

ROLANDO D. LAYUG, PETITIONER, VS. COMMISSION ON ELECTIONS, MARIANO VELARDE (ALIAS “BROTHER MIKE”) AND BUHAY PARTY-LIST, RESPONDENTS.

G.R. No. 192984. February 28, 2012

Ponente: PERLAS-BERNABE, J.

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PERLAS-BERNABE, J.:

In this Petition for Certiorari under Rule 65 of the Rules of Court with prayer for temporary restraining order and preliminary injunction, petitioner Rolando D. Layug seeks to (1) enjoin the implementation of the Resolution[1] of the Commission on Elections (COMELEC) Second Division, dated June 15, 2010, which denied his petition to disqualify respondent Buhay Hayaan Yumabong Party-List (hereinafter Buhay Party-List) from participating in the 2010 Party-List Elections, and Mariano Velarde (Brother Mike) from being its nominee; (2) nullify Buhay Party-List's proclamation under COMELEC En Banc NBC Resolution[2] No.10-034 dated July 30, 2010; and (3) compel the COMELEC En Banc to rule on his Motion for Reconsideration[2] dated 28 July 2010.

The Facts

On March 31, 2010, petitioner Rolando D. Layug (Layug), in his capacity as a taxpayer and concerned citizen, filed pro se a Petition to Disqualify³ (SPA No. 10-016 [DCN]) Buhay Party-List from participating in the May 10, 2010 elections, and Brother Mike from being its nominee. He argued that Buhay Party-List is a mere “extension of the El Shaddai,” which is a religious sect. As such, it is disqualified from being a party-list under Section 5, Paragraph 2, Article VI of the 1987 Constitution⁴, as well as Section 6, Paragraph 1 of Republic Act (R.A.) No. 79415, otherwise known as the “Party-List System Act.” Neither does Brother Mike, who is allegedly a billionaire real estate businessman and the spiritual leader of El Shaddai, qualify as “one who belongs to the marginalized and underrepresented sector xxx”, as required of party-list nominees under Section 6 (7) of COMELEC Resolution No. 8807[7], the “Rules on Disqualification Cases Against Nominees of Party-List Groups/Organizations Participating in the May 10, 2010 Automated National and Local Elections.”

In their Answer[8] thereto, Buhay Party-List and Brother Mike claimed that Buhay Party-List is not a religious sect but a political party possessing all the qualifications of a party-list. It is composed of groups for the elderly, the women, the youth, the handicapped, as well as the professionals, and Brother Mike belongs to the marginalized and underrepresented elderly group. They likewise argued that nominees from a political party such as Buhay Party-List need not even come from the marginalized and underrepresented sector.

Record shows that Layug received a copy of the aforesaid Answer only at the hearing conducted on April 20, 2010 after his lawyer, Atty. Rustico B. Gagate, manifested that his client has not received the same. Counsel for private respondents explained that their liaison officer found Layug's given address – #70 Dr. Pilapil St., Barangay San Miguel, Pasig City – to be inexistent. To this, Atty. Gagate was said to have retorted as follows: “The good counsel for the respondent could send any Answer or processes or pleadings to may (sic) address at Bambang, Nueva Vizcaya Your Honor, they could come over all the way to Nueva Vizcaya, we will entertain

him.”[9]

On June 15, 2010, the COMELEC Second Division issued a Resolution[10] denying the petition for lack of substantial evidence. A copy thereof was sent to Layug via registered mail at #70 Dr. Pilapil Street, Barangay San Miguel, Pasig City. However, the mail was returned unserved with the following notation of the postmaster: “1st 6/23/10 unknown; 2nd 6/25/10 unknown; and 3rd attempt 6/28/10 RTS INSUFFICIENT ADDRESS.” Subsequently, in its Order[11] dated July 26, 2010, the COMELEC Second Division found Layug to be a “phantom petitioner” by “seeing to it that pleadings, orders and judicial notices addressed to him are not received by him because the address he gave and maintains is fictitious”. Accordingly, Layug was deemed to have received on June 23, 2010 a copy of the Resolution dated June 15, 2010 and, there being no motion for reconsideration filed within the reglementary period, said Resolution was declared final and executory. It was entered[12] in the Book of Entries of Judgment on July 28, 2010.

As a consequence of such entry, the COMELEC En Banc, sitting as the National Board of Canvassers for Party-List, promulgated on July 30, 2010 NBC Resolution No. 10-034[13] proclaiming Buhay Party-List as a winner entitled to two (2) seats in the House of Representatives. Being the fifth nominee, however, Brother Mike was not proclaimed as the representative of Buhay Party-List.

Meanwhile, on July 28, 2010, Layug moved for reconsideration of the Resolution dated June 15, 2010 before the COMELEC En Banc claiming denial of due process for failure of the COMELEC to serve him, his representatives or counsels a copy of said Resolution. He alleged that it was only on July 26, 2010, after learning about it in the newspapers, that he personally secured a copy of the Resolution from the COMELEC.[14] His motion for reconsideration, however, was denied by the COMELEC Second Division in its Order[15] dated August 4, 2010 for being filed out of time.

