EMILIO E. DIOKNO, VICENTE R. ALCANTARA, ANTONIO Z. VERGARA, JR., DANTE M. TONG, JAIME C. MENDOZA, ROMEO M. MACAPULAY, ROBERTO M. MASIGLAT, LEANDRO C. ATIENZA, ROMULO AQUINO, JES...

G.R. NO. 168475. July 04, 2007

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

This is a Petition for Review on Certiorari under Rule 45 of the 1997 Revised Rules of Civil Procedure, seeking the nullification of the Decision[1] and Resolution[2] of the Court of Appeals in CA-G.R. SP No. 83061, dated 17 June 2004 and 10 June 2005, respectively, which dismissed petitioners' Petition for Certiorari and denied their Motion for Reconsideration thereon.

The Facts

The First Line Association of Meralco Supervisory Employees (FLAMES) is a legitimate labor organization which is the supervisory union of Meralco. Petitioners and private respondents are members of FLAMES.

On 1 April 2003, the FLAMES Executive Board created the Committee on Election (COMELEC) for the conduct of its union elections scheduled on 7 May 2003.[3] The COMELEC was composed of petitioner Dante M. Tong as its chairman, and petitioners Jaime C. Mendoza and Romeo M. Macapulay as members. Subsequently, private respondents Jimmy S. Ong, Nardito C. Alvarez, Alfredo J. Escall, and Jaime T. Valeriano filed their respective certificates of candidacy. On 12 April 2003, the COMELEC rejected Jimmy S. Ong's candidacy on the ground that he was not a member of FLAMES. Meanwhile, the certificates of candidacy of Nardito C. Alvarez, Alfredo J. Escall, and Jaime T. Valeriano were similarly rejected on the basis of the exclusion of their department from the scope of the existing collective bargaining agreement (CBA). The employees assigned to the aforesaid department are allegedly deemed disqualified from membership in the union for being confidential employees.

On 24 April 2003, private respondents Jimmy S. Ong, Nardito C. Alvarez, Alfredo J. Escall, Jaime T. Valeriano (Ong, et al.), and a certain Leandro M. Tabilog filed a Petition[4] before the Med-Arbitration Unit of the Department of Labor and Employment (DOLE). They prayed, inter alia, for the nullification of the order of the COMELEC which disallowed their candidacy.[5] They further prayed that petitioners be directed to render an accounting of funds with full and detailed disclosure of expenditures and financial transactions; and that a representative from the Bureau of Labor Relations (BLR) be designated to act as chairman of the COMELEC in lieu of petitioner Dante M. Tong.[6]

On 30 April 2003, DOLE-NCR Regional Director Alex E. Maraan issued an Order[7] directing DOLE personnel to observe the conduct of the FLAMES election on 7 May 2003.[8]

On 2 May 2003, petitioners filed a Petition[9] with the COMELEC seeking the disqualification of private respondents Edgardo Daya, Pablo Lucas, Leandro Tabilog, Reynaldo Espiritu, Jose Vito, Antonio de Luna,

Armando Yalung, Edwin Layug, Nards Pabilona, Reynaldo Reyes, Evangeline Escall, Alberto Alcantara, Rogelio Cervitillo, Marcelino Morelos, and Faustino Ermino (Daya, et al.). Petitioners alleged that Daya, et al., allowed themselves to be assisted by non-union members, and committed acts of disloyalty which are inimical to the interest of FLAMES. In their campaign, they allegedly colluded with the officers of the Meralco Savings and Loan Association (MESALA) and the Meralco Mutual Aid and Benefits Association (MEMABA) and exerted undue influence on the members of FLAMES.

On 6 May 2003, the COMELEC issued a Decision,[10] declaring Daya, et al., officially disqualified to run and/or to participate in the 7 May 2003 FLAMES elections. The COMELEC also resolved to exclude their names from the list of candidates in the polls or precincts, and further declared that any vote cast in their favor shall not be counted. According to the COMELEC, Daya, et al., violated Article IV, Section 4(a)(6)[11] of the FLAMES Constitution and By-Laws (CBL) by allowing non-members to aid them in their campaign. Their acts of solicitation for support from non-union members were deemed inimical to the interest of FLAMES.

