

**ROBERTO ALBAÑA, KATHERINE BELO, GENEROSO DERRAMAS,
VICENTE DURAN, RICARDO ARAQUE, LILIA ARANAS, MERLINDA
DEGALA, GABRIEL ARANAS, ERNESTO BITO-ON AND JUVIC
DESLATE, PETITIONERS, ...**

G.R. No. 163302. July 23, 2004

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Before us is a Petition for Certiorari and Prohibition for the nullification of the Resolution of the Commission on Elections (COMELEC), First Division, dated October 21, 2003 annulling the proclamation of the petitioners as the duly-elected municipal officials of Panitan, Capiz, during the May 14, 2001 elections, and the Resolution of the COMELEC En Banc dated May 5, 2004, denying their motion for reconsideration. The petitioners aver that the public respondent committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the assailed resolutions.

The Antecedents

During the May 14, 2001 elections, the petitioners and private respondents ran for the positions of Mayor, Vice-Mayor and Members of the Sangguniang Bayan in the Municipality of Panitan, Capiz. On May 18, 2001, the petitioners were duly elected and proclaimed winners to the following positions:

- Roberto Albaña – Mayor
- Katherine Belo – Vice-Mayor
- Generoso Derramas – Member of the Sang[g]uniang Bayan (SB)
- Vicente Duran – Member of the SB
- Ricardo Araque – Member of the SB
- Lilia Aranas – Member of the SB
- Merlinda Degala – Member of the SB
- Gabriel Aranas – Member of the SB
- Ernesto Bito-on – Member of the SB
- Juvic Deslate – Member of the SB[1]

On June 23, 2001, the private respondents filed a complaint against the petitioners with the COMELEC Law Department, alleging that the latter committed acts of terrorism punishable by Section 261(e)[2] of the Omnibus Election Code, and engaged in vote-buying, punishable under Section 261(a)[3] of the Omnibus Election Code. The private respondents prayed that the petitioners be charged of the said crimes and disqualified from holding

office under Section 68[4] of the said Code, and Section 6[5] of Republic Act No. 6646. The case was docketed as Election Offense Case No. 01-111.

The Law Department of the COMELEC found a prima facie case and issued a Resolution on January 15, 2002, recommending the filing of an Information against the petitioners for violation of Section 261(e) of the Omnibus Election Code, in relation to Section 28 of Republic Act No. 6648. It, likewise, recommended the disqualification of all the petitioners from further holding office, and the reconvening of the Municipal Board of Canvassers (MBC) in order to proclaim the qualified candidates who obtained the highest number of votes.[6]

Acting on the said resolution, the COMELEC En Banc issued, on February 28, 2003, a Resolution directing its Law Department to file the appropriate Information against the petitioners for violation of Section 261(e) of the Omnibus Election Code and directing the Clerk of the Commission to docket the electoral aspect of the complaint as a disqualification case. The dispositive portion reads:

IN VIEW OF THE FOREGOING, We DIRECT the LAW DEPARTMENT to FILE THE NECESSARY INFORMATION against ROBERTO ALBAÑA, KATHERINE BELO, GENEROSO DERRAMAS, VICENTE DURAN, RICARDO ARAQUE, LILIA ARANAS, MERLINDA DEGALA, GABRIEL ARANAS, ERNESTO BITO-ON and JUVIC DESLATE before a court of competent jurisdiction.

The Clerk of the Commission is likewise directed to docket the electoral aspect of the complaint as a disqualification case and immediately assign the same to a division which shall resolve the case on the basis of the recommendation of the Law Department.[7]

The petitioners filed a motion for reconsideration[8] thereon, alleging that the COMELEC did not make any findings of fact in its resolution, and that there was even no disquisition as to the merits of the affidavits of their witnesses and the evidence presented by them. The petitioners also alleged that the COMELEC erred in ordering the docketing of the electoral aspect of the complaint, in light of Section 2 of COMELEC Resolution No. 2050.

