

ERNESTO “BIBOT” A. DOMINGO, JR., PETITIONER, VS. COMMISSION ON ELECTIONS AND BENJAMIN “BENHUR” D. ABALOS, JR., RESPONDENTS.

G.R. No. 136587. August 30, 1999

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

Assailed in this special civil action for certiorari are the En Banc Resolution of the Commission on Elections ("COMELEC"), dated December 1, 1998,[1] and the Resolution of the COMELEC First Division, dated July 2, 1998,[2] in SPA No. 98-361, which dismissed, for lack of merit, the petition for disqualification filed against herein private respondent, the incumbent mayor of Mandaluyong City.

In the May 11, 1998 elections, petitioner Ernesto Domingo, Jr. and private respondent Benjamin Abalos, Jr. were both mayoralty candidates of Mandaluyong City. After private respondent's proclamation on May 17, 1998, petitioner filed the instant petition for disqualification, on the ground that, during the campaign period, private respondent "prodded" his father, then incumbent Mandaluyong City Mayor Benjamin Abalos, Sr., to give "substantial allowances" to public school teachers appointed as chairpersons and members of the Boards of Election Inspectors ("BEIs") for Mandaluyong City.

Petitioner's allegations obtain from an incident on April 14, 1998, wherein, in a "Pasyal-Aral" outing for Mandaluyong City public school teachers in Sariaya, Quezon, then Mayor Benjamin Abalos, Sr. announced that the teachers appointed to the BEIs will each be given a hazard pay of P1,000.00 and food allowance of P500.00, in addition to the allowance of P1,500.00.[3] In the petition for disqualification filed before the COMELEC First Division, petitioner charged that private respondent's influence over his father on this matter was evident from the following declaration of father Abalos, Sr.:

Your President [referring to Mr. Alfredo de Vera, President of the Federation of Mandaluyong Public School Teachers], together with Benhur, walang tigil `yan kakapunta sa akin at not because he is my son siya ang nakikipag-usap sa kanila and came up with a beautiful compromise. xxx[4]

As alleged by petitioner, the foregoing statement was revealing of how private respondent "prodded" his father, then Mayor Abalos, Sr., to award "substantial allowances" to the public school teachers who will assume seats in the BEIs in the May 11, 1998 elections, as to influence them into voting for him and ensuring his victory.

Mayor Abalos, Sr.'s speech, as well, as other activities in the aforesaid "Pasyal-Aral" outing, were recorded on videotape per instructions of Mr. Perfecto Doroja, an "associate" of petitioner.[5] In addition to the videotape, petitioner also submitted photographs of a streamer, hung at the entrance of the Tayabas Bay Beach Resort, Sariaya, Quezon, declaring Mayor Benjamin S. Abalos, Sr. as co-sponsor of the "Pasyal-Aral",[6] as well as affidavits of three public school teachers who participated in the said activity.[7]

Petitioner alleges that private respondent's act of "prodding" his father, then incumbent mayor Benjamin S.

Abalos, Sr., to give "substantial allowances" to the Mandaluyong City public school teachers constitutes a violation of Section 68 of the Omnibus Election Code, the pertinent provisions of which read:

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; xxx shall be disqualified from continuing as a candidate, or if he has been elected, from holding the office. xxx

In dismissing the petition for disqualification for insufficiency of evidence and lack of merit, the COMELEC First Division admonished petitioner and his counsel for attempting to mislead the COMELEC by making false and untruthful statements[8] in his petition. On reconsideration, the COMELEC, En Banc, affirmed the findings and conclusions of its First Division.

Before us, petitioner assails the Resolutions of public respondent COMELEC for being violative of his right to due process, and thus, issued with grave abuse of discretion. It is petitioner's argument that the dismissal of his petition for disqualification on the ground of insufficiency of evidence was unfounded, considering that no hearing on the merits was conducted by public respondent on the matter.

Petitioner next contends that grave abuse of discretion was likewise attendant in public respondent's act of dismissing the petition for disqualification for insufficiency of evidence, despite the "overwhelming" pieces of evidence of petitioner, consisting of the video cassette, pictures and affidavits, which were "not denied" by private respondent.[9] Petitioner further decries the fact that private respondent presented "no evidence" to substantiate his defense, while all the pieces of evidence that he submitted in his petition for disqualification were strong enough to prove violation by private respondent of Section 68 of the Omnibus Election Code.[10]

Before touching on the merits, we shall first resolve the procedural matters raised by private respondent; namely, forum-shopping and failure to file this petition on time.

It is not disputed that, in addition to the petition for disqualification, petitioner also filed a criminal complaint[11] and an election protest *ex abundante cautela*[12] with public respondent COMELEC. Private respondent contends that, inasmuch as the petition for disqualification and the complaint for election offense involve the same issues and charges, i.e., vote-buying, exerting undue influence on BEI members, petitioner should be held liable for forum-shopping.

