AMADO S. BAGATSING, ERNESTO M. MACEDA, AND JAIME LOPEZ, PETITIONERS, VS. COMMISSION ON ELECTIONS AND JOSE L. ATIENZA, RESPONDENTS.

G.R. No. 134047. December 08, 1999

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

In this petition for certiorari petitioners seek to annul and set aside the Resolution dated June 4, 1998 of the Commission on Elections (COMELEC) First Division directing the proclamation of private respondent as Mayor of the City of Manila for having been issued with grave abuse of discretion amounting to lack, or excess, of jurisdiction.

The backdrop of the instant case reveals the following antecedent facts:

Petitioners Amado S. Bagatsing, Ernesto M. Maceda and Jaime Lopez and herein private respondent Jose L. Atienza were candidates for the position of Mayor of Manila in the May 11, 1998 elections.

On May 18, 1998, seven (7) days after the elections, petitioners filed with the COMELEC a complaint for disqualification against private respondent, docketed as SPA No. 98-319, on the ground that the latter allegedly caused the disbursement of public funds in the amount of Three Million Three Hundred Seventy-Five Thousand (P3,375,000.00) Pesos, more or less, within the prohibited forty-five-day period before the elections in violation of Article 22, Section 261 (g) (2).[1] of Batas Pambansa Blg. 881, otherwise known as the Omnibus Election Code of the Philippines. The alleged disbursement was intended to be distributed in the form of financial assistance to the public school teachers of the City of Manila who manned the precinct polls in that city during the elections.

On May 20, 1998, the COMELEC (First Division)[*] issued an order which dispositively reads as follows:

> PREMISES CONSIDERED, it appearing that the evidence presented consisting of disbursement voucher and the general payroll evidencing payment to the teachers in the form of financial assistance dated May 5, 1998, in violation of Section 68 of the Omnibus Election Code, which provides:
> SEC. 68. Disqualifications. – Any candidate who in an action or protest in which he is a party is declared by final decision of a competent court guilty of, or found by the Commission of having (a) given money or other material consideration to influence, induce or corrupt the voters or public officials performing electoral functions; (b) committed acts of terrorism to enhance his candidacy, (c) spent in his election campaign an amount in excess of that allowed by this Code; (d) solicited, received or made any contribution prohibited under Section 89, 95, 96, 97 and 104; or (e) violated any Section 80, 83, 85, 86 and 261, paragraphs d, e, k, v and cc, sub-paragraph 6, shall be disqualified from continuing as a candidate, or if he has been elected, from holding the office. Any person who is a permanent resident of or an immigrant to a foreign country shall not be qualified to run for any elective office under this Code, unless said person has waived hi (sic) statues (sic) as permanent resident or immigrant of a foreign country in accordance with the residence requirement provided for in the election laws (Sec. 25, 1971 EC) (underscoring ours).

show a probable cause of commission of election offenses which are grounds for disqualification, and the evidence in support of disqualification is strong, the City Board of Canvassers of Manila is hereby directed to complete the canvassing of election returns of the City of Manila, but to suspend proclamation of respondent Jose L. Atienza, Jr. should he obtain the winning number of votes for the position of City Mayor of Manila, until such time when the petition for disqualification against him shall have been resolved.

The Executive Director of this Commission is directed to cause the immediate implementation of this Order.

SO ORDERED.[2]

On May 21, 1998, private respondent filed a Motion for Reconsideration and sought to set aside the afore-quoted order directing his proclamation as mayor.

On June 4, 1998, the COMELEC (First Division)[*] rendered a resolution ratiocinating thusly:

> The Commission En Banc finds correct respondent's reliance on COMELEC Resolution No. 2050 for his cause. The Resolution, promulgated by the Commission in order to formulate the rules governing the disposition of cases of disqualification filed by virtue of Section 68 of the Omnibus Election Code in relation to Section 6 of Republic Act 6646 otherwise known as the Electoral Reform Law of 1987, pertinently provides:
> 2. Any complaint for disqualification based on Section 68 of the Omnibus Election Code, filed after the elections against a candidate who has alredy been proclaimed as winner shall be dismissed as a disqualification case. However, the complaint shall be referred for preliminary investigation to the Law Department of the Commission.
>
> Where a similar complaint is filed after the elections but before proclamation of the respondent candidate, the complaint shall nevertheless, be dismissed as a disqualification case. However, the complaint shall be referred for preliminary investigation to the Law Deparment. If, before proclamation, the Law Department makes a prima facie finding of guilt and the corresponding information has been filed with the appropriate trial court, the complainant may file a petition for suspension of the proclamation of the respondent with the Court before which the criminal case is pending and the said Court may order the suspension of the proclamation, if the evidence of guilt is strong.