On June 3, 2003, the COMELEC issued a Resolution[9] denying the said motion for lack of merit and for having been filed out of time. The Clerk of the Commission docketed the disqualification case against the petitioners as SPA No. 03-006.

On October 21, 2003, the COMELEC First Division rendered the assailed resolution in SPA No. 03-006 annulling the petitioners' proclamation on the ground that they violated Section 261(a) and (e) of the Omnibus Election Code, and directing the election officer of Panitan to constitute a new municipal board of canvassers, thus:

WHEREFORE, in view of the foregoing, the proclamation of respondents Roberto Albaña, Katherine Belo, Generoso Derramas, Vicente Duran, Ricardo Araque, Lilia Aranas, Merlinda Degala, Gabriel Aranas, Ernesto Bito-on and Juvic Deslate as Mayor, Vice-Mayor and members of the Sangguniang Bayan of Panitan, Capiz, are hereby annulled on the ground that they committed election offenses as provided for under Section 261 (a) of the Omnibus Election Code in relation to Section 28 of RA 6646 and Section 261 (e) of the same Code in relation to Section 68 thereof. The Election Officer of the municipality of Panitan is hereby directed to constitute a new Municipal Board of Canvassers which shall disregard the votes garnered by the respondents, prepare a new Certificate of Canvass on the basis of the votes of the candidates for the position held by the respondents to the exclusion of the latter and immediately, proclaim the winners.

SO ORDERED.[10]

The petitioners' motion for reconsideration and supplement to the motion for reconsideration were denied by the COMELEC En Banc in the Resolution of May 5, 2004, declaring that the disqualification case was the result of the findings of the Commission En Banc. It also held that as an aftermath of petitioners' violation of Section 261(e) in relation to Section 68 of the Omnibus Election Code, they are considered disqualified candidates and,

therefore, the votes they received are deemed stray votes.[11] Commissioners Mehol K. Sadain and Florentino A. Tuason, Jr. filed separate dissenting opinions.

On the same day, the private respondents moved for the execution pending appeal of the assailed resolutions on the ground that decisions on election contests rendered by the COMELEC may be executed pending appeal for good reasons. They contended that a good reason existed in this case, considering that their terms of office were about to expire.[12]

The Present Petition

On May 13, 2004, the petitioners filed this Petition for Certiorari and Prohibition with Application for a Temporary Restraining Order (TRO) or a Writ of Preliminary Injunction seeking to nullify the two Resolutions dated October 21, 2003 and May 5, 2004. Since the Court did not issue a temporary restraining order, the COMELEC declared the assailed Resolutions as final and executory and directed the Regional Election Director to implement the same in an Order dated May 27, 2004.[13]

On June 1, 2004, the Municipal Election Officer issued a Notice to the Members of the Municipal Board of Canvassers informing them that the Board shall convene on June 8, 2004.[14] On June 10, 2004, the Municipal Board of Canvassers proclaimed the private respondents as the winners in the May 14, 2001 elections, with Pio Jude S. Belo as Mayor, Rodolfo Deocampo as Vice-Mayor and Lorencito B. Diaz as a Member of the Sangguniang Bayan.[15]

The threshold issues raised by the parties in this case are the following: (a) whether the petition was mooted by the election and proclamation of the new set of municipal officials after the May 10, 2004 elections; and, (b) if in the negative, whether the COMELEC committed a grave abuse of discretion amounting to excess or lack of jurisdiction in issuing the assailed resolutions.