We rule to the contrary. Forum-shopping exists when the petitioner files multiple petitions or complaints involving the same issues in two or more tribunals or agencies.[13] The issues in the two cases are different. The complaint for election offense is a criminal case which involves the ascertainment of the guilt or innocence of the accused candidate and, like any other criminal case, requires a conviction on proof beyond reasonable doubt.[14] A petition for disqualification, meanwhile, requires merely the determination of whether the respondent committed acts as to merit his disqualification from office, and is done through an administrative proceeding which is summary in character and requires only a clear preponderance of evidence.[15]

Next, petitioner admits receiving a copy of the assailed COMELEC First Division Resolution on July 13, 1998. He also admits filing a motion for reconsideration of the said COMELEC First Division Resolution on July 20, 1998. A copy of the assailed COMELEC En Banc Resolution dated December 1, 1998 was received by petitioner on December 4, 1998. Under Section 3, Rule 64 of the Revised Rules of Court, petitions for certiorari from orders or rulings of the COMELEC

shall be filed within thirty (30) days from notice of the judgment or final order or resolution sought to be reviewed. The filing of a motion for new trial or reconsideration of the said judgment or final order or

resolution xxx shall interrupt the period herein fixed. If the motion is denied, the aggrieved party may file the petition within the remaining period, but which shall not be less than five (5) days in any event, reckoned from notice of denial.

Section 4 of Rule 19 of the COMELEC Rules of Procedure likewise provides:

Effect of motion for reconsideration on period to appeal. - A motion to reconsider a decision, resolution, order or ruling when not pro-forma, suspends the running of the period to elevate the matter to the Supreme Court.

Inasmuch as the filing of a motion for reconsideration interrupts the 30-day period within which to file a petition for certiorari with this Court, petitioner has effectively consumed seven days of the abovementioned 30-day period when he filed his motion for reconsideration. Thus, as correctly pointed out by private respondent, when petitioner received a copy of the assailed COMELEC En Banc Resolution, he only had 23 days from December 4, 1998, the date when he received the COMELEC En Banc Resolution, or until December 27, 1998[16], to file the instant petition for certiorari. This petition was filed on January 4, 1999.

In any event, whether the petition was filed on time or not, an examination of the records leaves us satisfied that public respondent COMELEC did not commit grave abuse of discretion in dismissing the petition for disqualification.

First, on the issue of due process, we find no violation thereof when public respondent COMELEC decided to dismiss the petition for disqualification without hearing. Well-established is the rule that the essence of due process is simply an opportunity to be heard.[17] In *Zaldivar vs. Sandiganbayan*[18], cited in the recent case of *Bautista vs. COMELEC*[19], we held that the right to be heard does not only refer to the right to present verbal arguments in court. A party may also be heard through his pleadings. Where opportunity to be heard is accorded, either through oral arguments or pleadings, there is no denial of procedural due process.

Furthermore, the filing by petitioner of a motion for reconsideration accorded him ample opportunity to dispute the findings of the COMELEC First Division, so that he was as fully heard as he might have been had oral arguments actually taken place. Deprivation of due process cannot be successfully invoked where a party was given the chance to be heard in his motion for reconsideration.[20]

Next, petitioner re-asserts before us the sufficiency of his evidence to prove that private respondent influenced the Mandaluyong City public school teachers, through his father, Abalos, Sr., in the performance of their functions as members of the BEIs.

Petitioner's evidence fails to persuade. First, the affidavits of the three teachers who participated in the controversial "Pasyal-Aral" do not contain anything but the following bare declarations: (1) that they heard Abalos, Sr. promise that he will give hazard pay of P1,000.00 and food allowance of P500.00, in addition to the regular living allowance of P1,500.00, and (2) that, before the May 11, 1998 elections they each received P1,500.00, or half of the total allowances promised by Abalos, Sr. in his speech. Nothing in these affidavits suggests, let alone sets out, knowledge on any degree of participation of private respondent in the grant of these allowances. The name of private respondent was not even mentioned or alluded to by any of the three affiants.

Petitioner also submitted photographs taken of the streamer at the entrance of the Tayabas Bay Beach Resort, welcoming the participants to the "Pasyal-Aral" and declaring the Mandaluyong City School Board and then mayor Abalos, Sr. as co-sponsors of the affair. Since by law, the mayor is a co-chairman of the City School Board[21], we find nothing unusual in his having co-sponsored the said event. We fail to see the connection between these pictures and the alleged influence wielded by private respondent on the public school teachers of Mandaluyong City.