On 7 May 2003, the COMELEC proclaimed the following candidates, including some of herein petitioners as winners of the elections, to wit[12]:

NAME POSITION

Emilio E. Diokno President

Vicente P. Alcantara Executive Vice President - External

Antonio Z. Vergara, Jr. Executive Vice President - Internal

Alberto L. Mabugat Vice-President - Organizing

Roberto D. Masiglat, Jr. Vice-President - Education

Leandro C. Atienza Vice-President - Chief Steward

Felito C. Macasaet Secretary

Edgardo R. Villanueva Asst. Secretary

Romulo C. Aquino Treasurer

Jesus D. Samia Asst. Treasurer

Gaudencio C. Camit Auditor

Rodante B. [Parao] Asst. Auditor

Jose Z. Tullo Central Coordinator

Bernardo C. Sevilla North Coordinator

Francis B. Escoto South Coordinator12345

On 8 May 2003, private respondents Daya, et al., along with Ong, et al., filed with the Med-Arbitration Unit of the DOLE-NCR, a Petition[13] to: a) Nullify Order of Disqualification; b) Nullify Election Proceedings and Counting of Votes; c) Declare Failure of Election; and d) Declare Holding of New Election to be Controlled and Supervised by the DOLE. The Petition was docketed as Case No. NCR-OD-0304-002-LRD.

On 14 May 2003, another group led by private respondent Gaudencio Jimenez, Jr., along with private respondents Johnson S. Reyes, Gavino R. Vidanes, Arnaldo G. Tayao, Bonifacio F. Cirujano, Edgardo G. Cadavona, Maximo

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A. Caoc, Jose O. Maclit, Jr., Luzmindo D. Acorda, Jr., Lemuel R. Ragasa and Gil G. de Vera (Jimenez, et al.) filed a Petition with the Med-Arbitration Unit of the DOLE-NCR against petitioners to nullify the 7 May 2003 election on the ground that the same was not free, orderly, and peaceful. It was docketed as Case No. NCR-OD-0305-004-LRD, which was subsequently consolidated with the Petition of Daya, et al. and the earlier Petition of Ong, et al.

Meanwhile, the records show that a subsequent election was held on 30 June 2004, which was participated in and won by herein private respondents Daya, et al. The validity of the 30 June 2004 elections was assailed by herein petitioners before the DOLE[14] and taken to the Court of Appeals in CA-G.R. SP No. 88264 on certiorari, which case does not concern us in the instant Petition. The Court of Appeals, in the aforesaid case, rendered a Decision[15] dated 12 January 2007, upholding the validity of the 30 June 2004 elections, and the declaration of herein private respondents Daya, et al., as the duly elected winners therein.

The Decision of the Med-Arbiter

On 7 July 2003, Med-Arbiter Tranquilino B. Reyes, Jr. issued a Decision[16] in favor of private respondents, Daya, et al. However, the petition of Jimenez, et al., was dismissed because it was premature, it appearing that the COMELEC had not yet resolved their protest prior to their resort to the Med-Arbiter. Finally, the Petition of Ong, et al., seeking to declare themselves as bona fide members of FLAMES was ordered dismissed.

The Med-Arbiter noted in his decision that during a conference which was held on 15 May 2003, the parties agreed that the issue anent the qualifications of private respondents Ong, et al. had been rendered moot and academic.[17]

The Med-Arbiter reversed the disqualification imposed by the COMELEC against private respondents Daya, et al. He said that the COMELEC accepted all the allegations of petitioners against private respondents Daya, et al., sans evidence to substantiate the same. Moreover, he found that the COMELEC erred in relying on Article IV, Section 4(a) (6) of the CBL as basis for their disqualification. The Med-Arbiter read the aforesaid provision to refer to the dismissal and/or expulsion of a member from FLAMES, but not to the disqualification of a member as a candidate in a union election. He rationalized that the COMELEC cannot disqualify a candidate on the same grounds for expulsion of members, which power is vested by the CBL on the Executive Board. The Med-Arbiter also held that there was a denial of due process because the COMELEC failed to receive private respondents Daya, et al.'s motion for reconsideration of the order of their disqualification. The COMELEC was also found to have refused to receive their written protest in violation of the union's CBL.[18]

Lastly, the Med-Arbiter defended his jurisdiction over the case. He concluded that even as the election of union officers is an internal affair of the union, his office has the right to inquire into the merits and conduct of the election when its jurisdiction is sought.[19]

The decretal portion of the Med-Arbiter's Decision states, viz:

> WHEREFORE, premises considered, the [P]etition to Nullify the Order of Disqualification; Nullify Election proceedings and counting of Votes; and Declare a Failure of Elections is hereby granted. The disqualification of [private respondent] Ed[gardo] Daya, et al., is hereby considered as null and void. Perforce, the election of union officers of FLAMES on May 7, 2003 is declared a failure and a new election is ordered conducted under the supervision of the Department of Labor and Employment.
>
> The [P]etition to conduct an accounting of union funds and to stop the release of funds to [petitioner] Diokno, et al., is ordered dismissed for lack of merit.
>
> And the Petition to Declare [private respondents] Jimmy Ong, Alfredo [E]scall, Nardito Alvarez, and Jaime

> Valeriano as members of FLAMES is hereby ordered dismissed for lack of merit.
>
> The [P]etition to Nullify the election filed by [private respondents] Gaudencio Jimenez, et al., is likewise ordered dismissed.[20]

Aggrieved, petitioners filed an appeal before the Director of the BLR.