The Ruling of the Court

On the first issue, we agree with the COMELEC that the petition for the nullification of its October 21, 2003 and May 5, 2004 Resolutions and the proclamation of the private respondents on June 10, 2004 was mooted by the election and proclamation of a new set of municipal officials after the May 10, 2004 elections. In fact, the records show that petitioner Katherine Belo was elected as Mayor, petitioner Generoso Derramas as Vice-Mayor, and petitioners Ricardo Araque and Ernesto Bito-on as members of the Sangguniang Bayan. The expiration of the challenged term of the offices renders the corresponding petition moot and academic.[16]

Where the issues have become moot and academic, there is no justiciable controversy, thereby rendering the resolution of the same of no practical use or value.[17] Nonetheless, courts will decide a question otherwise moot and academic if it is capable of repetition, yet evading review.[18] In this case, we find it necessary to resolve the issues raised in the petition in order to prevent a repetition thereof and, thus, enhance free, orderly, and peaceful elections. For this reason, we resolve to grant the petition.

On the second issue, the petitioners aver that since they were already proclaimed the duly-elected municipal officials of Panitan, Capiz, on May 18, 2001, the COMELEC should have dismissed the complaint for their disqualification which the private respondents filed only on June 23, 2001, more than a month after such proclamation. They aver that such dismissal was mandated by Section 2 of COMELEC Resolution No. 2050, adopted on November 3, 1988, which reads:

- Any complaint for disqualification based on Section 68 of the Omnibus Election Code in relation to Section 6 of Rep. Act No. 6646 filed after the election against a candidate who has already been proclaimed as winner shall be dismissed as a disqualification case. However, the complainant shall be referred for preliminary

investigation to the Law Department of the commission.

Where a similar complaint is filed after election but before proclamation of the respondent candidate, the complaint shall, nevertheless, be dismissed as a disqualification case. However, the complaint shall be referred for preliminary investigation to the Law Department. If, before proclamation, the Law Department makes a prima facie finding of guilt and the corresponding information has been filed with the appropriate trial court, the complainant may file a petition for suspension of the proclamation of the respondent with the court before which the criminal case is pending and the said court may order the suspension of the proclamation if the evidence of guilt is strong. (Emphasis supplied)

The petitioners cite the ruling of this Court in *Bagatsing vs. COMELEC*,^[19] and the dissenting opinion of Commissioner Mehol Sadain, that after the COMELEC directed its Law Department on February 28, 2003 to file the appropriate Informations against the petitioners for violations of Section 261(a) and (e) of the Omnibus Election Code, it should have refrained from making a finding of disqualification before the petitioners' conviction by final judgment, since by so doing, the COMELEC preempted the decision of the trial court.

The Office of the Solicitor General, for its part, asserts that the petition at bar, considering the petitioners' plea for a writ of preliminary injunction, was designed to eschew criminal prosecution for violation of Section 261(a)(e) of the Omnibus Election Code.

We rule for the petitioners.

Section 2 of COMELEC Resolution No. 2050 is as clear as day: the COMELEC is mandated to dismiss a complaint for the disqualification of a candidate who has been charged with an election offense but who has already been proclaimed as winner by the Municipal Board of Canvassers. COMELEC Resolution No. 2050 specifically mandates a definite policy and procedure for disqualification cases;^[20] hence, should be applied and given effect. In *Bagatsing vs. Commission on Election*,^[21] this Court ruled that a complaint for disqualification filed after the election against a candidate before or after his proclamation as winner shall be dismissed by the COMELEC, viz:

Second, as laid down in paragraph 2, a complaint for disqualification filed after the election against a candidate (a) who has not yet been proclaimed as winner, or (b) who has already been proclaimed as winner. In both cases, the complaint shall be dismissed as a disqualification case but shall be referred to the Law Department of the COMELEC for preliminary investigation. ...

...

