

MANUEL H. AFIADO, JASMINIO B. QUEMADO, JR. AND GLESIE L. TANGONAN, PETITIONERS, VS. COMMISSION ON ELECTIONS (COMELEC), RESPONDENT.

G.R. No. 141787. September 18, 2000

Ponente: DE LEON, JR., J.

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DE LEON, JR., J.:

Before us is a Petition for Mandamus with Prayer for Preliminary Mandatory Injunction, praying for the early resolution of the petition for the "recall" of former Vice-Mayor Amelita S. Navarro (currently the Mayor) of Santiago City, which was filed with respondent Commission on Elections (COMELEC).

The facts are as follows:

During the May 11, 1998 elections in Santiago City, Joel Miranda became the substitute candidate for his father, Jose "Pempe" Miranda, for the position of Mayor. When the ballots were counted, Joel emerged as the winner over his opponent Antonio Abaya and he was later proclaimed. Amelita S. Navarro also won and was proclaimed as the Vice-Mayor of Santiago City.

On May 13, 1998, the defeated candidate, Antonio Abaya, filed before the COMELEC against Joel Miranda a Petition to Declare Null and Void Substitution with Prayer for Issuance of Writ of Preliminary Injunction and/or Temporary Restraining Order, docketed as SPA No. 98-288, which was later amended. The amended petition sought the declaration of the certificate of candidacy of Jose Miranda, the father of Joel, as null and void.

The petition, as amended, was granted by the COMELEC en banc, and consequently the election and proclamation of Joel Miranda as Mayor of Santiago City was annulled. This ruling was affirmed by the Supreme Court in a Decision promulgated on July 28, 1999 in G.R. No. 136531, entitled "Joel Miranda vs. Antonio Abaya and COMELEC." In that decision, we ruled that since the certificate of candidacy of Jose Miranda was not valid, he could not be validly substituted by his son, Joel Miranda, as a mayoralty candidate in Santiago City. Hence, Joel Miranda could not be validly proclaimed as the winner in the mayoralty elections. Vice-Mayor Amelita S. Navarro thus became the new Mayor of Santiago City by virtue of the law on succession.^[1] Joel Miranda filed a motion for reconsideration but this was denied with finality by the Supreme Court in a Resolution dated September 28, 1999.

Navarro took her oath of office and assumed her position as Mayor of Santiago City on October 11, 1999.

Meanwhile, on July 12, 1999, while the said G.R. No. 136531 was still pending in the Supreme Court, petitioners Manuel H. Afiado, Jasminio B. Quemado and Glesie L. Tangonan convened the barangay officials of Santiago City who compose the Preparatory Recall Assembly (PRA) at the Santiago City People's Coliseum after giving them due notice. On the same date, July 12, 1999, the PRA passed and adopted Preparatory Recall Assembly Resolution No. 1 for the recall of Vice-Mayor Amelita S. Navarro. The pertinent portions of the said Resolution No. 1 read as follows:

ASSEMBLY RESOLUTION NO. 1

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RESOLUTION OF THE PREPARATORY
RECALL ASSEMBLY OF THE BARANGAY
OFFICIALS OF SANTIAGO CITY
FOR THE RECALL OF THE INCUMBENT
VICE-MAYOR OF SANTIAGO CITY

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WHEREAS, during the Preparatory Recall Assembly the official acts of City Vice Mayor Navarro that brought forth the loss of confidence in her capacity and fitness to discharge the duties and to perform the functions of her public office were recounted for the contemplation and evaluation of the members present, to wit:

- Her lack of respect and due regard for superior authority...
- Her greed for political power which worked against public interest and the general welfare...
- Her lack of regard for public officials, subordinates and lowly employees, which is conduct unbecoming of a public official and speaks of her unprofessionalism...
- Her constant insistence to usurp the powers or authority vested upon other public officials...
- Her application of delaying tactics in the SP actions on the City Government's annual budget...
- Her disregard of parliamentary rules by imposing her unsolicited and unnecessary opinion unto the city councilors...
- Because of her preoccupation towards matters other than those of public concerns, substantial part of the legislative tasks of the Sangguniang Panlungsod brought to it for action have remained unacted unfinished (sic);
- Her alleged malfeasance of corruption while she was still the City Mayor in acting capacity, specifically her direct hand in the anomalous acquisition of six dump trucks, a request for investigation for (sic) which is pending at the Office of the Ombudsman;
- Her antagonistic attitude towards development concerns...