The Ruling of the BLR Director

On 3 December 2003, the Director of the BLR issued a Resolution,[21] affirming in toto the assailed Decision of the Med-Arbiter.

Public respondent Director Hans Leo J. Cacdac ruled, inter alia, that the COMELEC's reliance on Article IV, Section 4(a) (6) of the CBL, as a ground for disqualifying private respondents Daya, et al., was premature. He echoed the interpretation of the Med-Arbiter that the COMELEC erroneously resorted to the aforecited provision which refers to the expulsion of a member from the union on valid grounds and with due process, along with the requisite 2/3 vote of the Executive Board. Hence, the COMELEC cut short the expulsion proceedings in disqualifying private respondents Daya, et al.[22] The BLR Director further held that the case involves a question of disqualification on account of the alleged commission by private respondents Daya, et al., of illegal campaign acts, which acts were not specifically mentioned in the guidelines for the conduct of election as issued by the COMELEC. Likewise, on the alleged refusal of private respondents Daya, et al., to submit to the jurisdiction of the COMELEC by failing to file a petition to nullify its order of disqualification, the BLR Director deemed the same as an exception to the rule on exhaustion of administrative remedies. Thus:

> By themselves, such acts could not be taken as repugnant of COMELEC's authority. Sensing that they were prejudiced by the disqualification order, it was only incumbent upon [private respondents Daya, et al.] to seek remedy before a body, which they thought has a more objective perspective over the situation. In short, they opted to bypass the administrative remedies within the union. Such a move could not be taken against [private respondents Daya, et al.] considering that non-exhaustion of administrative remedies is justified in instances where it would practically amount to a denial of justice, or would be illusory or vain, as in the present controversy.[23]

The BLR Director disposed in this wise:

> WHEREFORE, the appeal is DISMISSED for lack of merit. The Decision of Med-Arbiter Tranquilino B. Reyes, DOLE-NCR, dated 7 July 2003 is AFFIRMED in its entirety.
>
> Let the records of this case be returned to the DOLE-NCR for the immediate conduct of election of officers of the First Line Association of Meralco Supervisory Employees (FLAMES) under the supervision of DOLE-NCR personnel.[24]

Subsequently, petitioners sought a reversal of the 3 December 2003 Resolution, but the BLR Director issued a Resolution dated 10 February 2003,[25] refusing to reverse his earlier Resolution for lack of merit.

Petitioners elevated the case to the Court of Appeals via a Petition for Certiorari.

The Ruling of the Court of Appeals

The Court of Appeals found petitioners' appeal to be bereft of merit.

The appellate court held that the provision relied upon by the COMELEC concerns the dismissal and/or expulsion of union members, which power is vested in the FLAMES' Executive Board, and not the COMELEC. It affirmed the finding of the BLR Director that the COMELEC, in disqualifying private respondents Daya, et al., committed a procedural shortcut. It held:

> Without the requisite two-thirds (2/3) vote of the Executive Board dismissing and/or expelling private respondents for acts contemplated thereunder, the COMELEC was clearly violating the union's constitution and bylaws (sic) by utilizing the aforequoted provision in its said May 6, 2003 decision and, in the process, arrogating unto itself a power it did not possess. As the document embodying the covenant between a union and its members and the fundamental law governing the members' rights and obligations, it goes without saying that the constitution and bylaws (sic) should be upheld for as long as they are not contrary to law, good morals or public policy.[26]

On the matter of the failure of private respondents Daya, et al. to come up with 30 percent (30%) members' support in filing the Petition to Nullify the COMELEC's Decision before the Med-Arbiter, the Court of Appeals said that the petition did not involve the entire membership of FLAMES, so there was no need to comply with the aforesaid requirement. Furthermore, the appellate court applied the exception to the rule on exhaustion of administrative remedies on the ground, inter alia, that resort to such a remedy would have been futile, illusory or vain.[27] Indeed, the Court of Appeals emphasized that private respondents Daya, et al., were directed by the COMELEC to file their Answer to the petition for their disqualification only on 5 May 2003. Private respondents Daya, et al., filed their Answer on 6 May 2003. On the same day, the COMELEC issued its Decision disqualifying them. A day after, the 7 May 2003 election was held. The Court of Appeals further stressed that private respondents Daya, et al.'s efforts to have their disqualification reconsidered were rebuffed by the COMELEC; hence, they were left with no choice but to seek the intervention of the BLR,[28] which was declared to have jurisdiction over intra-union disputes even at its own initiative under Article 226[29] of the Labor Code.