In sharp contrast, the complaint for disqualification against private respondent in the case at bar was lodged on May 18, 1998 or seven (7) days after the 1998 elections. Pursuant to paragraph 2 of Resolution No. 2050, the complaint shall be dismissed as a disqualification case and shall be referred for preliminary investigation to the Law Department of the COMELEC. Under this scenario, the complaint for disqualification is filed after the election which may be either before or after the proclamation of the respondent candidate.^[22]

It bears stressing that Resolution No. 2050 was approved precisely because of the variance in opinions of the members of the respondent COMELEC on matters of procedure in dealing with and evaluating cases for disqualification filed under Section 68 of the Omnibus Election Code in relation to Section 6 of Rep. Act No. 6646.^[23]

Under the said resolution, if a complaint is filed with the COMELEC against a candidate who has already been proclaimed winner, charging an election offense under Section 261 of the Omnibus Election Code, as amended by Rep. Act Nos. 6646 and 8436, and praying for the disqualification of the said candidate, the COMELEC shall determine the existence of probable cause^[24] for the filing of an Information against the candidate for the

election offense charged. However, if the COMELEC finds no probable cause, it is mandated to dismiss the complaint for the disqualification of the candidate.

If the COMELEC finds that there is probable cause, it shall order its Law Department to file the appropriate Information with the Regional Trial Court (RTC) which has territorial jurisdiction over the offense, but shall, nonetheless, order the dismissal of the complaint for disqualification, without prejudice to the outcome of the criminal case. If the trial court finds the accused guilty beyond reasonable doubt of the offense charged, it shall also order his disqualification pursuant to Section 264 of the Omnibus Election Code, as amended by Section 46 of Rep. Act No. 8189 which reads:

SEC. 46. Penalties.— Any person found guilty of any Election offense under this Act shall be punished with imprisonment of not less than one (1) year but not more than six (6) years and shall not be subject to probation. In addition, the guilty party shall be sentenced to suffer disqualification to hold public office and deprivation of the right of suffrage. If he is a foreigner, he shall be deported after the prison term has been served. Any political party found guilty shall be sentenced to pay a fine not less One hundred thousand pesos (P100,000.00) but not more than Five hundred thousand pesos (P500,000.00).

In this case, the petitioners were proclaimed winners on May 18, 2001. The private respondents filed their complaint for violation of Section 216(a) and (e) of the Omnibus Election Code and for the disqualification of the petitioners only on June 23, 2001. The COMELEC found probable cause against the respondents for the offense charged and directed its Law Department to file the appropriate Information against the petitioners. Patently then, the COMELEC committed a grave abuse of its discretion amounting to excess or lack of jurisdiction in issuing its assailed resolutions disqualifying the petitioners from the positions they were respectively elected, in defiance of Resolution No. 2050.

The complaint of the Office of the Solicitor General, that the petitioners filed their petition merely and solely to eschew criminal prosecution for violation of Section 216(a) and (e) of the Omnibus Election Code, as amended, has no factual basis. In fact, the petitioners stated in their petition that “inasmuch as the COMELEC had already directed the prosecution of the herein petitioners in a criminal case which is now pending in the Regional Trial Court of Capi, their supposed disqualification should be adjudged by the latter court and not by the COMELEC.”

The COMELEC, likewise, committed a grave abuse of its discretion when it ordered the Municipal Election Officers to convene a new Board of Canvassers and proclaim the winners after the petitioners were declared disqualified.

It is well-settled that the ineligibility of a candidate receiving majority votes does not entitle the eligible candidate receiving the next highest number of votes to be declared elected. A minority or defeated candidate cannot be deemed elected to the office. The votes intended for the disqualified candidate should not be considered null and void, as it would amount to disenfranchising the electorate in whom sovereignty resides.[25] As we held in *Reyes vs. Commission on Elections*: [26]

To simplistically assume that the second placer would have received the other votes would be to substitute our judgment for the mind of the voter. The second placer is just that, a second placer. He lost the elections. He was repudiated by either a majority or plurality of voters. He could not be considered the first among qualified candidates because in a field which excludes the disqualified candidate, the conditions would have substantially changed. We are not prepared to extrapolate the results under the circumstances. [27]

WHEREFORE, the petition is GRANTED. The COMELEC Resolutions dated October 21, 2003 and May 5, 2004 are hereby NULLIFIED AND SET ASIDE. As a necessary consequence, the proclamation of the private respondents on June 10, 2004 by the Municipal Board of Canvassers as the elected Mayor, Vice-Mayor and

Members of the Sangguniang Bayan of the Municipality of Panitan, Capiz, respectively, is, likewise, NULLIFIED AND SET ASIDE. No costs.

