 of 27 December 1996, the COMELEC stated that the next barangay election would be on 12 May 1997 hence, no recall election could be done within one year immediately preceding 12 May 1997. The recall then in this case falls within the prohibited period.

On 21 January 1997 we issued a Temporary Restraining Order ordering the respondent COMELEC to cease and desist from implementing its questioned Resolution No. 2879 and directing the respondents to Comment on the petition within a non-extendible period of ten (10) days.

In its Comment for public respondent COMELEC, the Office of the Solicitor General alleges that per Report of the Election Officer of Basilisa, Surigao del Norte, the PRA meeting was attended by 109 members, a number sufficient to constitute a quorum since Basilisa is composed of 27 barangays with eight officers for each unit. All of the 109 "signed the minutes of the meeting as they affixed therein their signatures and thumbmarks signifying their assent to the assembly;" and the COMELEC, "(u)pon examination of the signatures and the minutes of the meeting," "affirmed the authenticity of the signatures and thumbmarks of the members of the PRA." Thereafter, the Office of the Solicitor General further states, the COMELEC's Deputy Executive Director for Operation "recommended to the Comelec en banc the holding of the recall election." Pursuant thereto, the COMELEC en banc issued on 12 December 1996 the challenged Resolution, whose reconsideration petitioner never sought .

The Office of the Solicitor General then urges us to dismiss the petition because: (a) of prematurity, since petitioners had not asked the COMELEC to reconsider Resolution No. 2879; (b) it raises factual issues which are not proper subjects of a petition for certiorari; and (c) the barangay election on 12 May 1997 will not bar the recall election in question in light of our decision in *Paras v. Commission on Elections* (G.R. No. 123169, 4 November 1996) where we held that the regular election referred to in Section 74(b) of the Local Government Code of 1991 refers to the election where the office held by the local elective official sought to be recalled will be contested and be filled by the electorate, which is not the barangay election on 12 May 1997, but the election for Mayor, Vice Mayor and members of the SB in May of 1998.

In their Comment, private respondents contend that there was compliance with the requirements of due process as all members of the PRA were duly notified of the date and place of meeting for the purpose of recall. The PRA of Basilisa is composed of 243 members, representing the total number of elected barangay officials of the 27 barangays thereof. They were all furnished and served with notice of said meeting, which they received in due time as evidenced by 243 registry receipts issued by the Post Office and which form part of the records in the COMELEC. Only 123 responded and attended the PRA meeting, while 114 did not respond nor attend the meeting, the whereabouts of 5 were unknown and 1 had earlier resigned.

Private respondents further claim that the meeting's venue was the Sering High School building in barangay

Sering, which is definitely a public place; and that the meeting was attended by a majority of the barangay officials constituting the PRA, as well as Barangay residents of the different barangays.

Private respondents finally claim that the instant petition is part of a continuing scheme to unjustly prevent a recall process. According to them, the first meeting of the Association of Barangay Councils to formally organize the Municipal Preparatory Recall Assembly was set for 5 July 1996, but had to be postponed to 9 July 1996 because petitioner Mayor Jariol, upon learning of it, called a meeting of barangay officials also on 5 July 1996. Again, on 9 July 1996, Mayor Jariol called a meeting of the barangay officials to prevent the latter from convening a Municipal PRA. Despite threats of disciplinary action by Mayor Jariol, the barangay officials nevertheless met, formally convened and constituted themselves into the Municipal Preparatory Recall Assembly. On 15 July 1996, respondent Felipe Ycot and 107 other barangay officials who attended the aforesaid meeting of 9 July 1996 were administratively charged before the Sangguniang Bayan of Basilisa with dereliction of duty for their failure to attend the meeting called by Mayor Jariol on 9 July 1996. Respondents therein moved to inhibit the members of the SB, petitioners herein; but, the motion was peremptorily denied. A motion for reconsideration was denied on 13 September 1996. On even date the SB handed down a decision dismissing from office the herein private respondents with the 106 other barangay officials. Fortunately, on appeal to the Sangguniang Panlalawigan (SP) of Surigao del Norte, the decision was reversed in the decision of the SP of 22 November 1996. This was followed on 2 December 1996 by the letter of the Governor of Surigao del Norte directing petitioner Jariol to reinstate the barangay officials, which Jariol refused to comply with.

In their Joint [Consolidated] Reply, petitioners reiterate their reliance on the sworn statements of 7 barangay captains and 55 SB members that they did not receive notice of the meeting, and as to the 243 registry receipts alleged by private respondents, petitioners maintain that it “is not mentioned when these registered notices were sent, from which Post Office, and when these were received.” They even claim that “it is rather unusual that the notices were sent allegedly by registered mail because notices of meetings of barangay officials are normally sent by personal delivery.”

