

SARIO MALINIAS, PETITIONER, VS. THE COMMISSION ON ELECTIONS, TEOFILO CORPUZ, ANACLETO TANGILAG AND VICTOR DOMINGUEZ, RESPONDENTS.

G.R. No. 146943. October 04, 2002

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

Before us is a petition for review on certiorari[1] of the Resolutions of the Commission on Elections (“COMELEC” for brevity) en banc[2] dated June 10, 1999 and October 26, 2000. The assailed Resolutions dismissed the complaint[3] filed by petitioner Sario Malinias (“Malinias” for brevity) and Roy S. Pilando (“Pilando” for brevity) for insufficiency of evidence to establish probable cause for violation of Section 25 of Republic Act No. 6646[4] and Sections 232 and 261 (i) of Batas Pambansa Blg. 881.[5]

The Facts

Petitioner Malinias was a candidate for governor whereas Pilando was a candidate for congressional representative of Mountain Province in the May 11, 1998 elections.[6]

The Provincial Board of Canvassers held the canvassing of election returns at the second floor of the Provincial Capitol Building in Bontoc, Mountain Province from May 11, 1998 to May 15, 1998.[7]

On July 31, 1998, Malinias and Pilando filed a complaint with the COMELEC’s Law Department for violation of Section 25 of R.A. No. 6646, and Sections 232 and 261 (i) of B.P. Blg. 881, against Victor Dominguez, Teofilo Corpuz, Anacleto Tangilag, Thomas Bayugan, Jose Bagwan who was then Provincial Election Supervisor, and the members of the Provincial Board of Canvassers. Victor Dominguez (“Dominguez” for brevity) was then the incumbent Congressman of Poblacion, Sabangan, Mountain Province. Teofilo Corpuz (“Corpuz” for brevity) was then the Provincial Director of the Philippine National Police in Mountain Province while Anacleto Tangilag (“Tangilag” for brevity) was then the Chief of Police of the Municipality of Bontoc, Mountain Province.

Malinias and Pilando alleged that on May 15, 1998 a police checkpoint at Nacagang, Sabangan, Mountain Province blocked their supporters who were on their way to Bontoc, and prevented them from proceeding to the Provincial Capitol Building. Malinias and Pilando further alleged that policemen, upon orders of private respondents, prevented their supporters, who nevertheless eventually reached the Provincial Capitol Building, from entering the capitol grounds.

In their complaint, Malinias and Pilando requested the COMELEC and its Law Department to investigate and prosecute private respondents for the following alleged unlawful acts.

“3. That on May 15, 1998 at the site of the canvassing of election returns for congressional and provincial returns located at the second floor of the Provincial Capitol Building the public and particularly the designated

representatives/watchers of both affiants were prevented from attending the canvassing.

x x x x x x x x

4. That the aforementioned “Mass-affidavits” support our allegations in this affidavit-complaint that we and our supporters were prevented from attending the provincial canvassing because of the illegal checkpoint/blockade set-up by policemen in Nakagang, Tambingan, Sabangan, Mt. Province and as an evidence to these allegations, Certification of the Police Station is hereto attached as Annex “D” and affidavits of supporters hereto attached as Annex “E”, both made an integral part of this affidavit-complaint; and that said “mass-affidavits” show that the Provincial canvassing were not made public or (sic) candidates and their representatives/watchers prevented because of barricade, closure of canvassing rooms, blockade by armed policemen that coerce or threaten the people, the candidates or their representatives from attending the canvassing;[8]

In support of the complaint, several supporters of Malinias and Pilando executed so-called “mass affidavits” uniformly asserting that private respondents, among others, (1) prevented them from attending the provincial canvassing, (2) padlocked the canvassing area, and (3) threatened the people who wanted to enter the canvassing room. They likewise alleged that the Provincial Board of Canvassers never allowed the canvassing to be made public and consented to the exclusion of the public or representatives of other candidates except those of Dominguez.[9]

Consequently, the COMELEC’s Law Department conducted a preliminary investigation during which only Corpuz and Tangilag submitted their joint Counter-Affidavit.