Petitioners sought a reconsideration of the 17 June 2004 Decision of the Court of Appeals, but the same was denied in a Resolution[30] dated 10 June 2005.

Hence, the instant Petition.

At the outset, petitioners contend that the instant Petition falls under the exceptions to the rule that the Supreme Court is not a trier of facts. They implore this Court to make factual determination anent the conduct of the 7 May 2003 elections. They also question the jurisdiction of the BLR on the case at bar because of the failure of private respondents Daya, et al., to exhaust administrative remedies within the union. It is the stance of petitioner that Article 226[31] of the Labor Code which grants power to the BLR to resolve inter-union and intra-union disputes is dead law, and has been amended by Section 14 of Republic Act No. 6715, whereby the conciliation, mediation and voluntary arbitration functions of the BLR had been transferred to the National Conciliation and Mediation Board.

Petitioners similarly assert that the 7 May 2003 election was conducted in a clean, honest, and orderly manner, and that private respondents, some of whom are not bona fide members of FLAMES, were validly disqualified by the COMELEC from running in the election. They also rehashed their argument that non-members of the union were allowed by private respondents Daya, et al., to participate in the affair. They challenge the finding of the BLR Director that the reliance by the COMELEC on Article IV, Section 4(a)(6) of the CBL, was premature. Petitioners insist that the COMELEC had the sole and exclusive power to pass upon the qualification of any candidate, and therefore, it has the correlative power to disqualify any candidate in accordance with its guidelines.

For their part, private respondents Daya, et al., maintain that the Petition they filed before the DOLE-NCR Med-Arbiter questioning the disqualification order of the COMELEC and seeking the nullification of the 7 May 2003 election involves an intra-union dispute which is within the jurisdiction of the BLR. They further claim that the COMELEC, in disqualifying them, mistakenly relied on a provision in the FLAMES' CBL that addresses the expulsion of members from the union, and no expulsion proceedings were held against them. Finally, they underscore the finding of the appellate court that there was disenfranchisement among the general membership of

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FLAMES due to their wrongful disqualification which restricted the members' choices of candidates. They reiterate the conclusion of the Court of Appeals that had the COMELEC tabulated the votes cast in their favor, there would have been, at least, a basis for the declaration that they lost in the elections.

Issues

Petitioners attribute to the Court of Appeals several errors to substantiate their Petition.[32] They all boil down, though, to the question of whether the Court of Appeals committed grave abuse of discretion when it affirmed the jurisdiction of the BLR to take cognizance of the case and then upheld the ruling of the BLR Director and Med-Arbiter, nullifying the COMELEC's order of disqualification of private respondents Daya et al., and annulling the 7 May 2003 FLAMES elections.

The Court's Ruling

The Petition is devoid of merit.

We affirm the finding of the Court of Appeals upholding the jurisdiction of the BLR. Article 226 of the Labor Code is hereunder reproduced, to wit:

> ART. 226. BUREAU OF LABOR RELATIONS. - The Bureau of Labor Relations and the Labor Relations Divisions in the regional offices of the Department of Labor shall have original and exclusive authority to act, at their own initiative or upon request of either or both parties, on all inter-union and intra-union conflicts, and all disputes, grievances or problems arising from or affecting labor-management relations in all workplaces whether agricultural or nonagricultural, except those arising from the implementation or interpretation of collective bargaining agreements which shall be the subject of grievance procedure and/or voluntary arbitration.
>
> The Bureau shall have fifteen (15) working days to act on labor cases before it, subject to extension by agreement of the parties.

The amendment to Article 226, as couched in Republic Act No. 6715,[33] which is relied upon by petitioners in arguing that the BLR had been divested of its jurisdiction, simply reads, thus:

> Sec. 14. The second paragraph of Article 226 of the same Code is likewise hereby amended to read as follows:
>
> "The Bureau shall have fifteen (15) calendar days to act on labor cases before it, subject to extension by agreement of the parties."

