

ANTONIO M. BERNARDO, ERNESTO A. DOMINGO, JR. AND JESUS C. CRUZ, PETITIONERS, VS. BENJAMIN S. ABALOS, SR., BENJAMIN “BENHUR” D. ABALOS, JR., DR. EDEN C. DIAZ, ROMEO F. ZAPANTA, A...

G.R. No. 137266. December 05, 2001

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

This is a petition for certiorari[1] seeking the nullification of Resolution No. 98-3208 of the Commission on Elections (COMELEC) En Banc promulgated on December 1, 1998 dismissing the complaint for vote buying filed by petitioners against respondents.

On April 21, 1998, petitioners Antonio M. Bernardo, Ernesto A. Domingo, Jr. and Jesus C. Cruz filed with the COMELEC a criminal complaint against respondents Benjamin S. Abalos, Sr., Benjamin C. Abalos, Jr., Dr. Eden C. Diaz, Romeo Zapanta and Arcadio de Vera for vote buying in violation of Section 261, paragraphs (a), (b) and (j) of the Omnibus Election Code (OEC), in relation to Section 28 of Republic Act 6646 and Section 68 of the OEC. The complaint, docketed as E.O. Case No. 98-110,[2] alleged that:

- On April 14, 1998 (Tuesday), respondent Mandaluyong City Mayor Benjamin S. Abalos, Sr., and his son respondent Benjamin "Benhur" C. Abalos, Jr., candidate for City Mayor of the same city in the May 11, 1998 elections, conspiring with respondents Dr. Eden C. Diaz, Schools Division Superintendent, Romeo F. Zapanta, Assistant Schools Division Superintendent, and Arcadio de Vera, President, Mandaluyong Federation of Public School Teachers, sponsored, arranged and conducted an all-expense-free transportation, food and drinks affair for the Mandaluyong City public school teachers, registered voters of said city, at the Tayabas Bay Beach Resort, Sariaya, Quezon Province.

- Among the identified public school teachers present, brought in around twelve (12) buses, were Corazon Mayoya, Principal of Highway Hills Elementary School, her Assistant Principal and Mr. Dante del Remigio; Mrs. Diaz, Principal of Mandaluyong City High School and Mr. Alvia; Mrs. Parillo, Andres Bonifacio Elementary School; Mrs. Gregoria Ignacio, Principal of Doña Pilar Gonzaga Elementary School and Mrs. Bolantes; Mrs. Diaz, Principal, Nueve de Febrero Elementary School; Ms. Magsalin, Principal of Mandaluyong Science High School and Mrs. Rita Bondayril; Mrs. De Vera, Fabella Elementary School; Ms. Anselmo, Principal of Isaac Lopez Elementary School and Mrs. Fayton; Mrs. Sylvia Liwanag, District Supervisor, District II, Mrs. Nalaonan, Principal of Amado T. Reyes Elementary School; Mrs. Teresita Vicencio, Mandaluyong City Elementary School; Officers of the Mandaluyong Federation of Public School Teachers namely: Mrs. Erlinda Ilagan, Treasurer; Ms. Nancy de Leon, Auditor; Ms. Fortunata Gondran, PRO; Mr. Nenito Pumariga, Business Manager; Mr. Jose Guerrero, Sgt.-at-arms; and Board Members Ms. Virginia Carillo, Ms. Wilma Fernandez, Mr. Arturo Morales and Mr. Teddy Angeles.

- During the whole-day affair, the background music loudly and repeatedly played over the sound system was the political jingle advertisement of Mandaluyong City candidate for Mayor, Benjamin "Benhur" Abalos, Jr., sang to the tune of the song 'SHA LALA LALA'.

- Some of the participants wore T-shirts with the name of candidate "Benhur" Abalos, Jr.," printed in over-sized colored letters.
- Mayor Benjamin Abalos, Sr. delivered a speech wherein he offered and promised the Mandaluyong City public school teachers and employees a "hazard" pay of P1,000.00, and increasing their allowances from P1,500.00 to P2,000.00 for food, or with a total of P3,000.00 which they will get by the end of the month.
- The offers and promises to said public school teachers, who are members of the Board of Election Inspectors of Mandaluyong City and registered voters thereat, were made a few weeks before the election to induce or unduly influence the said teachers and the public in general (the other guests) to vote for the candidacy of Benjamin "Benhur" Abalos, Jr..
- The offers and promises of Mayor Abalos, Sr., and the enthusiastic acceptance of said monetary increase of allowances by the public school teachers and employees of Mandaluyong City, is a violation of Section 261 pars. (a), (b) and (j) of the Omnibus Election Code against vote-buying and vote-selling.[3]

The Director[4] of the Law Department of the COMELEC conducted a preliminary investigation. All the private respondents filed separate counter-affidavits[5] with prayer to dismiss the complaint.

On November 26, 1998, the Director of the Law Department submitted his findings to the COMELEC En Banc recommending that the complaint be dismissed for insufficiency of evidence.