In their Counter-Affidavit, Corpuz and Tangilag admitted ordering the setting up of a checkpoint at Nacagang, Sabangan, Mountain Province and securing the vicinity of the Provincial Capitol Building, to wit:

“3. We admit having ordered the setting up of check points in Nakagang, Tambingan, Sabangan, Mountain Province; as in fact, this is not the only checkpoint set up in the province. There are other checkpoints established in other parts of the province, to enforce the COMELEC gun ban and other pertinent rules issued by the Commission on Election during the election period.

x x x x x x x x

4. Policemen were posted within the vicinity of the capitol grounds in response to earlier information that some groups were out to disrupt the canvass proceedings which were being conducted in the second floor of the Provincial Capitol Building. This is not remote considering that this had happened in the past elections. In fact, during the canvass proceeding on May 15, 1998 a large group of individuals identified with no less than affiants-complainants Roy S. Pilando and Sario Malinias was conducting a rally just in front of the capitol, shouting invectives at certain candidates and their leaders. This group likewise were holding placards and posted some in front of the capitol building.

x x x x x x x x”[10]

After the investigation, in a study dated May 26, 1999, the COMELEC’s Law Department recommended to the COMELEC en banc the dismissal of the complaint for lack of probable cause.[11]

In a Resolution dated June 10, 1999, the COMELEC en banc dismissed the complaint of Malinias and Pilando for insufficiency of evidence to establish probable cause against private respondents. On October 26, 2000, the COMELEC dismissed Malinias’ Motion for Reconsideration.

Hence, Malinias filed the instant petition.

The Comelec’s Ruling

In dismissing the complaint against private respondents, the COMELEC ruled as follows:

“As appearing in the Minutes of Provincial Canvass, complainant Roy Pilando was present during the May 15, 1998 Provincial Canvass. He even participated actively in a discussion with the members of the Board and the counsel of Congressman Dominguez. The minutes also disclosed that the lawyers of LAMMP, the watchers, supporters of other candidates and representatives of the Integrated Bar of the Philippines were present at one time or another during the canvass proceedings. The minutes does not indicate any charges of irregularities inside and within the vicinity of the canvassing room.

Pursuant to Comelec Res. No. 2968 promulgated on January 7, 1998, checkpoints were established in the entire country to effectively implement the firearms ban during the election period from January 11, 1998 to June 10, 1998. In Mountain Province, there were fourteen (14) checkpoints established by the Philippine National Police way before the start of the campaign period for the May 11, 1998 elections including the subject checkpoint at Nacagang, Tambingan, Sabangan, Mountain Province. Thus, the checkpoint at Sabangan, Mountain Province was not established as alleged only upon request of Congressman Dominguez on May 15, 1998 but way before the commencement of the campaign period. Granting arguendo that the Congressman did make a request for a checkpoint at Sitio Nacagang, it would be a mere surplusage as the same was already existing.

Furthermore, an alleged text of a radio message requesting advice from the PNP Provincial Director at Bontoc, Mt. Province was attached to complainants’ affidavit-complaint. However, said person by the name of Mr. Palicos was never presented to affirm the truth of the contents and the signature appearing therein.”[12]

Finding that Malinias failed to adduce new evidence, the COMELEC dismissed Malinias’ Motion for Reconsideration.[13]

The Court’s Ruling

The sole issue for resolution is whether the COMELEC gravely abused its discretion in dismissing Malinias and Pilando’s complaint for insufficiency of evidence to establish probable cause for alleged violation of Section 25 of R.A. No. 6646 and Sections 232 and 261 (i) of B.P. 881.

We rule that the COMELEC did not commit grave abuse of discretion.

For this Court to issue the extraordinary writ of certiorari, the tribunal or administrative body must have issued the assailed decision, order or resolution in a capricious and despotic manner.

“There is grave abuse of discretion justifying the issuance of the writ of certiorari when there is a capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction; where the power is exercised in an arbitrary or despotic manner by reason of passion, prejudice, or personal hostility, amounting to an evasion of positive duty or to a virtual refusal to perform the duty enjoined, or to act at all in contemplation of law.”[14]

Such is not the situation in the instant case. The COMELEC dismissed properly the complaint of Malinias and Pilando for insufficient evidence, and committed no grave abuse of discretion amounting to lack or excess of jurisdiction.