The applicability of COMELEC Resolution No. 2050 on cases of such nature as the one at bench, had been upheld by the Supreme Court in Lozano vs. Commission on Elections, G.R. 94628, October 28, 1991, when it declared:

> Resolution No. 2050 specifically mandates a definite policy and procedure for disqualification cases. The COMELEC Rules of Procedure speak of special actions, which include disqualification cases, in general. Hence, as between as specific and a general rule, the former shall necessarily prevail.

It is thus, a good law which could govern this case.

Considering therefore, that the petition for disqualification was filed after the election but before respondent's proclamation, the Commission En Banc, conformably with Resolution No. 2050, hereby dismisses the same as a disqualification case but refers Petitioners' charges of election offense against respondent to the Law Department for appropriate action.[3]

The decretal portion of the resolution reads:

> WHEREFORE, in view of the foregoing, the Commission FIRST DIVISION hereby GRANTS the Motion to lift the order of suspension of respondent's proclamation. The Order of the First Division suspending respondent's proclamation as City Mayor of Manila is SET ASIDE. The City Board of Canvassers of Manila

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> is hereby DIRECTED to CONVENE, COMPLETE the CANVASS and PROCLAIM the candidate obtaining the highest number of votes for said position. Petitioners' complaints against respondent for violation of the Omnibus Election Code is hereby referred to the Law Department for preliminary investigation.
>
> SO ORDERED.[4]

That same day at around eleven in the morning, petitioners filed a Motion to Suspend Immediate Intended Proclamation of Respondent. In the afternoon of the same day, petitioners likewise filed a Motion for Reconsideration and a Second Motion to Suspend Immediate Intended Proclamation of Respondent before COMELEC en banc.

Meanwhile, the City Board of Canvassers of Manila reconvened at three o'clock in the afternoon of the same day, June 4, 1998, and proclaimed private respondent as the duly elected Mayor of the City of Manila.[5]

On June 25, 1999, without waiting for the resolution of their motion for reconsideration pending before the COMELEC en banc, petitioners filed the instant petition to set aside the June 4, 1998 Resolution of the COMELEC's First Division.

Records reveal, however, that said motion for reconsideration was denied for reconsideration pending before the COMELEC en banc was denied in its Order of July 2, 1998 at the instance of herein petitioners themselves for the reason that they had already filed a petition before this Court docketed as G.R. No. 134047.[6]

The ground for the petitition at bar, as therein promulgated, is as follows:

> 6.1 Respondent acted whimsically, capriciously and arbitrarily when it dismissed outright the Petition for Disqualification docketed SPA No. 98-319 against respondent Atienza on the basis of Comelec Resolution 2050 which had already been modified by this Honorable Court in the case of Sunga vs. Comelec (supra). Therefore the dismissal by the Comelec must be struck down as having been issued in excess of jurisdiction or with grave abuse of discretion amounting to lack of jurisdiction.[7]

The only issue for our consideration is whether or not the COMELEC First Division committed grave abuse of discretion in issuing the Resolution dated June 4, 1998 dismissing the disqualification case against private respondent and referring the same to its Law Department for preliminary investigation.

COMELEC Resolution No. 2050, adopted on November 3, 1988, reads:

> WHEREAS, there remain pending before the Commission, a number of cases of disqualification filed by virtue of the provisions of Section 68 of the Omnibus Election Code in relation to Section 6 of R.A. 6646, otherwise known as the Electoral Reforms Law of 1987;
>
> WHEREAS, opinions of the members of the Commission on matters of procedure in dealing with cases of this nature and the manner of disposing of the same have not been uniform;
>
> WHEREAS, in order to avoid conflicts of opinion in the disposition or disqualification cases contemplated under Section 68 of the Omnibus Election Code in relation to Section 6 of Rep. Act 6646, there is a strongly felt need to lay down a definite policy in the disposition of this specific class of disqualification cases;
>
> NOW, THEREFORE, on motion duly seconded, the Commission en banc:
>
> RESOLVED, as it hereby resolves, to formulate the following rules governing the disposition of cases of disqualification filed by virtue of Section 68 of the Omnibus Election Code in relation to Section 6 of R.A. No. 6646, otherwise known as the Electoral Reforms Law of 1987:
>
> 1. Any complaint for the disqualification of a duly registered candidate based upon any of the grounds specifically enumerated under Section 68 of the Omnibus Election Code, filed directly with the Commission

