

RODOLFO E. AGUINALDO, FLORENCIO L. VARGAS, ROMEO I. CALUBAQUIB, AMADO T. GONZALES, SILVERIO C. SALVANERA, ALBERTA O. QUINTO, AND AURORA V. ESTABILLO, PETITIONERS, VS. COMMISSION...

G.R. No. 132774. June 21, 1999

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

Before us is a petition for prohibition under Rule 65 of the Revised Rules of Court, with a prayer for the issuance of a writ of preliminary injunction and/or a temporary restraining order.

Petitioners, at the time of the filing of the petition, were incumbent provincial or municipal officials in Cagayan. Petitioner Rodolfo E. Aguinaldo was governor; Florencio L. Vargas, vice governor; Romeo I. Calubaquib, member of the Sangguniang Panlalawigan; Amado T. Gonzales, member of the Sangguniang Panlalawigan; Silverio C. Salvanera, member of the Sangguniang Panlalawigan; Alberta O. Quinto, mayor of the municipality of Peñablanca; and Aurora V. Estabillo, mayor of the municipality of Sta. Praxedes.

Petitioners seek to prevent the COMELEC from enforcing during the 1998 elections Section 67 of the Omnibus Election Code (B.P. Blg. 881) "in accordance with its own tenor or as modified by paragraph 3 of Section 11 of Republic Act No. 8436."

Section 67 of the Omnibus Election Code reads:

"Sec. 67. Candidates holding elective office. -- Any elective official, whether national or local, running for any office other than the one which he is holding in a permanent capacity, except for President and Vice-President, shall be considered ipso facto resigned from his office upon the filing of his certificate of candidacy."

On the other hand, the third paragraph of Section 11 of R.A. No. 8436 reads:

"SEC. 11. Official Ballot. -- ...

...Provided, That any elective official, whether national or local, running for any office other than the one he/she is holding in a permanent capacity, except for president and vice-president, shall be deemed resigned only upon the start of the campaign period corresponding to the position for which he/she is running; ..."

Petitioners contend that Section 67, of the Omnibus Election Code is violative of the equal protection clause of the Constitution, as its classification of persons running for office is not a valid classification, following the guidelines laid down by the Court in *People v. Cayat*.^[1] According to the doctrine laid down in *Cayat*, for a classification to be valid, (1) it must be based upon substantial distinctions, (2) it must be germane to the purpose of the law, (3) it must not be limited to existing conditions only, and (4) it must apply equally to all members of the same class.

Petitioners contend that the classification in Section 67 is not based on substantial distinctions and, thus, violative

of the equal protection clause of the Constitution.

According to petitioners, candidates for elective office are classified into the following groups under Section 67:

"(a) First classification: an incumbent elective official who runs for the same position as his present incumbency...(and) another incumbent elective official running for another position; and

(b) Second Classification: an incumbent elective official who runs for president or vice-president...(and) another incumbent elective [official] running for any other position (i.e., not his incumbency nor for president or vice president)..."[2]

Petitioners argue that, in the first classification, the reelectionist is given an undue advantage since he is able to use the resources, prestige, and influence of his position. The same is not available to one seeking an office different from the one he is presently holding. This, according to petitioners, does not equalize the playing field for all candidates.

As regards the second classification, petitioners argue that there is no basis for giving candidates for president or vice president the "special privilege"[3] of remaining in office.

Petitioners claim that the classifications result into "absurd or unwanted and difficult situations"[4] and give the following examples: (1) a mayor who runs for president remains as mayor even though he is physically absent from his city or municipality because he campaigns nationwide; (2) a councilor or vice mayor who runs for mayor is considered resigned from his position although he remains physically present in his locality; (3) a president -- a national official -- who runs for a lower position is considered resigned from office, while the mayor -- a local official -- who runs for president is not.

Petitioners contend that the classifications "could have been made without sufficient study,"[5] as the Omnibus Election Code was passed during the Marcos years, "when no one could honestly believe he could be elected president or even vice president."[6] Also during that time, members of the Batasang Pambansa could run for reelection indefinitely so it was not likely for any of them to run for a "lower" position. Petitioners say that Section 67 was "largely ignored as an innocuous (sic) oddity."[7] Their "thesis therefore is that the provision did not get sufficient attention and analysis that would have brought out its constitutional infirmities."[8]

Petitioners also argue that Section 67 effectively shortens the terms of office of elected officials, in violation of Article X, Section 8 of the Constitution, which provides:

"Sec. 8. The term of office of elective local officials, except barangay officials, which shall be determined by law, shall be three years and no such official shall serve for more than three consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected."

