

ENGINEER LEONARDO C. LEYALEY, PETITIONER, VS. COMMISSION ON ELECTIONS, SARIO N. MALINIAS AND TONY OPPAS, RESPONDENTS.

G.R. NO. 160061. October 11, 2006

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

This resolves the petition for certiorari under Rule 65 in relation to Rule 64 of the 1997 Rules of Civil Procedure assailing two Resolutions of the Commission on Elections En Banc (Comelec En Banc) dated June 13, 2000 and September 11, 2003.

The undisputed facts, as set out in the COMELEC En Banc Resolution dated June 13, 2000, are as follows:

The respondent Leonardo C. Leyaley is the OIC, District Engineer, Mountain Province Engineering District, Bontoc, Mountain Province. In connection with the 11 May 1998 national and local elections, he was indicted for violation of Section 261 (v) of B.P. Blg. 881, otherwise known as the "Omnibus Election Code of the Philippines." In their affidavit-complaint, the complainants Sario M. Malinias and Tony Oppas allege: That we learned that the Department of Public Works and Highways, Regional Office released to the District Engineer of Mountain Province Engineering District, the amount of FOURTEEN MILLION EIGHT HUNDRED FIVE THOUSAND (P14,805,000.00) PESOS both on May 6, 1998. x x x

That the foregoing amount were allegedly disbursed by the Mountain Province Engineering District, Department of Public Works and Highways on ELECTION PERIOD by O.I.C. District Engineer, Leonardo C. Leyaley;

That we believe that disbursement of Government funds on election period is prohibited by law;

x x x x

The respondent denied the allegations of the complainants. Thus, in his counter-affidavit he said:

I strongly and vehemently deny any liability to the above-stated charges as contained in paragraphs 1 and 2 of the Affidavit-Complaint of Sario Malinias and Tony Oppas.

x x x x

The undersigned counter-affidavit (sic) respectfully maintains his innocence of the election offence (sic) or offences (sic) being imputed against him. The above-stated amounts which were allegedly released to the Mountain Province Engineering District, and disbursed by him in his capacity as officer-in-charge of the said district office are covered by the exemption as above-stated. While the said amounts of money happened to be release during the election period, the same were used in payment of projects which were awarded after a public bidding before the effectivity of the election ban, forty-five days before May 11, 1998 (Attached hereby are copies of the letters of award). [Emphasis supplied]

Aware of the existence of several projects which were awarded as far back as in 1997 and in 1998, and in line

with the government policy of fast-tracking completion of government projects, your counter-affiant requested for an exemption from the Regional Director, COMELEC-CAR and the same was granted. x x x

For all the foregoing reasons, your counter-affiant humbly believes that the election ban as stated in paragraph 3 of the affidavit-complaint does not apply to the alleged payment or disbursement made by the district office for which I am being charge [sic]. Counter-affiant also prays that the request of affiants-complainants for investigation and filing of a case be denied and that the above-entitled case be dismissed."

Thereafter, the complainants filed a reply to the respondent's counter-affidavit, while the respondent filed a rejoinder thereto, after which, the parties submitted with the Law Department their respective memoranda.

On 12 November 1999, the Law Department rendered a resolution, the dispositive portion of which reads as follows:

PREMISES CONSIDERED, the Law Department (Investigation and Prosecution Division), RECOMMENDS to dismiss the complaint of Sario M. Malinias and Tony Oppas against Leonardo C. Leyaley for insufficiency of evidence to establish probable cause for violation of Section 261 (v) of the Omnibus Election Code, and that the parties be notified accordingly.[1]

The COMELEC En Banc disapproved the recommendation of the Law Department, reasoning as follows:

As a rule, the release, disbursement or expenditure of public funds within the forty-five (45) days before a regular election and thirty (30) days before a special election, for any and all kinds of public works is prohibited by law. x x x There are, however, exceptions to this rule, one of which is that, when the work undertaken is by contract through public bidding. However, under this exception, work undertaken by "takay" or "paquiao" system are not considered as work contract. Thus, Section 261 (v) of the Omnibus Election Code provides as follows: Sec. 261. Prohibited Acts. — The following shall be guilty of an election offense:

x x x x

(v) Prohibition against release, disbursement or expenditure of public funds. — Any public official or employee including barangay officials and those of government-owned or controlled corporations and their subsidiaries, who, during forty-five days before a regular election and thirty days before a special election, releases, disburses or expends any public funds for:

(1)

Any and all kinds of public works, except:

(a) Work undertaken by contract through public bidding held, or by negotiated contract awarded, before the forty-five day period before election: Provided, That work for the purpose of this section undertaken under the so called 'takay' or 'paquiao' system shall not be considered as work contract.