As to whether the notice of meeting stated a purpose and the meeting was public or held in closed doors, petitioners reiterated their earlier submission and further assert that the sworn statements of 11 persons which they attached to the petition were not traversed by any sworn statement.

As regards the claim of COMELEC that petitioners should have first contested the factual findings of the PRA before the COMELEC instead of filing this petition, petitioners allege that “they did not have enough opportunity to do so” for the challenged resolution was promulgated on 12 December 1996 and the recall election was scheduled on 25 January 1997. Further, the Resolution was first published only on 20 December 1996, and petitioners only learned of this the following day in Surigao City as no newspapers are circulated in Basilisa, and the copy of the resolution sent to petitioners was delivered to petitioner Jariol on or about 3 January 1997.

Petitioners were silent on the charge of private respondents that this petition was part of the former’s scheme to harass the private respondents to unjustly prevent the recall process.

After due deliberation on the arguments adduced in the foregoing pleadings, we resolved to DISMISS this petition for prematurity and for petitioner’s failure to sufficiently show that respondent Commission on Elections committed grave abuse of discretion in giving due course to the recall petition and in promulgating Resolution No. 2879.

As correctly pointed out by the Office of the Solicitor General, if petitioners were unsatisfied with the findings of the COMELEC, they should have first moved for reconsideration before filing this special civil action for certiorari under Rule 65 of the Rules of Court. The petitioners were fully aware of the proceedings before the

COMELEC.

The COMELEC performed a purely administrative function when it promulgated Resolution No. 2879. A party aggrieved thereby must not merely initiate the prescribed administrative procedure to obtain relief, but also must pursue it to its appropriate conclusion before seeking judicial intervention in order to give that administrative agency an opportunity to decide the matter by itself correctly and prevent unnecessary and premature resort to the court. (*Cruz v. del Rosario*, 9 SCRA 755, 758 [1963]; *Manuel v. Jimenez*, 17 SCRA 55, 57 [1966]). This is the rule on exhaustion of administrative remedies. A motion for reconsideration then is a pre-requisite to the viability of a special civil action for certiorari, unless the party who avails of the latter can convincingly show that his case falls under any of the following exceptions to the rule: (1) where the question is purely legal, (2) where judicial intervention is urgent, (3) where its application may cause great and irreparable damage, (4) where the controverted acts violate due process, (5) failure of a high government official from whom relief is sought to act on the matter, and (6) when the issue for non-exhaustion of administrative remedies has been rendered moot. (See *Severino S. Tabios, Annotation on Failure to Exhaust Administrative Remedies As a Ground for Motion to Dismiss*, 165 SCRA 352, 357-362 [1988]).

In the instant case, the only reason advanced by petitioner was lack of “enough opportunity to do so.” We disagree. Petitioner first learned of the promulgation of the Resolution on 21 December 1996 through the 20 December 1996 issue of the *Manila Bulletin* and formally received a copy of the Resolution on 3 January 1997. They had sufficient time to file a motion for its reconsideration since the recall election was scheduled on 25 January 1997. Instead of filing this petition on 6 January 1997, petitioners should have first filed a motion for reconsideration.

Verily, the principal issue in this case is focused on the factual findings of COMELEC. Petitioners sought to disprove them by sworn statements which they attached to the petition at bar. Obviously, these were not offered before the COMELEC, thus the latter could not have passed upon their admissibility or probative value. It cannot then be said that the COMELEC acted with grave abuse of discretion in ruling on the recall on the basis of, among other things, the Report of its Municipal Election Officer assigned in Basilisa, Surigao del Norte. The latter has in his favor the presumption of regularity in the performance of his duty (Sec. 3(M), Rule 131, Rules of Court). Petitioners had the burden to disprove that presumption, which they miserably failed to do. They did not even assail the Report nor impute any improper motive on the Election Officer as to create doubt as to the integrity of his Report.

Finally, the scheduled barangay election on 12 May 1997 is not the regular election contemplated in Section 74(b) of the Local Government Code of 1991 whose conduct is the basis for computing the one-year prohibited period. As we held in *Paras v. Commission on Elections* (supra):

It would, therefore, be in keeping with the intent of the recall provision of the Code to construe regular local election as one referring to an election where the office held by the local elective official sought to be recalled could be contested and be filled by the electorate.

Hence the holding of the recall election in question can be validly done at any time before the commencement of the one (1) year period immediately preceding the next general election for municipal elective officials in May of 1998.

IN VIEW OF ALL THE FOREGOING, the instant petition is DISMISSED for lack of merit and the Temporary Restraining Order issued on 21 January 1997 is LIFTED. The Commission on Elections is DIRECTED to set anew and hold the RECALL ELECTION in question not later than 15 April 1997.

Costs against petitioners.

SO ORDERED.

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

[1] The body is written in the Cebuano dialect.

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