Petitioners lament that "no relevant discussions"[9] seem to have been made in relation to the "re-enactment" of Section 67 of the Omnibus Election Code into Section 11 of R.A. No. 8436.

The COMELEC, on the other hand, asserts that the classification embodied in Section 67 is reasonable and based on substantial distinction. It points out that incumbents running for the same position are not considered resigned because the intention of the law is to allow them to continue serving their constituents and avoid a disruption in the delivery of essential services. Those running for different positions are considered resigned because they are considered to have abandoned their present position by their act of running for other posts.

For his part, the Solicitor General points out that the issue regarding Section 67 had already been passed upon by the Court in the case of *Dimaporo v. Mitra, Jr.*[10]

Mohammad Ali Dimaporo was a congressman representing the second legislative district of Lanao del Sur. On January 15, 1990, he filed a certificate of candidacy for the position of governor of the Autonomous Region in Muslim Mindanao (ARMM). The COMELEC thereafter informed the House of Representatives of this matter. Then House Speaker Ramon V. Mitra, Jr. and the Secretary of the House of Representatives Camilo L. Sabio excluded his name from the roll of members.

Dimaporo lost in the ARMM elections. He wrote Mitra a letter expressing his desire to resume his functions as a member of the House of Representatives. It appears that this did not materialize; thus, Dimaporo filed a petition with the Supreme Court praying for his reinstatement.

Dimaporo claimed that his act of filing a certificate of candidacy for another position did not divest him of his seat as a member of the House of Representatives. He alleged that Section 67 of the Omnibus Election Code was no longer operative as it is violative of the Constitution. Dimaporo said Section 67 shortens the term of office of a congressman on a ground not provided for under Article XVIII, Section 2 of the Constitution,[11] in relation to Article VI, Section 7.[12]

Dimaporo asserted that, as provided by law, the term of a member of the House of Representatives may only be shortened through the following:

- (1) Forfeiture of his seat by holding any other office or employment in the government or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations or subsidiaries;[13]
- (2) Expulsion as a disciplinary action for disorderly behavior;[14]
- (3) Disqualification as determined by resolution of the Electoral Tribunal in an election contest;[15] and
- (4) Voluntary renunciation of office.[16]

The Court proceeded to trace the history and examine the rationale behind Section 67. We then ruled:

"... rather than cut short the term of office of elective public officials, this statutory provision seeks to ensure that such officials serve out their entire term of office by discouraging them from running for another public office and thereby cutting short their tenure by making it clear that should they fail in their candidacy, they cannot go back to their former position. This is consonant with the constitutional edict that all public officials must serve the people with utmost loyalty and not trifle with the mandate which they have received from their constituents." [17]

Indeed, we have dealt squarely with the issue of the validity of Section 67 of the Omnibus Election Code in *Dimaporo v. Mitra, Jr.*

Section 67 was crafted with the intention of giving flesh to the constitutional pronouncement that public service is a public trust. The following portion of our ruling in *Dimaporo* is apropos:

"Assemblyman Manuel M. Garcia, in answer to the query of Assemblyman Arturo Tolentino on the constitutionality of Cabinet Bill No. 2,[18] said:

"MR. GARCIA (M.M.):

Thank you, Mr. Speaker.

Mr. Speaker, on the part of the Committee, we made this proposal based on constitutional grounds. We did not propose this amendment mainly on the rationale as stated by the Gentlemen from Manila that the officials running for office other than the ones they are holding will be considered resigned not because of abuse of facilities of power or the use of office facilities but primarily because under our Constitution, we have this new

chapter on accountability of public officers...

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...This only means that all elective public officials should honor the mandate they have gotten from the people... a Batasan Member who hold (sic) himself out with the people and seek (sic) their support and mandate should not be allowed to deviate or allow himself to run for any other position unless he relinquishes or abandons his office. Because his mandate to the people is to serve for 6 years. Now, if you allow a Batasan or a governor or a mayor who was mandated to serve for 6 years to file for an office other than the one he was elected to, then, that clearly shows that he has not (sic) intention to service the mandate of the people which was placed upon him and therefore he should be considered ipso facto resigned. I think more than anything that is the accountability that the Constitution requires of elective public officials..."[19]

Section 67 is not violative of the Constitution as it does not unduly cut short the term of office of local officials. The situation that results with the application of Section 67 is covered by the term "voluntary renunciation".