The Issues

Aggrieved, Layug filed this petition imputing grave abuse of discretion on the part of the COMELEC for the following acts and omissions:

I. THE COMELEC SECOND DIVISION DID NOT ISSUE A NOTICE OF PROMULGATION TO THE PETITIONER’S COUNSEL AS REQUIRED BY RULE 13 OF THE RULES OF COURT, THEREBY COMMITTING A CLEAR VIOLATION OF PROCEDURAL DUE PROCESS; and

II. BY ISSUING THE 30 JULY 2010 RESOLUTION, THE COMELEC EN BANC UNLAWFULLY NEGLECTED THE PERFORMANCE OF AN ACT WHICH THE LAW SPECIFICALLY ENJOINS AS A DUTY RESULTING FROM ITS OFFICE, WHICH IS TO HEAR AND DECIDE THE PETITIONER’S MOTION FOR RECONSIDERATION WHICH WAS TIMELY FILED.[16]

In their respective Comments[17] to the petition, respondents assail the jurisdiction of the Court arguing that, with the proclamation of Buhay Party-List on July 30, 2010 and the assumption into office of its representatives, Mariano Michael DM. Velarde, Jr. and William Irwin C. Tieng, it is now the House of Representatives Electoral Tribunal that has the sole and exclusive jurisdiction over questions relating to their qualifications.

With regard to the issue on denial of due process, respondents maintain that, by providing an incorrect address to which a copy of the Resolution dated June 15, 2010 was duly sent and by refusing to rectify the error in the first instance when it was brought to his attention, Layug cannot now be heard to complain.

We rule for the respondents.

The Ruling of the Court

I. The Court not the HRET has jurisdiction over the present petition.

Section 17, Article VI of the 1987 Constitution provides that the House of Representatives Electoral Tribunal (HRET) shall be the sole judge of all contests relating to the election, returns, and qualifications of its Members. Section 5 (1) of the same Article identifies who the "members" of the House are:

Sec. 5. (1). The House of Representatives shall be composed of not more than two hundred and fifty members, unless otherwise fixed by law, who shall be elected from legislative districts apportioned among the provinces, cities, and the Metropolitan Manila area in accordance with the number of their respective inhabitants, and on the basis of a uniform and progressive ratio, and those who, as provided by law, shall be elected through a party list system of registered national, regional, and sectoral parties or organizations. (Underscoring added).

Clearly, the members of the House of Representatives are of two kinds: (1) members who shall be elected from legislative districts; and (2) those who shall be elected through a party-list system of registered national, regional, and sectoral parties or organizations.[18] In this case, Buhay Party-List was entitled to two seats in the House that went to its first two nominees, Mariano Michael DM. Velarde, Jr. and William Irwin C. Tieng. On the other hand, Brother Mike, being the fifth nominee, did not get a seat and thus had not become a member of the House of Representatives. Indubitably, the HRET has no jurisdiction over the issue of Brother Mike's qualifications.

Neither does the HRET have jurisdiction over the qualifications of Buhay Party-List, as it is vested by law, specifically, the Party-List System Act, upon the COMELEC. Section 6 of said Act states that "the COMELEC may motu proprio or upon verified complaint of any interested party, remove or cancel, after due notice and hearing, the registration of any national, regional or sectoral party, organization or coalition xxx." Accordingly, in the case of *Abayon vs. HRET*,[19] We ruled that the HRET did not gravely abuse its discretion when it dismissed the petitions for quo warranto against Aangat Tayo party-list and Bantay party-list insofar as they sought the disqualifications of said party-lists.

Thus, it is the Court, under its power to review decisions, orders, or resolutions of the COMELEC provided under Section 7, Article IX-A of the 1987 Constitution[20] and Section 1, Rule 37 of the COMELEC Rules of Procedure[21] that has jurisdiction to hear the instant petition.

II. Layug was not denied due process.

A party may sue or defend an action pro se.[22] Under Section 3, Rule 7 of the Rules of Court, "(e)very pleading must be signed by the party or counsel representing him, stating in either case his address which should not be a post office box."

A judicious perusal of the records shows that Layug filed pro se both the Petition to Disqualify[23] and his Position Paper[24] before the COMELEC Second Division. In the Petition to Disqualify, he stated his address as #70 Dr. Pilapil Street, Barangay San Miguel, Pasig City. While Atty. Rustico B. Gagate appeared as counsel for Layug during the hearing conducted on April 20, 2010, he nonetheless failed to provide either his or his client's complete and correct address despite the manifestation that counsel for private respondents could not personally serve the Answer on Layug due to the inexistence of the given address. Neither did the Position Paper that was subsequently filed pro se on April 23, 2010 indicate any forwarding address.