WHEREAS, on accounts of the documented facts and stated hereinabove the members of the Preparatory Recall Assembly present have lost, after due thought their confidence upon the incumbent City Vice Mayor Amelita S. Navarro.

NOW WHEREFORE, upon a motion duly seconded, be it -

RESOLVED, as it is hereby RESOLVED to INVOKE THE RESCISSION OF THE ELECTORAL MANDATE OF THE INCUMBENT CITY VICE-MAYOR AMELITA S. NAVARRO for LOSS OF CONFIDENCE through a recall election to be set by the COMMISSION ON ELECTION as provided for under Section 71 of the Local Government Code of 1991;

xxx xxx xxx

APPROVED by the majority of the members of the Preparatory Recall Assembly held on July 12, 1999 at the People's Coliseum, Santiago City, Isabela.[2]

According to the petitioners, PRA Resolution No. 1 together with all the reglementary requirements, has been

forwarded and submitted to the office of respondent COMELEC at Santiago City and later to its Head Office in Manila through the Provincial Elections Office and Regional Elections Office.

On September 9, 1999, while the subject Preparatory Recall Resolution No. 1 was under evaluation in the COMELEC's Head Office, then Vice-Mayor Amelita S. Navarro filed a petition, docketed as EM No. 99-006, with the COMELEC which sought the nullification of the said PRA Resolution No. 1. In Navarro's petition, the herein petitioners Afiado, Quemado and Tangonan (as officers of the Preparatory Recall Assembly of Santiago City) were impleaded as the respondents therein.

Hearings in EM No. 99-006 were then conducted at the COMELEC's head office. After the deadline for the submission of memoranda on December 1, 1999, herein petitioners as the respondents in that case, alleged that they were not informed nor were they aware of further developments. This prompted them to file on December 27, 1999 an Urgent Motion for the Early Resolution of the Petition (EM No. 99-006). According to the herein petitioners, the act of herein respondent COMELEC in not deciding the said petition violates Rule 18, Section 7 of the 1993 COMELEC Rules of Procedure which provides that:

Sec. 7. Period to Decide by the Commission En Banc. - Any case or matter submitted to or heard by the Commission en banc shall be decided within thirty (30) days from the date it is deemed submitted for decision or resolution, except a motion for reconsideration of a decision or resolution of a Division in Special Actions and Special cases which shall be decided within fifteen (15) days from the date the case or matter is deemed submitted for decision, unless otherwise provided by law.

The herein petitioners allege that the act of respondent COMELEC in not resolving the petition, EM No. 99-006, within the reglementary period constitutes neglect in the performance of its duties and responsibilities; and that the alleged inaction of respondent COMELEC will render the said case and/or PRA Resolution No. 1 moot and academic inasmuch as recall elections cannot be undertaken anymore come June 30, 2000 pursuant to Section 74 of the 1991 Local Government Code, which provides that:

Sec. 74. Limitation 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.[3]

Finally, on February 18, 2000, sensing the urgency of the situation since PRA Resolution No. 1 was not yet acted upon by the COMELEC, the herein petitioners filed the present petition for mandamus to compel respondent COMELEC to resolve and deny immediately Navaro's petition, docketed therein as EM No. 99-006, and in effect to give due course to and implement the said PRA Resolution.