In the present case, the public works projects involved herein were undertaken under the "takay" or "paquiao" system. The Law Department, however, said that "strictly speaking" they are not paquiao projects because they "were first subjected to public bidding" before they "were awarded to the party who tendered a bid that is most advantageous to the government." This is untenable. Section 261(v) of the Omnibus Election Code, explicitly provides that "work for the purpose of this section undertaken under the so called "takay" or "paquiao" system shall not be considered as work contract." Hence, the mere fact that respondent conducted a public bidding before awarding the public works projects to the successful bidders did not change the nature of the work performed under those projects as "work undertaken under the "takay" or "paquiao" system. They cannot be considered as "work undertaken by contract through public bidding" because under the Code, they are NOT work contracts. Otherwise, the prohibition against the release and disbursement of public funds in payment of work undertaken by

the "takay" or "paquiao" system could easily be defeated by simply holding a public bidding.

Besides, the exemption under the penultimate paragraph of Sec. 261(v) of the Omnibus Election Code is applicable only to "ongoing public works projects commenced before the campaign period." The public works projects in the present case were ALREADY COMPLETED on 29 January 1998, i.e., before the campaign period. Hence, they are no longer "ongoing public works projects." It follows that the exemption provided in the law is inapplicable in this case.

The Law Department further held that respondent applied for exemption from the aforesaid legal prohibition which was granted by the Office of the Regional Director, Cordillera Administrative Region, Baguio City. In this connection, it would suffice to state that the exemption granted by the said office was "for exemption from the Public Works Ban" and not from the prohibition against the release, disbursement or expenditure to public funds.

X X X X

The respondent herein was charged for having violated the provision of paragraph (v) and not for violation of the provision of paragraph (w) of Section 261 of the Code. Hence, respondent cannot take refuge under the alleged exemption granted by the Regional Director, Cordillera Administrative Region, Baguio City.[2] (Emphasis supplied)

with the following dispositive portion:

ACCORDINGLY, the resolution of the Law Department dated 12 November 1999 is hereby REVERSED and SET ASIDE. The Law Department is directed to file with the proper Regional Trial Court the necessary criminal information for violation of Section 261 (v) of the Omnibus Election Code of the Philippines against the respondent Leonardo C. Leyaley.

SO ORDERED.

Herein petitioner moved for reconsideration of the foregoing Resolution but on September 11, 2003, the COMELEC En Banc issued the second assailed Resolution affirming the Resolution dated June 13, 2000.

Hence, this petition for certiorari where petitioner alleges that the COMELEC En Banc erred in (1) not holding that the paquiao or takay projects which were awarded after public bidding are exempted from the election ban; (2) not holding that projects which were already completed are included in the exemption of "ongoing public works projects commenced before the campaign period" under Section 261 (v) of the Omnibus Election Code; and (3) finding that the exemption granted by the COMELEC-CAR was only for the prohibition against construction of public works and not exemption from the prohibition against the release, disbursement or expenditure of public funds.

At the outset, the Court sees it fit to reiterate the well-settled rule, that "unless the COMELEC is shown to have committed grave abuse of discretion, its decision will not be interfered with by this Court." [3] Thus, for certiorari to prosper, it must be shown that there was a capricious, arbitrary and whimsical exercise of power committed by public respondent. [4]

The present petition, however, does not contain allegations, nor is there any evidence shown to prove that the COMELEC acted in such manner. All of petitioner's arguments are geared mainly towards convincing this Court that there is a flaw in the COMELEC En Banc's interpretation of Section 261 (v) of the Omnibus Election Code. Petitioner merely argues that although, admittedly, the projects for which disbursements were made were paquiao or takay projects, the same were awarded after a public bidding, hence, such projects should come under the exception for "work undertaken by contract through public bidding held" under Section 261 (v) (1) (a) of the

Omnibus Election Code.

An examination of the assailed Resolutions of the COMELEC En Banc shows that its conclusion - that there is probable cause to justify the filing of an Information against petitioner - is supported by logical reasoning and firmly based on the wordings of the provisions of Section 261 (v) of the Omnibus Election Code. Thus, the Court sees no grave abuse of discretion amounting to lack of jurisdiction on the part of the COMELEC.