This Court in Bautista v. Court of Appeals,[34] interpreting Article 226 of the Labor Code, was explicit in declaring that the BLR has the original and exclusive jurisdiction on all inter-union and intra-union conflicts. We said that since Article 226 of the Labor Code has declared that the BLR shall have original and exclusive authority to act on all inter-union and intra-union conflicts, there should be no more doubt as to its jurisdiction. As defined, an intra-union conflict would refer to a conflict within or inside a labor union, while an inter-union controversy or dispute is one occurring or carried on between or among unions.[35] More specifically, an intra-union dispute is defined under Section (z), Rule I of the Rules Implementing Book V of the Labor Code, viz:

> (z) "Intra-Union Dispute" refers to any conflict between and among union members, and includes all disputes or grievances arising from any violation of or disagreement over any provision of the constitution and by-laws of a union, including cases arising from chartering or affiliation of labor organizations or from any violation of the rights and conditions of union membership provided for in the Code.

The controversy in the case at bar is an intra-union dispute. There is no question that this is one which involves a dispute within or inside FLAMES, a labor union. At issue is the propriety of the disqualification of private

respondents Daya, et al., by the FLAMES COMELEC in the 7 May 2003 elections. It must also be stressed that even as the dispute involves allegations that private respondents Daya, et al., sought the help of non-members of the union in their election campaign to the detriment of FLAMES, the same does not detract from the real character of the controversy. It remains as one which involves the grievance over the constitution and bylaws of a union, and it is a controversy involving members of the union. Moreover, the non-members of the union who were alleged to have aided private respondents Daya, et al., are not parties in the case. We are, therefore, unable to understand petitioners' persistence in placing the controversy outside of the jurisdiction of the BLR. The law is very clear. It requires no further interpretation. The Petition which was initiated by private respondents Daya, et al., before the BLR was properly within its cognizance, it being an intra-union dispute. Indubitably, when private respondents Daya, et al., brought the case to the BLR, it was an invocation of the power and authority of the BLR to act on an intra-union conflict.

After having settled the jurisdiction of the BLR, we proceed to determine if petitioners correctly raised the argument that private respondents Daya, et al., prematurely sought the BLR's jurisdiction on the ground that they failed to exhaust administrative remedies within the union. On this matter, we affirm the findings of the Court of Appeals which upheld the application by the BLR Director of the exception to the rule of exhaustion of administrative remedies.

In this regard, this Court is emphatic that "before a party is allowed to seek the intervention of the court, it is a pre-condition that he should have availed of all the means of administrative processes afforded him. Hence, if a remedy within the administrative machinery can still be resorted to by giving the administrative officer concerned every opportunity to decide on a matter that comes within his jurisdiction when such remedy should be exhausted first before the court's judicial power can be sought. The premature invocation of court's judicial intervention is fatal to one's cause of action."[36]

Verily, there are exceptions to the applicability of the doctrine.[37] Among the established exceptions are: 1) when the question raised is purely legal; 2) when the administrative body is in estoppel; 3) when the act complained of is patently illegal; 4) when there is urgent need for judicial intervention; 5) when the claim involved is small; 6) when irreparable damage will be suffered; 7) when there is no other plain, speedy, and adequate remedy; 8) when strong public interest is involved; 9) when the subject of the proceeding is private land; 10) in quo warranto proceedings;[38] and 11) where the facts show that there was a violation of due process.[39] As aptly determined by the BLR Director, private respondents Daya, et al., were prejudiced by the disqualification order of the COMELEC. They endeavored to seek reconsideration, but the COMELEC failed to act thereon.[40] The COMELEC was also found to have refused to receive their written protest.[41] The foregoing facts sustain the finding that private respondents Daya, et al., were deprived of due process. Hence, it becomes incumbent upon private respondents Daya, et al., to seek the aid of the BLR. To insist on the contrary is to render their exhaustion of remedies within the union as illusory and vain.[42] These antecedent circumstances convince this Court that there was proper application by the Med-Arbiter of the exception to the rule of exhaustion of administrative remedies, as affirmed by the BLR Director, and upheld by the Court of Appeals.

We cannot accept, and the Court of Appeals rightfully rejected, the contention of petitioners that the private respondents Daya, et al.'s complaint filed before the Med-Arbiter failed to comply with the jurisdictional requirement because it was not supported by at least thirty percent (30%) of the members of the union. Section 1 of Rule XIV of the Implementing Rules of Book V mandates the thirty percent (30%) requirement only in cases where the issue involves the entire membership of the union, which is clearly not the case before us. The issue is obviously limited to the disqualification from participation in the elections by particular union members.