> before an election in which the respondent is a candidate, shall be inquired into by the Commission for the purpose of determining whether the acts complained of have in fact been committed. Where the inquiry by the Commission results in a finding before election, that the respondent candidate did in fact commit the acts complained, the Commission shall order the disqualification of the respondent candidate from continuing as such candidate.
>
> In case such complaint was not resolved before the election, the Commission may motu propio, or an (sic) motion of any of the parties, refer the complaint to the law Department of the Commission as the instrument of the latter in the exercise of its exclusive power to conduct a preliminary investigation of all cases involving criminal infractions of the election laws. Such recourse may be availed of irrespective of whether the respondent has been elected or has lost in the election.
>
> 2. Any complaint for disqualification based on Section 68 of the Omnibus Election Code in relation to Section 6 of Rep. Act No. 6646 filed after the election against a candidate who has already been proclaimed as winner shall be dismissed as a disqualification case. However, the complaint shall be referred for preliminary investigation to the Law Department of the Commission.
>
> Where a similar complaint is filed after election but before proclamation of the respondent candidate, the complaint shall, nevertheless, be dismissed as a disqualification case. However, the complaint shall be referred for preliminary investigation to the Law Department. If, before proclamation, the Law Department makes a prima facie finding of guilt and the corresponding information has been filed with the appropriate trial court, the complainant may file a petition for suspension of the proclamation of the respondent with the court before which the criminal case is pending and the said court may order the suspension of the proclamation if the evidence of guilt is strong. justice
>
> 3. The Law Department shall terminate the preliminary investigation within thirty (30) days from receipt of the referral and shall submit its study, report and recommendation to the Commission en banc within five (5) days from the conclusion of the preliminary investigation. If it makes a prima facie finding of guilt, it shall submit with such study the Information for filing with the appropriate court.

The above-quoted resolution covers two (2) different aspects:

First, as contemplated in paragraph 1, a complaint for disqualification filed before the election must be inquired into by the COMELEC for the purpose of determining whether the acts complained of have in fact been committed. Where the inquiry results in a finding before the election, the COMELEC shall order the candidate’s disqualification. In case the complaint was not resolved before the election, the COMELEC may motu propio or on motion of any of the parties, refer the said complaint to the Law Department of the COMELEC for preliminary investigation.

Second, paragraph 2 refers to a complaint for disqualification filed after the election against a candidate who has not yet been proclaimed or who has already been proclaimed as a winner. In both cases, the complaint shall be dismissed as a disqualification case but shall be referred to the Law Department of the COMELEC for preliminary investigation. However, if before proclamation, the Law Department makes a prima facie finding of guilt and the corresponding information has been filed with the appropriate trial court, the complainant may file a petition for suspension of the proclamation of the respondent with the court before which the criminal case is pending and the said court may order the suspension of the proclamation of the evidence of guilt is strong.

Petitioners contend that said resolution is no longer a good law since it has been nullified in toto by this Court in Sunga v. COMELEC.[8]

Contrary to petitioners’ contention, the Court did not nullify in toto COMELEC Resolution No. 2050 in the recent case of Sunga v. COMELEC. There, we held that:

> xxx We discern nothing in COMELEC Resolution No. 2050 declaring, ordering or directing the dismissal of a disqualification case filed before the election but which remained unresolved after the election. What the Resolution mandates in such a case is for the Commission to refer the complaint to its Law Department for investigation to determine whether the acts complained of have in fact been committed by the candidate sought to be disqualified. The findings of the Law Deparment then become the basis for disqualifying the erring candidate. This is totally different from the other two situations contemplated by Resolution No. 2050, i.e., a disqualification case filed after the election but before the proclamation of winners and that filed after the election and the proclamation of winners, wherein it was specifically directed by the same Resolution to be dismissed as a disqualification case.
>
> Moreover, Resolution No. 2050 as interpreted in Silvestre v. Duavit infringes on Sec. 6 of RA No. 6646, which provides:
>
> SEC. 6. Effects of Disqualification Case.--Any candidate who has been declared by final judgment to be disqualified shall not be voted for, and the votes cast for him shall not be counted. If for any reason a candidate is not declared by final judgment before an election to be disqualified and he is voted for and receives the winning number of votes in such election, the Court or Commission shall continue with the trial and hearing of the action, inquiry or protest and, upon motion of the complainant or any intervenor, may during the pendency thereof order the suspension of the proclamation of such candidate whenever the evidence of his guilt is strong (italics supplied).
>
> Clearly, the legislative intent is that the COMELEC should continue the trial and hearing of the disqualification case to its conclusion, i.e., until judgment is rendered thereon. The word 'shall' signifies that this requirment of the law is mandatory, operating to impose a positive duty which must be enforced. The implication is that the COMELEC is left with no discretion but to proceed with the disqualification case even after the election. Thus, in providing for the outright dismissal of the disqualification case which remains unresolved after the election, Silvestre v. Duavit in effect disallows what RA No. 6646 imperatively requires. xxx.[9]