First, Malinias charged private respondents with alleged violation of Section 25 of Republic Act No. 6646, quoted, as follows:

“Sec. 25. Right to be Present and to Counsel During the Canvass. – Any registered political party, coalition of parties, through their representatives, and any candidate has the right to be present and to counsel during the canvass of the election returns; Provided, That only one counsel may argue for each political party or candidate. They shall have the right to examine the returns being canvassed without touching them, make their observations thereon, and file their challenge in accordance with the rules and regulations of the Commission.

No dilatory action shall be allowed by the board of canvassers.”

In the present case, Malinias miserably failed to substantiate his claim that private respondents denied him his right to be present during the canvassing. There was even no showing that Malinias was within the vicinity of the Provincial Capitol Building or that private respondents prevented him from entering the canvassing room.

As found by the COMELEC and admitted by Malinias, Pilando was present and even participated actively in the canvassing.[15] Malinias failed to show that his rights as a gubernatorial candidate were prejudiced by the alleged failure of his supporters to attend the canvassing. Malinias claimed that even though Pilando was present during the canvassing, the latter was only able to enter the room after eluding the policemen and passing through the rear entrance of the Provincial Capitol Building.[16] This allegation, however, is not supported by any clear and convincing evidence. Pilando himself, who was purportedly prevented by policemen from entering the canvassing room, failed to attest to the veracity of this statement rendering the same self-serving and baseless.

In an analogous case where a political candidate’s watcher failed to attend the canvass proceedings, this Court held:

“Another matter which militates against the cause of petitioner is that he has not shown that he suffered prejudice because of the failure of his watcher to attend the canvassing. Had the watcher been present, what substantive issues would he have raised? Petitioner does not disclose. Could it be that even if the watcher was present, the result of the canvassing would have been the same?”

There is therefore no merit in petitioner’s claim that respondent Commission on Elections gravely abused its discretion in issuing its questioned decision. And, as emphatically stated in *Sidro v. Comelec*, 102 SCRA 853, this Court has invariably followed the principle that “in the absence of any jurisdictional infirmity or an error of law of the utmost gravity, the conclusion reached by the respondent Commission on a matter that falls within its competence is entitled to the utmost respect, xxx.” There is justification in this case to reiterate this principle.”[17]

Assuming that Pilando in fact entered the canvassing room only after successfully evading the policemen surrounding the Provincial Capitol grounds, Pilando could have easily complained of this alleged unlawful act during the canvass proceedings. He could have immediately reported the matter to the Provincial Board of Canvassers as a violation of Section 25 of R.A. No. 6646. However, Pilando opted simply to raise questions on alleged irregularities in the municipal canvassing.[18] While he had the opportunity to protest the alleged intimidation committed by policemen against his person, it is quite surprising that he never mentioned anything about it to the Provincial Board of Canvassers.

Surprisingly, the COMELEC and private respondents apparently overlooked that R.A. No. 6646 does not punish a violation of Section 25 of the law as a criminal election offense. Section 25 merely highlights one of the recognized rights of a political party or candidate during elections, aimed at providing an effective safeguard against fraud or irregularities in the canvassing of election returns. Section 27[19] of R.A. No. 6646, which specifies the election offenses punishable under this law, does not include Section 25.

Malinias further claims that, in violation of this right, his supporters were blocked by a checkpoint set-up at Nacagang, Sabangan, Mountain Province. This allegation is devoid of any basis to merit a reversal of the COMELEC’s ruling. Malinias’ supporters who were purportedly blocked by the checkpoint did not confirm or corroborate this allegation of Malinias.