Note, further, that the function of the remedy of certiorari is very limited. In *People v. Court of Appeals*,^[5] the Court expounded thus:

As observed in *Land Bank of the Philippines v. Court of Appeals, et al.* "the special civil action for certiorari is a remedy designed for the correction of errors of jurisdiction and not errors of judgment. The *raison d'être* for the rule is when a court exercises its jurisdiction, an error committed while so engaged does not deprive it of the jurisdiction being exercised when the error is committed. If it did, every error committed by a court would deprive it of its jurisdiction and every erroneous judgment would be a void judgment. In such a scenario, the administration of justice would not survive. Hence, where the issue or question involved affects the wisdom or legal soundness of the decision - not the jurisdiction of the court to render said decision - the same is beyond the province of a special civil action for certiorari. x x x^[6] (Emphasis supplied)

The issues raised in the case at bar involve only possible errors of judgment, questioning the correctness of the COMELEC's rulings on whether paquiao or takay projects that were awarded through public bidding should be exempted from the election ban; and whether the exemption granted by the COMELEC-CAR did not cover the ban on the release, disbursement or expenditure of public funds. Thus, since it is not the jurisdiction of the COMELEC that is being questioned, the case is not a proper subject of certiorari proceedings.

Moreover, it appears on record that on January 29, 2004, pursuant to COMELEC En Banc Resolution dated September 11, 2003, two Informations^[7] against petitioner had already been filed with the Regional Trial Court of Bontoc, Mountain Province (RTC), involving the very same charges subject of the present petition. In *People v. Odilao*,^[8] the Court reiterated the rule set forth in *Crespo v. Mogul*,^[9] to wit:

The preliminary investigation conducted by the fiscal [in this case, the COMELEC] for the purpose of determining whether a *prima facie* case exists warranting the prosecution of the accused is terminated upon the filing of the information in the proper court. In turn, as above stated, the filing of said information sets in motion the criminal action against the accused in Court. Should the fiscal find it proper to conduct a reinvestigation of the case, at such stage, the permission of the Court must be secured. After such reinvestigation the finding and recommendations of the fiscal should be submitted to the Court for appropriate action. x x x once the case had already been brought to Court whatever disposition the fiscal may feel should be proper in the case thereafter should be addressed for the consideration of the Court. x x x

Whether the accused had been arraigned or not and whether it was due to a reinvestigation by the fiscal or a review by the Secretary of Justice whereby a motion to dismiss was submitted to the Court, the Court in the exercise of its discretion may grant the motion or deny it and require that the trial on the merits proceed for the proper determination of the case.

The rule therefore in this jurisdiction is that once a complaint or information is filed in Court any disposition of the case as its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the Court. Although the fiscal retains the direction and control of the prosecution of criminal cases even while the case is already in Court he cannot impose his opinion on the trial court. The Court is the best and sole judge on what to do with the case before it. The determination of the case is within its exclusive jurisdiction and competence. A motion to dismiss the case filed by the fiscal should be addressed to the Court who has the option to grant or deny the same. It does not matter if this is done before or after the arraignment of the accused or that the motion was filed after a reinvestigation or upon instructions of the Secretary of Justice who reviewed the

records of the investigation.[10] (Emphasis supplied)

The foregoing ruling is aptly applicable to this case. The petition merely seeks the review of the COMELEC's finding of probable cause against petitioner. Since the criminal action against petitioner had been commenced with the filing of the Informations, this petition has then been rendered moot and academic, as the proper disposition of said criminal cases is now within the exclusive jurisdiction of the RTC.

WHEREFORE, the petition is DISMISSED.

No costs.

SO ORDERED.

Panganiban, C.J., Puno, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Corona, Carpio-Morales, Callejo, Sr., Azcuna, Tinga, Chico-Nazario, Garcia, and Velasco, Jr., JJ., concur.

[1] Rollo, pp. 47-49.

[2] Rollo, pp. 51-54.

[3] Sarangani v. Commission on Elections, G.R. Nos. 155560-62, November 11, 2003, 415 SCRA 614, 623.

[4] Barbers v. Commission on Elections, G.R. No. 165691, June 22, 2005, 460 SCRA 569, 581.

[5] G.R. No. 142051, February 24, 2004, 423 SCRA 605.

[6] Id. at 613.

[7] Informations for Crim. Case No. 1810 and Crim. Case No. 1811, Records, pp. 407-410

[8] G.R. No. 155451, April 14, 2004, 427 SCRA 622.

[9] No. L-53373, June 30, 1987, 151 SCRA 462.

[10] Note 8 at 629-630.

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