The corollary issue in the case at bench is whether or not an elective official who became City Mayor by legal succession can be the subject of a recall election by virtue of a Preparatory Recall Assembly Resolution which was passed or adopted when the said elective official was still the Vice-Mayor.

We deny the petition.

On March 31, 2000 respondent COMELEC issued and promulgated in EM No. 99-006 a Resolution[4] which denied due course to the subject PRA Resolution No. 1. This development therefore rendered the present petition for mandamus moot and academic. The record shows that herein petitioners' counsel of record was furnished copies of the COMELEC's Resolution dated March 31, 2000 by registered mail on April 1, 2000.

Anent the corollary issue as to whether or not Mayor Navarro can be the subject of recall election by virtue of Resolution No. 1 of the Preparatory Recall Assembly which was passed when she was still the elected City Vice-Mayor, the same has become moot and academic. We quote below the pertinent portion of the COMELEC's Resolution dated March 31, 2000 in EM No. 99-006 and to which we agree, to wit:

The assumption by legal succession of the petitioner as the new Mayor of Santiago City is a supervening event which rendered the recall proceeding against her moot and academic. A perusal of the said Resolution reveals that the person subject of the recall process is a specific elective official in relation to her specific office. The said resolution is replete with statements, which leave no doubt that the purpose of the assembly was to recall petitioner as Vice Mayor for her official acts as Vice Mayor. The title itself suggests that the recall is intended for the incumbent Vice Mayor of Santiago City. The third paragraph of the resolution recounted " the official acts of City Vice Mayor Navarro that brought forth the loss of confidence in her capacity and fitness to discharge the duties and to perform the functions of her public office." And because of such acts, the assembly "RESOLVED to invoke the rescission of the electoral mandate of the incumbent City Vice Mayor." Clearly, the intent of the PRA as expressed in the said Resolution is to remove the petitioner as Vice Mayor for they already lost their confidence in her by reason of her official acts as such. To recall, then, the petitioner when she is already the incumbent City Mayor is to deviate from the expressed will of the PRA. Having, thus, succeeded to the position of City Mayor, the petitioner was placed beyond the reach of the effects of the PRA Resolution.[5]

The specific purpose of the Preparatory Recall Assembly was to remove Amelita S. Navarro as the elected Vice-Mayor of Santiago City since PRA Resolution No. 1 dated July 12, 1999 expressly states that "...it is hereby resolved to invoke the rescission of the electoral mandate of the incumbent City Vice-Mayor Amelita S. Navarro for loss of confidence through a recall election to be set by the Commission on Election as provided for under Section 71 of the Local Government Code of 1991." [6] However, the said PRA Resolution No. 1 is no longer applicable to her inasmuch as she has already vacated the office of Vice-Mayor on October 11, 1999 when she assumed the position of City Mayor of Santiago City.

Even if the Preparatory Recall Assembly were to reconvene to adopt another resolution for the recall of Amelita Navarro, this time as Mayor of Santiago City, the same would still not prosper in view of Section 74 (b) of the Local Government Code of 1991 which provides that "No recall shall take place within one (1) year from the date of the official's assumption of office or one (1) year immediately preceding a regular election." There is no more allowable time in the light of that law within which to hold recall elections for that purpose. The then Vice-Mayor Amelita S. Navarro assumed office as Mayor of Santiago City on October 11, 1999. One year after her assumption of office as Mayor will be October 11, 2000 which is already within the one (1) year prohibited period immediately preceding the next regular election in May 2001.

WHEREFORE, the petition for mandamus is hereby DISMISSED.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Buena, and Gonzaga-Reyes, JJ., concur.

Pardo, J., no part.

Ynares-Santiago, J., on leave.

[1] *Miranda vs. Abaya*, 311 SCRA 617 (1999).

[2] *Rollo*, pp. 11-14.

[3] Underscoring ours.

[4] Rollo, pp. 64-69.

[5] Rollo, pp. 67-68.

[6] Underscoring ours.

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