SO ORDERED.

Davide, Jr., C.J., Puno, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Carpio-Morales, Azcuna, Tinga, and Chico-Nazario, JJ., concur.
Corona, J., on leave.

[1] Rollo, p. 131.

[2] Sec. 261. Prohibited Acts. The following shall be guilty of an election offense:

...

(e) Threats, intimidation, terrorism, use of fraudulent device or other forms of coercion.— Any person who, directly or indirectly, threatens, intimidates or actually causes, inflicts or produces any violence, injury, punishment, damage, loss or disadvantage upon any person or persons or that of the immediate members of his family, his honor or property, or uses any fraudulent device or scheme to compel or induce the registration or refraining from registration of any voter, or the participation in a campaign or refraining or desistance from any campaign, or the casting of any vote or omission to vote, or any promise of such registration, campaign, vote or omission therefrom.

[3] The provisions reads, thus:

(a) Vote-buying and vote-selling. –

(1) Any person who gives, offers or promises money or anything of value, gives or promises any office or employment, franchise or grant, public or private, or makes or offers to make an expenditure, directly or indirectly, or cause to be made to any person association, corporation, entity, or community in order to induce anyone or the public in general to vote for or against any candidate or withhold his vote in the election, or to vote for or against any aspirant for the nomination or choice of a candidate in a convention or similar selection process of a political party.

(2) Any person, association, corporation, group or community who solicits or receives, directly or indirectly, any expenditure or promise of any office or employment, public or private, for any of the foregoing considerations.

[4] 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; (b) committed acts of terrorism to enhance his candidacy; (c) spent in his election campaign an amount in excess of that allowed by this Code; (d) solicited, received or made any contribution prohibited under Sections 89, 95, 96, 97 and 104; or (e) violated any of Sections 80, 83, 85, 86 and 261, paragraphs d, e, k, v, and cc, subparagraph 6, shall be disqualified from continuing as a candidate, or if he has been elected, from holding the office. Any person who is a permanent resident of or an immigrant to a foreign country shall not be qualified to run for any elective office under this Code, unless said person has waived his status as a permanent resident or immigrant of a foreign country in accordance with the residence requirement provided for in the election laws.

[5] Sec. 6. Effect of Disqualification Case. — Any candidate who has been declared by final judgment to be disqualified shall not be voted for, and the votes cast for him shall not be counted. If, for any reason, a candidate is not declared by final judgment before an election to be disqualified and he is voted for and receives the winning number of votes in such election, the Court or Commission shall continue with the trial and hearing of the action, inquiry or protest and, upon motion of the complainant or any intervenor, may during the pendency thereof order the suspension of the proclamation of such candidate whenever the evidence of his guilt is strong.

[6] Id. at 29.

[7] Id.

[8] Id. at 56.

[9] Id. at 63.

[10] Id. at 35.

[11] Id. at 45-48.

[12] Id. at 113.

[13] Id. at 158.

[14] Id. at 169.

[15] Id. at 178.

[16] *Trinidad vs. COMELEC*, 315 SCRA 175 (1999).

[17] *Garcia vs. COMELEC*, 258 SCRA 754 (1996)

[18] *Sixto S. Brillantes, Jr. vs. Commission on Elections*, G.R. No. 163193, 15 June 2004.

[19] 320 SCRA 817 (1999).

[20] *Lozano vs. Yorac*, 203 SCRA 256 (1991).

[21] *Supra*.

[22] Id. at 828-830.

[23] *Lozano vs. Yorac*, *supra*.

[24] See *Webb vs. De Leon*, 247 SCRA 652 (1995).

[25] *Labo, Jr. vs. Commission on Elections*, 211 SCRA 297 (1992).

[26] 254 SCRA 514 (1996).

[27] Id. at 529.

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