Having resolved the jurisdictional cobwebs in the instant case, it is now apt for this Court to address the issue

anent the disqualification of private respondents and the conduct of the 7 May 2003 elections.

On this matter, petitioners want this Court to consider the instant case as an exception to the rule that the Supreme Court is not a trier of facts; hence, importuning that we make findings of fact anew. It bears stressing that in a petition for review on certiorari, the scope of this Court's judicial review of decisions of the Court of Appeals is generally confined only to errors of law,[43] and questions of fact are not entertained. We elucidated on our fidelity to this rule, and we said:

> Thus, only questions of law may be brought by the parties and passed upon by this Court in the exercise of its power to review. Also, judicial review by this Court does not extend to a reevaluation of the sufficiency of the evidence upon which the proper labor tribunal has based its determination.[44]

It is aphoristic that a re-examination of factual findings cannot be done through a petition for review on certiorari under Rule 45 of the Rules of Court because as earlier stated, this Court is not a trier of facts; it reviews only questions of law.[45] The Supreme Court is not duty-bound to analyze and weigh again the evidence considered in the proceedings below.[46] This is already outside the province of the instant Petition for Certiorari. While there may be exceptions to this rule, petitioners miserably failed to show why the exceptions should be applied here. With greater force must this rule be applied in the instant case where the factual findings of the Med-Arbiter were affirmed by the BLR Director, and then, finally, by the Court of Appeals. The findings below had sufficient bases both in fact and in law. The uniform conclusion was that private respondents Daya, et al., were wrongfully disqualified by the COMELEC; consequently, the FLAMES election should be annulled.

On the issue of disqualification, there was a blatant misapplication by the COMELEC of the FLAMES' CBL. As has been established ad nauseam, the provision[47] relied upon by the COMELEC in disqualifying private respondents Daya, et al., applies to a case of expulsion of members from the union.

In full, Article IV, Section 4 (a) (6) of the FLAMES' CBL, provides, to wit:

> Section 4(a). Any member may be DISMISSED and/or EXPELLED from the UNION, after due process and investigation, by a two-thirds (2/3) vote of the Executive Board, for any of the following causes:
>
> x x x x
>
> (6) Acting in a manner harmful to the interest and welfare of the UNION and/or its MEMBERS.[48]

We highlight five points, thus:

First, Article IV, Section 4(a)(6) of the FLAMES' CBL, embraces exclusively the case of dismissal and/or expulsion of members from the union. Even a cursory reading of the provision does not tell us that the same is to be automatically or directly applied in the disqualification of a candidate from union elections, which is the matter at bar. It cannot be denied that the COMELEC erroneously relied on Article IV, Section 4(a)(6) because the same does not contemplate the situation of private respondents Daya, et al. The latter are not sought to be expelled or dismissed by the Executive Board. They were brought before the COMELEC to be disqualified as candidates in the 7 May 2003 elections.

Second, the aforecited provision evidently enunciates with clarity the procedural course that should be taken to dismiss and expel a member from FLAMES. The CBL is succinct in stating that the dismissal and expulsion of a member from the union should be after due process and investigation, the same to be exercised by two-thirds (2/3) vote of the Executive Board for any of the causes[49] mentioned therein. The unmistakable directive is that in cases of expulsion and dismissal, due process must be observed as laid down in the CBL.

Third, nevertheless, even if we maintain a lenient stance and consider the applicability of Article IV, Section

4(a)(6) in the disqualification of private respondents Daya, et al., from the elections of 7 May 2003, still, the disqualification made by the COMELEC pursuant to the subject provision was a rank disregard of the clear due process requirement embodied therein. Nowhere do we find that private respondents Daya, et al. were investigated by the Executive Board. Neither do we see the observance of the voting requirement as regards private respondents Daya, et al. In all respects, they were denied due process.

Fourth, the Court of Appeals, the BLR Director, and the Med-Arbiter uniformly found that due process was wanting in the disqualification order of the COMELEC. We are in accord with their conclusion. If, indeed, there was a violation by private respondents Daya, et al., of the FLAMES' CBL that could be a ground for their expulsion and/or dismissal from the union, which in turn could possibly be made a ground for their disqualification from the elections, the procedural requirements for their expulsion should have been observed. In any event, therefore, whether the case involves dismissal and/or expulsion from the union or disqualification from the elections, the proper procedure must be observed. The disqualification ruled by the COMELEC against private respondents Daya, et al., must not be allowed to abridge a clear procedural policy established in the FLAMES' CBL. If we uphold the COMELEC, we are countenancing a clear case of denial of due process which is anathema to the Constitution of the Philippines which safeguards the right to due process.