Moreover, the police established checkpoints in the entire country to implement the firearms ban during the election period. Clearly, this is in consonance with the constitutionally ordained power of the COMELEC to deputize government agencies and instrumentalities of the Government for the exclusive purpose of ensuring free,

orderly, honest, peaceful and credible elections.[20]

Second, Malinias maintains that Corpuz and Tangilag entered the canvassing room in blatant violation of Section 232 of B.P. Blg. 881. His sole basis for this allegation is the affidavit of his supporters who expressly stated that they saw Dominguez and Corpuz (only) enter the canvassing room.[21] Malinias likewise contends that “Corpuz and Tangilag impliedly admitted that they were inside or at least within the fifty (50) meter radius of the canvassing room as they were able to mention the names of the persons who were inside the canvassing room in their Counter-Affidavit.”[22]

The provision of law which Corpuz and Tangilag allegedly violated is quoted as follows:

“Sec. 232. Persons not allowed inside the canvassing room. – It shall be unlawful for any officer or member of the Armed Forces of the Philippines, including the Philippine Constabulary, or the Integrated National Police or any peace officer or any armed or unarmed persons belonging to an extra-legal police agency, special forces, reaction forces, strike forces, home defense forces, barangay self-defense units, barangay tanod, or of any member of the security or police organizations or government ministries, commissions, councils, bureaus, offices, instrumentalities, or government-owned or controlled corporation or their subsidiaries or of any member of a privately owned or operated security, investigative, protective or intelligence agency performing identical or similar functions to enter the room where the canvassing of the election returns are held by the board of canvassers and within a radius of fifty meters from such room: Provided, however, That the board of canvassers by a majority vote, if it deems necessary, may make a call in writing for the detail of policemen or any peace officers for their protection or for the protection of the election documents and paraphernalia in the possession of the board, or for the maintenance of peace and order, in which case said policemen or peace officers, who shall be in proper uniform, shall stay outside the room within a radius of thirty meters near enough to be easily called by the board of canvassers at any time.”

Again, the COMELEC and private respondents overlooked that Section 232 of B.P. Blg. 881 is not one of the election offenses explicitly enumerated in Sections 261 and 262 of B.P. Blg. 881. While Section 232 categorically states that it is unlawful for the persons referred therein to enter the canvassing room, this act is not one of the election offenses criminally punishable under Sections 261 and 262 of B.P. Blg. 881. Thus, the act involved in Section 232 of B.P. Blg. 881 is not punishable as a criminal election offense. Section 264 of B.P. Blg. 881 provides that the penalty for an election offense under Sections 261 and 262 is imprisonment of not less than one year but not more than six years.

Under the rule of statutory construction of *expressio unius est exclusio alterius*, there is no ground to order the COMELEC to prosecute private respondents for alleged violation of Section 232 of B.P. Blg. 881 precisely because this is a non-criminal act.

“It is a settled rule of statutory construction that the express mention of one person, thing, or consequence implies the exclusion of all others. The rule is expressed in the familiar maxim, *expressio unius est exclusio alterius*.

The rule of *expressio unius est exclusio alterius* is formulated in a number of ways. One variation of the rule is the principle that what is expressed puts an end to that which is implied. *Expressum facit cessare tacitum*. Thus, where a statute, by its terms, is expressly limited to certain matters, it may not, by interpretation or construction, be extended to other matters.

x x x x x x x x

The rule of *expressio unius est exclusio alterius* and its variations are canons of restrictive interpretation. They are based on the rules of logic and the natural workings of the human mind. They are predicated upon one's own voluntary act and not upon that of others. They proceed from the premise that the legislature would not

have made specified enumeration in a statute had the intention been not to restrict its meaning and confine its terms to those expressly mentioned.”[23]

Also, since private respondents are being charged with a criminal offense, a strict interpretation in favor of private respondents is required in determining whether the acts mentioned in Section 232 are criminally punishable under Sections 261[24] and 262[25] of B.P. Blg. 881. Since Sections 261 and 262, which lists the election offenses punishable as crimes, do not include Section 232, a strict interpretation means that private respondents cannot be held criminally liable for violation of Section 232.

This is not to say that a violation of Section 232 of B.P. Blg. 881 is without any sanction. Though not a criminal election offense, a violation of Section 232 certainly warrants, after proper hearing, the imposition of administrative penalties. Under Section 2, Article IX-C of the Constitution, the COMELEC may recommend to the President the imposition of disciplinary action on any officer or employee the COMELEC has deputized for violation of its directive, order or decision.[26] Also, under the Revised Administrative Code,[27] the COMELEC may recommend to the proper authority the suspension or removal of any government official or employee found guilty of violation of election laws or failure to comply with COMELEC orders or rulings.