What the Court found objectionable therein was the second paragraph of paragraph 1 of Resolution No. 2050 as said provision clearly infringes on Section 6 of R.A. No. 6646 which mandates that should a disqualification case be not resolved before an election, the COMELEC shall continue with the trial and hearing of the case. It should not be referred to the Law Department as the resolution provides. The COMELEC's failure to distinguish between a complaint for disqualification filed before an election and one filed after an election resulted in the controversy. There, the COMELEC misapplied the rules pertaining to complaints filed after the election to a case clearly filed prior to the May 8, 1995 elections. As we have already mentioned above, the rules on disposition and resolution of cases filed before or after an election vary.[10] Consequently, the Sunga case cannot apply to the instant case because here, the disqualification case was filed on May 18, 1998, seven (7) days after the May 11, 1998 elections. Therefore, the provisions of paragraph 2 of Resolution No. 2050 must apply, in that, the complaint shall be dismissed as a disqualification case, but referred to the Law Department of the COMELEC for preliminary investigation. This is exactly what the COMELEC ruled in its assailed resolution of June 4, 1998, and rightly so.

Petitioners likewise fault the COMELEC for not ordering the suspension of respondent's proclamation as mayor despite their timely-filed "Motion to Suspend Immediate Intended Proclamation of Respondent" and which motion was reiterated in a second motion.

COMELEC did not err in not ordering the suspension of respondent's proclamation. The second paragraph of paragraph 2 of Resolution No. 2050 provides that where a complaint is filed after the elections but before proclamation, as in this case, the complaint must be dismissed as a disqualification case but shall be referred to

the Law Department for preliminary investigation. If before the proclamation, the Law Department makes a prima facie finding of guilt and the corresponding information has been filed with the appropriate trial court, the complainant may file a petition for suspension of the proclamation of respondent with the court before which the criminal case is pending and that court may order the suspension of the proclamation if the evidence of guilt is strong.[11] It appearing that none of the foregoing circumstances obtain herein as there is no prima facie finding of guilt yet, a suspension o respondent's proclamation is not warranted. The mere pendency of a disqualification case against a candidate, and a winning candidate at that, does not justify the suspension of his proclamation after winning in the election. To hold otherwise would unduly encourage the filing of baseless and malicious petitions for disqualification if only to effect the suspension of the proclamation of the winning candidate, not only to his damage and prejudice but also to the defeat of the sovereign will of the electorate, and for the undue benefit of underserving third parties.[12]

Before we end, a word of caution to herein petitioners and to future litigants and counsels predisposed to invoke this Court's jurisdiction without waiting for the resolution of whatever pending motions and motions for reconsideration they have before trial courts and tribunals exercising specialized jurisdiction: The Court will not countenance the practice of taking any shortcuts of the established rules of procedure pertaining to the hierarchy of courts and remedies of last resort. When the petitioners filed the instant petition for certiorari on June 25, 1999, they knew pretty well that the motion for reconsideration they filed to assail the June 4, 1998 resolution of the First Division of the Commission was still pending with the COMELEC en banc. Notwithstanding that knowledge, they went to this Court to seek another remedy which was not exactly available to them at that time. This practice falls short of forum-shopping in the technical sense and will not be allowed.

WHEREFORE, the instant petition is hereby DISMISSED.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Mendoza, Panganiban, Quisumbing, Purisima, Buena, Gonzaga-Reyes, Ynares-Santiago, and De Leon, Jr., JJ. concur.
Pardo, J., took no part.

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[1] [Sec. 261. Prohibited Acts. – The following shall be guilty of an election offense:

> x x x
>
> "(g) Appointment of new employees, creation of new positions, promotion, or giving salary increases. – During the period of forty-five days before a regular election and thirty days before a special election (1) x x x.
>
> "(2) Any government official who promotes or gives any increase of salary or remuneration or privilege to any government official or employees, including those in government-owned or controlled corporations."

[*] Composed of Manolo B. Gorospe as Presiding Commissioner and Evalyn I. Fetalino and Teresita Dy-Liacco Flores as Commissioners with the latter dissenting.

[2] Rollo, pp. 44-45.

[*] Composed of then Chairman Bernardo P. Pardo, presiding Commissioner Manolo B. Gorospe and Commissioner Teresita Dy-Liacco Flores.

[3] Id., at 32-33.

[4] Id., at 34.

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[5] Id., at 35.

[6] Id., at 87.

[7] Id., at 17.

[8] 288 SCRA 76 (1998).

[9] Sunga v. COMELEC, supra, pp. 85-86.

[10] See p. 9.

[11] See p. 8.

[12] Singco v. COMELEC, 101 SCRA 420, 429 (1980).

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