Fifth, from another angle, the erroneous disqualification of private respondents Daya, et al., constituted a case of disenfranchisement on the part of the member-voters of FLAMES. By wrongfully excluding them from the 7 May 2003 elections, the options afforded to the union members were clipped. Hence, the mandate of the union cannot be said to have been rightfully determined. The factual irregularities in the FLAMES elections clearly provide proper bases for the annulment of the union elections of 7 May 2003.

On a final note, as it appears that the question of the qualifications of private respondents Ong, et al. had been rendered moot and academic,[50] we do not find any reason for this Court to rule on the matter. As borne out by the records, the question had been laid to rest even when the case was still before the Med-Arbiter.[51]

WHEREFORE, the Petition is DENIED. The Decision of the Court of Appeals dated 17 June 2004, and its Resolution dated 10 June 2005 in CA-G.R. SP No. 83061 are AFFIRMED. Costs against petitioners.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, and Nachura, JJ., concur.

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[1] Penned by Associate Justice Rebecca de Guia-Salvador with Associate Justices Salvador J. Valdez, Jr., and Aurora Santiago-Lagman, concurring. Rollo, pp. 62-72.

[2] Id. at 74-75.

[3] According to Section 5, Article V of the FLAMES Constitution and By-Laws, the OFFICERS of the UNION shall hold office for a period of three (3) years from the date of their election until their successors shall have been duly elected and qualified; provided that they remain members of the UNION in good standing. Id. at 83.

[4] Id. at 88-103.

[5] Id. at p. 100.

[6] Id.

[7] Id. at 105.

[8] DOLE personnel were assigned to the following precincts, to wit:

a) Head Office - Ortigas
b) Manila Sector
c) Pasig Sector
d) Balintawak Sector
e) Valenzuela Sector
f) Alabang Sector
g) Plaridel Sector
h) Rizal Sector
i) Sta. Rosa Sector
j) Dasmarinas Sector
k) San Pablo Sector. Id.

[9] Id. at 106-113.

[10] Id. at 121-128.

[11] Section 4.

> (a) Any member may be DISMISSED and/or EXPELLED from the UNION, after due process and investigation, by a two-thirds (2/3) vote of the Executive Board for any of the following causes:
> x x x x
> 6. Acting in a manner harmful to the interest and welfare of the UNION and/or its MEMBERS.

[12] Rollo, p. 129.

[13] Id. at 130.

[14] From the Decision dated 12 January 2007 of the Court of Appeals in CA-G.R. SP No. 88264, it can be gleaned that on 4 October 2004, Med-Arbiter Tranquilino C. Reyes proclaimed private respondents Daya, et al. as the duly elected winners. On appeal, BLR Director Hans Leo J. Cacdac affirmed the Med-Arbiter and upheld the validity of the 30 June 2004 election, as well as the propriety of the proclamation of private respondents Daya, et al., as officers-elect of FLAMES. Id. at 420.

[15] Penned by Associate Justice Lucas P. Bersamin with Associate Justices Martin S. Villarama, Jr., and Lucenito N. Tagle, concurring; id. at 417-435.

[16] Id. at 170-183.

[17] Id. at 176, 179. Notwithstanding his statement in the Decision dated 7 July 2003, that the parties had agreed in a conference on 15 May 2003 that the qualifications of private respondents Ong, et al. became moot and academic, the Med-Arbiter proceeded to rule that Jimmy S. Ong is not a member of FLAMES as he was assigned to the Accounting Department which had been excluded from the bargaining unit per Addendum to the 1998 CBA. The Med-Arbiter said that Ong's transfer to a department not excluded from the bargaining unit per the 2002 CBA as well as the deduction from his salary of union dues did not automatically make him a member of FLAMES. It was not shown that he filed an application for membership nor was the same approved by the union president. Moreover, the Med-Arbiter stressed that private respondents Alfredo J. Escall, Nardito C. Alvarez, and Jaime T. Valeriano are disqualified from FLAMES membership because they belong to departments excluded from the bargaining unit pursuant to 2002 CBA. The group of Ong, et al. were found to have no corresponding right to inquire into the funds of the union.

[18] The Med-Arbiter in his Decision, cited Article IX, Section 1 of the FLAMES CBL, which provides, thus:

Section 1.

> x x x x
> (c) In the event of any election protest or questions, the COMELEC shall rule [on] such protest or questions regarding the conduct of the election provided that the protest or questions must be submitted in writing within twenty-four (24) hours from the time that the last ballot has been officially opened. The COMELEC has three (3) days to decide the protest or question.