In addition, a careful examination of the evidence presented by Malinias shows that the same are insufficient to justify a finding of grave abuse of discretion on the part of the COMELEC. Obviously, the evidence relied upon by Malinias to support his charges consisted mainly of affidavits prepared by his own supporters. The affidavits of Malinias’ own supporters, being self-serving, cannot be accepted at face value under the circumstances. As this Court has often stated, “reliance should not be placed on mere affidavits.”[28]

Besides, if Corpuz really entered the canvassing room, then why did Pilando and the representatives of other candidates, who were inside the room, fail to question this alleged wrongful act during the canvassing? Malinias’ contention that Corpuz and Tangilag impliedly admitted they were inside the canvassing room because they mentioned the names of the persons present during the canvassing deserves scant consideration as the same is not supported by any evidence.

Finally, Malinias asserts that private respondents should be held liable for allegedly violating Section 261 (i) of B. P. Blg. 881 because the latter engaged in partisan political activity. This provision states:

“Sec. 261 (i) Intervention of public officers and employees. – Any officer or employee in the civil service, except those holding political offices; any officer, employee, or member of the Armed Forces of the Philippines, or any police force, special forces, home defense forces, barangay self-defense units and all other para-military units that now exist or which may hereafter be organized who, directly or indirectly, intervenes in any election campaign or engages in any partisan political activity, except to vote or to preserve public order, if he is a peace officer.”

Section 79, Article X of B.P. Blg. 881 defines the term “partisan political activity” as an act designed to promote the election or defeat of a particular candidate or candidates to a public office.”[29] Malinias asserts that, in setting up a checkpoint at Nacagang, Tambingan, Sabangan, Mountain Province and in closing the canvassing room, Corpuz and Tangilag unduly interfered with his right to be present and to counsel during the canvassing. This interference allegedly favored the other candidate.

While Corpuz and Tangilag admitted ordering the setting up of the checkpoint, they did so to enforce the COMELEC’s firearms ban, pursuant to COMELEC Resolution No. 2968, among others.[30] There was no clear indication that these police officers, in ordering the setting up of checkpoint, intended to favor the other candidates. Neither was there proof to show that Corpuz and Tangilag unreasonably exceeded their authority in implementing the COMELEC rules. Further, there is no basis to rule that private respondents arbitrarily deprived

Malinias of his right to be present and to counsel during the canvassing.

The act of Corpuz and Tangilag in setting up the checkpoint was plainly in accordance with their avowed duty to maintain effectively peace and order within the vicinity of the canvassing site. Thus, the act is untainted with any color of political activity. There was also no showing that the alleged closure of the provincial capitol grounds favored the election of the other candidates.

In summary, we find that there is no proof that the COMELEC issued the assailed resolutions with grave abuse of discretion. We add that this Court has limited power to review findings of fact made by the COMELEC pursuant to its constitutional authority to investigate and prosecute actions for election offenses.[31] Thus, where there is no proof of grave abuse of discretion, arbitrariness, fraud or error of law, this Court may not review the factual findings of the COMELEC, nor substitute its own findings on the sufficiency of evidence.[32]

WHEREFORE, the instant Petition is DISMISSED. The assailed Resolutions of public respondent COMELEC are AFFIRMED. Costs against petitioner.

SO ORDERED.

Bellosillo, Acting C.J., Puno, Vitug, Panganiban, Quisumbing, Ynares-Santiago, Austria-Martinez, Corona, Carpio-Morales, and Callejo, Sr., JJ., concur.

Davide, Jr., C.J., Mendoza, and Sandoval-Gutierrez, JJ., on official leave.

[1] Since the instant petition is grounded on grave abuse of discretion on the part of COMELEC, the same is considered as a Petition for Certiorari under Rule 65 of the Rules of Court pursuant to Section 2 of Rule 64.

[2] Composed of Harriet O. Demetriou as Chairperson with Manolo B. Gorospe, Luzviminda G. Tancangco, Teresita Dy-Liacó Flores, Japal M. Guiani and Julio F. Desamito as Commissioners.

[3] Docketed as E.O. 98-262.

[4] Otherwise known as The Electoral Reforms Law.

[5] Otherwise known as The Omnibus Election Code.