"Even then, the concept of voluntary renunciation of office under Section 7, Article VI of the Constitution is broad enough to include the situation envisioned in Section 67, Article IX of B.P. Blg. 881. As discussed by the Constitutional Commissioners:

"MR. MAAMBONG:

Could I address the clarificatory question to the Committee? The term 'voluntary renunciation' does not only appear in Section 3; it appears in Section 6.

MR. DAVIDE:

Yes.

MR. MAAMBONG:

It is also a recurring phrase all over the constitution. Could the Committee please enlighten us exactly what 'voluntary renunciation' means? Is this akin to abandonment?

MR. DAVIDE:

Abandonment is voluntary. In other words, he cannot circumvent the restriction by merely resigning at any given time on the second term.

MR. MAAMBONG:

Is the Committee saying that the term voluntary renunciation is more general than abandonment and resignation?

MR. DAVIDE:

It is more general, more embracing."

That the act, contemplated in Section 67, Article IX of B.P. Blg. 881, of filing a certificate of candidacy for another office constitutes an overt, concrete act of voluntary renunciation of the elective office presently being held is evident from this exchange between the Members of Parliament Arturo Tolentino and Jose Roño:

"MR. ROÑO:

My reasonable ground is this: if you will make the person ... my, shall we say, basis is that in one case the person is intending to run for an office which is different from his own, and therefore it should be considered, at least from the legal significance, an intention to relinquish his office.

MR. TOLENTINO:

Yes.

MR. ROÑO:

And in the other, because he is running for the same position, it is otherwise.

MR. TOLENTINO:

Yes, but what I cannot see is why are you going to compel a person to quit an office which he is only intending to leave? A relinquishment of office must be clear, must be definite.

MR. ROÑO:

Yes, sir. That's precisely, Mr. Speaker, what I'm saying that while I do not disagree with the conclusion that the intention cannot be enough, but I am saying that the filing of the certificate of candidacy is an overt act of such intention. It's not just an intention: it's already there."^[20]

Our foregoing ruling in Dimaporo is still applicable in this case.

Petitioners further assert that Section 67 "could have been formulated without sufficient study (emphasis supplied)." Petitioners' choice of words betray their own uncertainty as to whether or not the implications of Section 67 were thoroughly analyzed before such section became law. Unfortunately for petitioners, uncertainties do not justify nullification of a law.

Moreover, it must be pointed out that this present petition is one for prohibition which is a preventive remedy. The act sought to be enjoined had already been accomplished with the holding of the 1998 elections. Prohibition, as a rule, does not lie to restrain an act that is already a fait accompli.^[21]

WHEREFORE, the instant petition is hereby dismissed for lack of merit.

SO ORDERED.

Davide, Jr., C.J., Romero, Bellosillo, Melo, Vitug, Kapunan, Mendoza, Purisima, Pardo, Buena, Gonzaga-Reyes, and Ynares-Santiago, JJ., concur.
Puno, and Panganiban, JJ., no part. On official leave.

[1] 68 Phil. 12 (1939).

[2] Rollo, p. 10.

[3] Id. at 12.

[4] Ibid.

[5] Rollo, p. 14.

[6] Ibid.

[7] Rollo, p. 15.

[8] Ibid.

[9] Ibid.

[10] 202 SCRA 779 (1991).

[11] This provision reads, "The Senators, Members of the House of Representatives, and the local officials first elected under this Constitution shall serve until noon of June 30, 1992."

[12] "The Members of the House of Representatives shall be elected for a term of three years which shall begin, unless otherwise provided by law, at noon on the thirtieth day of June next following their election. xxx"

[13] CONST., Art. VI, Sec. 13.

[14] Id. at Sec. 16(3).

[15] Id. at Sec. 17.

[16] Id. at Sec. 7, par. 2.

[17] *Dimaporo v. Mitra*, supra, at 790.

[18] This cabinet bill became the basis for Section 67 of the Omnibus Election Code.

[19] *Dimaporo v. Mitra, Jr.*, supra, at 788-789.

[20] *Dimaporo v. Mitra*, supra, at 792-793.

[21] *Vergara v. Rugue*, 78 SCRA 312 (1977); *Perez v. De la Cruz*, 27 SCRA 587 (1969); *Cabañero v. Torres*, 61 Phil. 522 (1935).

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