[19] Id. at 181.

[20] Id. at 183.

[21] Penned by Director Hans Leo J. Cacdac; id. at 209-216.

[22] Id. at 214.

[23] Id. at 216.

[24] Id.

[25] Id. at 217-220.

[26] Id. at 69.

[27] The Court of Appeals expounded in this wise, thus:

Although the rule had, likewise, been long-settled that redress must first be sought within the union itself, in accordance with its constitution and bylaws (sic), before a case should be elevated to the jurisdiction of labor agencies, said requirement had been traditionally held inapplicable under the following circumstances, to wit: (a) when resort to the remedy would be futile, illusory or vain; (b) when the remedy applied for was not acted upon for an unreasonable length of time; (c) when the relief sought was simply for damages; (d) when the act complained of is contrary to the constitution and bylaws (sic); (e) when the issue is purely a question of law; and (f) when due process was not observed. Id. at 71.

[28] Id. at 70.

[29] ART. 226. BUREAU OF LABOR RELATIONS. - The Bureau of Labor Relations and the Labor Relations Division in the regional offices of the Department of Labor shall have original and exclusive authority to act, at their own initiative or upon request of either or both parties, on all inter-union and intra-union conflicts, and all disputes, grievances or problems arising from or affecting labor-management relations in all workplaces whether agricultural or nonagricultural, except those arising from the implementation or interpretation of collective bargaining agreements which shall be the subject of grievance procedure and/or voluntary arbitration.

The Bureau shall have fifteen (15) working days to act on labor cases before it, subject to extension by agreement of the parties.

[30] Id. at 74.

[31] Supra note 29.

[32] Id. at 367.

[33] Entitled AN ACT TO EXTEND PROTECTION TO LABOR, STRENGTHEN THE CONSTITUTIONAL RIGHTS OF WORKERS TO SELF-ORGANIZATION, COLLECTIVE BARGAINING AND PEACEFUL CONCERTED ACTIVITIES, FOSTER INDUSTRIAL PEACE AND HARMONY, PROMOTE THE

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PREFERENTIAL USE OF VOLUNTARY MODES OF SETTLING LABOR DISPUTES, AND REORGANIZE THE NATIONAL LABOR RELATIONS COMMISSION, AMENDING FOR THESE PURPOSES CERTAIN PROVISIONS OF PRESIDENTIAL DECREE NO. 442, AS AMENDED, OTHERWISE KNOWN AS THE LABOR CODE OF THE PHILIPPINES, APPROPRIATING FUNDS THEREFOR ANDFOR OTHER PURPOSES.

[34] G.R. 123375, 28 February 2005, 452 SCRA 406, 420.

[35] Id.

[36] Metro Drug Distribution, Inc. v. Metro Drug Corporation Employees Association-Federation of Free Workers, G.R. No. 142666, 26 September 2005, 471 SCRA 45, 58, citing Ambil, Jr. v. Commission on Elections, G.R. No. 143398, 25 October 2000, 344 SCRA 372.

[37] Morcal v. Laviña, G.R. No. 166753, 29 November 2005, 476 SCRA 508, 512-513.

[38] Id.

[39] Verceles v. Bureau of Labor Relations-Department of Labor and Employment-national Capital Region, G.R. No. 153322, 15 February 2005, 451 SCRA 338, 349.

[40] Id. at 175.

[41] Id.

[42] Rollo, p. 216.

[43] Gerlach v. Reuters Limited, Phils., G.R. No. 148542, 17 January 2005, 448 SCRA 535, 544-545.

[44] Id.

[45] Umpoc v. Mercado, G.R. No. 158166, 21 January 2005, 449 SCRA 220, 235.

[46] Id.

[47] Article IV, Section 4(a)(6) of the FLAMES' CBL.

[48] Rollo, p. 82 and its dorsal page.

[49]

> (1) Non-payment of dues and other monetary obligations for a reasonable period of time, subject to the provisions of Article X;
> (2) Joining or forming another UNION;
> (3) Violation of any provision of the Constitution, By-laws, rules and regulations of the UNION;
> (4) Willfull (sic) violation of any provision of the Collective Bargaining Agreement (CBA);
> (5) Urging or advocating that a member start an action in any court of justice against the UNION or any of its officers, without first exhausting all internal remedies open to him or available in accordance with the constitution and by-laws of the UNION;
> (6) Acting in a manner harmful to the interest and welfare of the UNION and/or its MEMBERS; id.

[50] Supra note 17.

[51] Id.

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