[6] Rollo, p. 17.

[7] Ibid., pp. 61-72.

[8] Rollo, pp. 17-18.

[9] Ibid., pp. 19-24.

[10] Ibid., pp. 25-26.

[11] Rollo, p. 14.

[12] Rollo, pp. 14-16.

[13] Ibid., pp. 12-13.

[14] People vs. Marave, 11 SCRA 618 (1964).

[15] Rollo, pp. 15, 32-33.

[16] Rollo, p. 32.

[17] *Quilala vs. Commission on Elections*, 188 SCRA 502 (1990).

[18] *Rollo*, pp. 73-79.

[19] Section 27 of R.A. No. 6646 provides as follows: “Election Offenses. – In addition to the prohibited acts and election offenses enumerated in Section 261 and 262 of Batas Pambansa Blg. 881, as amended, the following shall be guilty of an election offense:

(a) Any person who causes the printing of official ballots and election returns by any printing establishment which is not under contract with the Commission on Election and any printing establishment which undertakes such unauthorized printing.

(b) Any member of the board of election inspectors or board of canvassers who tampers, increases, or decreases the votes received by a candidate in any election or any member of the board who refuses, after proper verification and hearing, to credit the correct votes or deduct such tampered votes.

(c) Any member of the board of election inspectors who refuses to issue to duly accredited watchers the certificate of voters provided in Section 16 hereof.

(d) Any person who violates Section 11 hereof regarding prohibited forms of election propaganda. Any chairman of the board of canvassers who fails to give notice of meetings to other members of the board, candidate or political party as required under Section 23 hereof.

(e) Any person declared a nuisance candidate as defined under Section 69 of Batas Pambansa Blg. 881, or is otherwise disqualified, by final and executory judgment, who continues to misrepresent himself out, as a candidate, such as by continuing to campaign thereafter, and/or other public officer or private individual, who knowingly induces or abets such misrepresentation, by commission or omission, shall be guilty of an election offense and subject to the penalty provided in Section 262 of the same code.

[20] See Section 2, Article IX-C of the 1987 Constitution.

[21] *Rollo*, p. 23.

[22] *Petition*, pp. 7-8.

[23] *Ruben E. Agpalo*, *Statutory Construction*, (1990), pp. 160-161, citing the cases of *Canlas vs. Republic*, 103 Phil. 712 (1958); *Lao Oh Kim vs. Reyes*, 103 Phil. 1139 (1958); *People vs. Aquino*, 83 Phil. 614 (1949); *Escribano vs. Avila*, 85 SCRA 245 (1978); *People vs. Lantin*, 30 SCRA 81 (1969); *Manila Lodge No. 761 vs. Court of Appeals*, 73 SCRA 162 (1976); *Santos vs. Court of Appeals*, 96 SCRA 448 (1980); *Lerum vs. Cruz*, 87 Phil. 652 (1950); *Velasco vs. Blas*, 115 SCRA 540 (1982).

[24] See Section 261 of B.P. Blg. 881.

[25] Section 262 of B.P. Blg. 881 provides as follows: “Other election offenses. — Violation of the provisions, or pertinent portions, of the following sections of this Code shall constitute election offenses: Sections 9, 18, 74, 75, 76, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106 107, 108, 109, 110, 111, 112, 122, 123, 127, 128, 129, 132, 134, 135, 145, 148, 150, 152, 172, 173, 174, 178, 180, 182, 184, 185, 186, 189, 190, 191, 192, 194, 195, 196, 197, 198, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 223, 229, 230, 231, 233, 234, 235, 236, 239 and 240.”

[26] See *People vs. Basilla*, 179 SCRA 87 (1989).

[27] See Section 2 (3), Title I (C), Executive Order No. 292.

[28] *Casimiro vs. Commission on Elections*, 171 SCRA 468 (1989) citing *Pimentel, Jr. vs. COMELEC*, 140

SCRA 126 (1985).

[29] See Section 79 of B.P. Blg. 881.

[30] Rollo, pp. 15-16.

[31] Section 2 (6), Art. IX-C of the 1987 Philippine Constitution.

[32] Domingo vs. Commission on Elections, 313 SCRA 311 (1999).

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