Yet it is upon the videotape recordings that petitioner lays much reliance on, in proving his case for disqualification. The recordings are supposed to document how former mayor Abalos, Sr. announced that his son, private respondent herein, prodded his father to release substantial allowances to teachers who will act as members of the BEIs. As found by the COMELEC First Division, the name uttered in the announcement was not "Benhur", private respondent's nickname and what petitioner alleged was uttered, but "Lito Motivo", a name which truly sounded unlike "Benhur".[22] Also, when the COMELEC, through its First Division, viewed the videotape submitted by petitioner, "the speech of Mayor Abalos, Sr. was cut and so (they) also did not see and hear that part of Mayor Abalos, Sr.'s speech allegedly uttered by him." [23]

In the Petition, petitioner's counsel admitted that the assailed quotation in the petition for disqualification was based on an "erroneous transcript" of the speech which was prepared by somebody else, and which he in turn failed to verify for errors. However, he denies having intended to mislead the COMELEC with the inclusion of this statement, but instead submits that the word "Benhur" was "derived" from the succeeding pronouncement of Abalos, Sr., "not because he is my son", which may in turn be inferred to refer to private respondent, who was a mayoralty candidate at the time.[24]

We find no grave abuse of discretion in the COMELEC's finding that Abalos, Sr.'s controversial statement, effectively reduced to this:

Your President, together with Lito Motivo, walang tigil `yan kakapunta sa akin at not because he is my son siya ang nakikipag-usap sa kanila and came up with a beautiful compromise. xxx

was seriously insufficient and vague to prove violation of Section 68 of the Omnibus Election Code. The burden of proving that private respondent indirectly influenced the public school teachers of Mandaluyong City, through his father, Abalos, Sr., was a burden that petitioner failed to meet.

Neither is this burden overcome by the argument that private respondent, for himself, had "no evidence" to rebut petitioner's allegations, since the burden of proving factual claims rests on the party raising them.[25] Besides, it is not true that private respondent gave only denials and did not present any evidence to his defense, or to offer an explanation for his father's actions, which were assailed as having been influenced by him. Private respondent presented in evidence a certified true copy of Joint Circular No. 1, series of 1998,[26] issued by the Department of Education, Culture and Sports, Department of Budget and Management and Department of Interior and Local Government, which authorized the payment of allowances of public school teachers chargeable to local government funds.[27] The Joint Circular provided the basis for private respondent's argument that the disbursement of funds by then mayor Abalos, Sr. was valid as having been made pursuant to administrative circular, and was not an unlawful attempt made in conspiracy with private respondent to secure the latter's victory in the elections.

In fine, we find no grave abuse of discretion in the COMELEC's decision to dismiss the petition for disqualification. The conclusion that petitioner's evidence is insufficient to support the charge of violation of Section 68 of the Omnibus Election Code was arrived at only after a careful scrutiny of the evidence at hand, especially of the videotapes of petitioner. This is clearly evident from the discussion of the COMELEC First Division, in the Resolution dated July 2, 1998, which quoted extensively from the pleadings and evidence of petitioners, and provided adequate explanation for why it considered petitioner's evidence insufficient and unconvincing.

Clearly, where there is no proof of grave abuse of discretion, arbitrariness, fraud or error of law in the questioned Resolutions, the Court may not review the factual findings of COMELEC, nor substitute its own findings on the sufficiency of evidence.[28]

Finally, the foregoing conclusion is without prejudice to the election protest and election offense cases involving the same parties pending with public respondent COMELEC.

WHEREFORE, the petition is DISMISSED. The assailed COMELEC Resolutions dated July 2, 1998 and December 1, 1998, dismissing the petition for insufficiency of evidence and lack of merit, and affirming the proclamation of private respondent Benjamin Abalos, Jr. as duly elected mayor of Mandaluyong City, are hereby AFFIRMED. No costs.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Quisumbing, Purisima, Pardo, Buena, and Ynares-Santiago, JJ., concur.

Panganiban, J., concurs in the result.

[1] Penned by Commissioner Julio F. Desamito.

[2] Penned by Commissioner Teresita Dy-Liacco Flores.

[3] Petition, 12; Rollo, 15.

[4] Petition for Disqualification, 5; Rollo, 66.

[5] Rollo, 115.

[6] Annex "D" of Petition for Disqualification; Rollo, 73.

[7] See Joint Affidavit of Anita Mallillin and Estela Posadas, Affidavit of Carlito F. Faminial, Annexes "G" and "H", Petition for Disqualification; Rollo, 74-75.