On December 1, 1998, the COMELEC En Banc issued the assailed Resolution No. 98-3208[6] dismissing the complaint "for insufficiency of evidence to establish a prima facie case,"

"Considering that this complaint, being criminal in nature, must have all its allegations supported by direct, strong, convincing and indubitable evidence; and that the submitted evidence of the complainant are mere self-serving statements and uncorroborated audio and visual recordings and a photograph; and considering further that the evidence of the respondents have more probative value and believable than the evidence of said complainants; and that the burden of proof lies with the complainants and not with the respondents."[7]

On February 09, 1999, petitioners, without first submitting a motion for reconsideration, filed the instant petition with this Court.

They alleged therein that the COMELEC En Banc, in issuing Resolution No. 98-3208 dated December 1, 1998, acted "with apparent grave abuse of discretion." [8]

The petition must fail.

Petitioners did not exhaust all the remedies available to them at the COMELEC level. Specifically, they did not seek a reconsideration of the assailed COMELEC En Banc Resolution as required by Section 1, Rule 13 of the 1993 COMELEC Rules of Procedure, thus:

"Section 1. What Pleadings are not Allowed. - The following pleadings are not allowed:

x x x

d) motion for reconsideration of an en banc ruling, resolution, order or decision except in election offense cases;

x x x." (Emphasis ours)

It is not disputed that petitioners' complaint before the COMELEC involves an election offense. But in this petition, they conveniently kept silent why they directly elevated to this Court the questioned Resolution without first filing a motion for reconsideration with the COMELEC En Banc. It was only after the respondents had filed their comment on the petition and called this Court's attention to petitioners' failure to comply with Section 1 of Rule 13 that they, in their Consolidated Reply, advanced the excuse that they "deemed it best not seek any further dilatory `motion for reconsideration'..., even if allowed by Sec. 1 (d) of COMELEC Rule 13." [9]

Petitioners' failure to file the required motion for reconsideration utterly disregarded the COMELEC Rules intended "to achieve an orderly, just, expeditious and inexpensive determination and disposition of every action and proceeding brought before the Commission." [10]

Contrary to petitioners' statement that a resort to a motion for reconsideration is "dilatory," it bears stressing that the purpose of the said motion is to give the COMELEC an opportunity to correct the error imputed to it. [11] If the error is immediately corrected by way of a motion for reconsideration, then it is the most expeditious and inexpensive recourse. But if the COMELEC refuses to correct a patently erroneous act, then it commits a grave abuse of discretion justifying a recourse by the aggrieved party to a petition for certiorari.

A petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure, as amended, can only be resorted to if "there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law." [12] Having failed to file the required motion for reconsideration of the challenged Resolution, petitioners' instant petition is certainly premature. [13] Significantly, they have not raised any plausible reason for their direct recourse to this Court.

In its assailed Resolution, the COMELEC cited a valid reason for dismissing petitioners' complaint against private respondents for vote buying. The COMELEC found that the evidence of the respondents have "more probative value and believable than the evidence of the complainants;" and that the evidence submitted by petitioners are "mere self-serving statements and uncorroborated audio and visual recording and a photograph."

Moreover, Section 28 of Republic Act 6646 provides:

"SEC. 28. Prosecution of Vote-buying and Vote-selling. - The representation of a complaint for violations of paragraph (a) or (b) of Section 261 of Batas Pambansa Blg. 881 supported by affidavits of complaining witnesses attesting to the offer or promise by or of the voter's acceptance of money or other consideration from the relatives, leaders or sympathizers of candidate, shall be sufficient basis for an investigation to be immediately conducted by the Commission, directly or through its duly authorized legal officers, under Section 68 or Section 265 of said Batas Pambansa Blg. 881.

x x x." (Emphasis ours)

Petitioners' complaint expressly states that no supporting affidavits were submitted by the complaining witnesses [14] to sustain their charge of vote buying. Suffice it to state that the absence of such supporting affidavits shows the frailty of petitioners' complaint. Indeed, it is vulnerable to dismissal.

WHEREFORE, the instant petition is DISMISSED.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Pardo, Ynares-Santiago, De Leon, Jr., and Carpio, JJ., concur.

Buena, J., on official leave.

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- [1] Filed under Rule 65 of the 1997 Rules of Civil Procedure, as amended.
- [2] Rollo, p. 37.
- [3] Criminal Complaint, *ibid.*, pp. 38-40.
- [4] Mr. Jose P. Balbuena.
- [5] Annexes "C", "D", "E" and "F", Petition, *ibid.*, pp. 49-66.
- [6] Annex "A", *ibid.*, pp. 29-35.
- [7] Rollo, p. 34.
- [8] *Ibid.*, p. 23.
- [9] Consolidated Reply, *ibid.*, p. 191.
- [10] Section 3, Rule 1, 1993 COMELEC Rules of Procedure.
- [11] Feria and Noche, Civil Procedure Annotated, Vol. 2, 2001 edition, p. 472, citing *D.C. Crystal, Inc. vs. Laya*, 170 SCRA 734 (1989); *Pure Foods Corporation vs. NLRC*, 171 SCRA 415 (1989); *Amante vs. Sison and Manzanero*, 60 Phil. 949, 951 (1934).
- [12] Section 1, Rule 65, 1997 Rules of Civil Procedure, as amended.
- [13] *Sunshine Transportation, Inc. vs. NLRC*, 254 SCRA 51 (1996).
- [14] See petitioners' cover letter of the complaint (Annex "B", Petition), Rollo, p. 36.

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