[8] Portions of the Resolution of the COMELEC, First Division, which make reference to the said misleading statements read:

"The petitioner xxx said in par. 10 of his petition that:

10. Attached hereto as Annex "E" is the video cassette taken by the above-named cameraman wherein the events of the above-named affair including the speech abovequoted of Mayor Benjamin Abalos, Sr. and the repeated playing of the song SHA LALA LALA with lyrics in Tagalog exhorting the electorate to vote for respondent in the May 11, 1998 elections. (Emphasis supplied)

We note that as far as Annex E is concerned, the petitioner thru his counsel Atty. Romulo Felizmeña who prepared the petition, tried to MISLEAD this Commission by the use of the words "Annex `E' is the video cassette taken by the above-named cameraman."

There is NO cameraman mentioned in any of the paragraphs of the petition.

xxx

xxx (W)hen we viewed and examined the video cassette marked Annex E, it appeared that petitioner and his counsel who prepared the petition once again tried to MISLEAD Us. Petitioner claims that this was part of the speech of Mayor Abalos, Sr., to wit:

Your President, together with Benhur [private respondent]. Walang tigil yan kakapunta sa akin at not because he is my son siya ay nakikiusap sa kanila and came up with beautiful compromise. xxx

But instead of the name Benhur, what We heard was a name which sounded like Lito Motivo, a name which

sounded very much different from the name Benhur.

xxx

Likewise, We note another MISLEADING statement of petitioner thru his counsel who prepared the petition. Par. 12 of the petition reads:

12. Attached hereto as Annex "G" is the joint affidavit of Anita Mallillin and Estela Posadas, all public school teachers of Mandaluyong City and as Annex "H" is the affidavit of Carlito F. Familial, also a public school teacher of Mandaluyong City. All these three (3) public school teachers served as members of the Board of Election Inspectors of Mandaluyong City in the May 11, 1998 elections. All stated that they received before the May 11, 1998 elections the extra amount of P1,500 representing 50 percent of the amount offered by Mayor Benjamin Abalos, Sr. in conspiracy with and upon the prodding of respondent. The violation of Sec. 68 of the Omnibus Election Code by respondent as co-principal of his father Mayor Benjamin Abalos, Sr. is now consummated.

[The full text of Annexes G and H were thereafter quoted.]

Note that there was NO statement by affiants that said allowances were `offered by Mayor Benjamin Abalos, Sr. in conspiracy with and upon the prodding of respondent.'

We admonish petitioner and his counsel for trying to MISLEAD this Commission (First Division) by making several false and untruthful statements in the petition designed to influence Us into favoring their cause. These actuations of petitioner and his counsel shall be noted by this Commission and any other similar actuations committed by them shall be dealt with more severely by this Commission.

[9] Petition, 24-25; Rollo, 27-28.

[10] Ibid., 26; Ibid., 29.

[11] Docketed as E.O. No. 98-110. Filed with the COMELEC Law Department, and naming Benjamin Abalos, Jr., Benjamin Abalos, Sr., Eden Diaz, Romeo Zapanta and Alfredo de Vera as defendants.

[12] Election Protest Case No. 98-34.

[13] Sec. 5, Rule 7, Revised Rules of Court; Administrative Circular No. 04-94.

[14] Sunga vs. Commission on Elections, 288 SCRA 76.

[15] Id.

[16] Strictly speaking, December 28, 1998, since December 27, 1998 is a Sunday.

[17] National Semiconductor (HK) Distribution, Ltd. vs. National Labor Relations Commission, 291 SCRA 348; Navarro III vs. Damaso, 246 SCRA 260.

[18] 166 SCRA 316.

[19] G.R. No. 133840, November 13, 1998.

[20] Salonga vs. Court of Appeals, 269 SCRA 534; Rodriguez vs. Project 6 Market Service, 247 SCRA 528.

[21] Sec. 98, Local Government Code.

[22] Resolution of COMELEC First Division, 4; Rollo, 42.

[23] Ibid.

[24] Petition, 28; Rollo, 31.

[25] Sec. 1, Rule 131, Revised Rules of Court.

[26] Annex "J" of Petition; Rollo, 138; Annex "H" of Comment to Petition; Rollo, 187.

[27] The Joint Circular was directed to "Governors, Mayors, Superintendents, and District Supervisors of Schools, Members of the Local School Boards and Other National and Local Government Officials Concerned" and authorized the "payment of existing allowances of teachers granted by local government units (LGUs) chargeable against the Special Education Funds (SEFs) as of 31 December 1997, provided that any additional allowances that may be granted to teachers by LGUs shall be charged to the general funds of LGUs, subject to existing budgeting rules and regulations."

[28] Nolasco vs. COMELEC, 275 SCRA 762; Lozano vs. Yorac, 203 SCRA 256; Apex Mining Co., Inc. vs. Garcia, 199 SCRA 278.

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