It should be stressed that a copy of the Resolution dated June 15, 2010 was mailed to Layug at his stated address at #70 Dr. Pilapil Street, Barangay San Miguel, Pasig City, which however was returned to sender (COMELEC) after three attempts due to insufficiency of said address, as evidenced by certified true copies of the registry return receipt[25], as well as the envelope⁴ containing the Resolution; the Letter[27] of Pasig City Central Post Office Postmaster VI Erlina M. Pecante; the Certification[28] dated November 2, 2010 of the Postmaster of Pasig City

Post Office; and the Affidavit of Service[29] of COMELEC Bailiff Arturo F. Forel dated August 13, 2010. Consequently, the COMELEC deemed Layug to have received a copy of the Resolution on June 23, 2010, the date the postmaster made his first attempt to serve it. There being no motion for reconsideration filed, the COMELEC issued an Order[30] on July 26, 2010 declaring the Resolution final and executory, which thereafter became the basis for the issuance of the assailed COMELEC En Banc's NBC Resolution[31] No. 10-034 dated July 30, 2010.

From the fact alone that the address which Layug furnished the COMELEC was incorrect, his pretensions regarding the validity of the proceedings and promulgation of the Resolution dated June 15, 2010 for being in violation of his constitutional right to due process are doomed to fail.[32] His refusal to rectify the error despite knowledge thereof impels Us to conclude that he deliberately stated an inexistent address with the end in view of delaying the proceedings upon the plea of lack of due process. As the COMELEC aptly pointed out, Layug contemptuously made a mockery of election laws and procedure by appearing before the Commission by himself or by different counsels when he wants to, and giving a fictitious address to ensure that he does not receive mails addressed to him.[33] He cannot thus be allowed to profit from his own wrongdoing. To rule otherwise, considering the circumstances in the instant case, would place the date of receipt of pleadings, judgments and processes within Layug's power to determine at his pleasure. This, We cannot countenance.

It bears stressing that the finality of a decision or resolution is a jurisdictional event which cannot be made to depend on the convenience of a party.[34] Decisions or resolutions must attain finality at some point and its attainment of finality should not be made dependent on the will of a party.

In sum, the Court finds no grave abuse of discretion amounting to lack or excess of jurisdiction attributable to the COMELEC in issuing NBC Resolution No. 10-034 dated July 30, 2010 proclaiming Buhay Party-List as a winner in the May 10, 2010 elections on the basis of the final and executory Resolution dated June 15, 2010 denying the petition to disqualify private respondents.

III. Mandamus does not lie to compel the COMELEC En Banc to rule on Layug's Motion for Reconsideration.

Mandamus, as a remedy, is available to compel the doing of an act specifically enjoined by law as a duty. It cannot compel the doing of an act involving the exercise of discretion one way or the other.¹ Section 3, Rule 65 of the Rules of Court clearly provides:

SEC. 3. Petition for mandamus — When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent. (Emphasis supplied)

In this case, the COMELEC En Banc cannot be compelled to resolve Layug's Motion for Reconsideration[36] of the Resolution dated June 15, 2010 that was filed on July 28, 2010 after said Resolution had already attained finality. In fact, the COMELEC Second Division denied the same Motion in its Order[37] dated August 4, 2010 precisely for the reason that it was filed out of time.

It should likewise be pointed out that the aforesaid Motion for Reconsideration was filed without the requisite notice of hearing. We have held time and again that the failure to comply with the mandatory requirements under

Sections 4[38] and 5[39] of Rule 15 of the Rules of Court renders the motion defective. As a rule, a motion without a notice of hearing is considered pro forma.[40] None of the acceptable exceptions obtain in this case.

Moreover, the Motion was filed by a new counsel – Evasco, Abinales and Evasco Law Offices – without a valid substitution or withdrawal of the former counsel. Thus said the COMELEC:

5. In spite of the finding that petitioner's given address '#70 Dr. Pilapil St., Barangay San Miguel, Pasig City' cannot be found, a new counsel, 'Evasco Abinales and Evasco Law Offices' filed on July 20, 2010, an 'ENTRY OF APPEARANCE AS COUNSEL (for petitioner Layug) WITH MANIFESTATION', at the bottom of which appear the name and signature of petitioner Roland D. Layug expressing his conforme, with his given (sic) at the same '#70 Dr. Pilapil St., Barangay San Miguel, Pasig City;' it is noted that the entry of appearance of a new counsel is without the benefit of the withdrawal of the former counsel.[41]

Considering, therefore, Layug's utter disregard of the rules of procedure for which he deserves no empathy, the Court finds that the COMELEC exercised its discretion within the bounds of the law thus warranting the dismissal of the instant case.

WHEREFORE, the instant Petition for Certiorari is hereby DISMISSED.

SO ORDERED.

Corona, C.J., Carpio, Velasco, Jr., Leonardo-De Castro, Brion, Peralta, Bersamin, Abad, Villarama, Jr., Perez, Mendoza, and Reyes, JJ., concur.

Del Castillo, J., on official leave.

Sereno, J., on leave.

[1] Rollo, pp. 34 – 38.

[2] Id. at 39 – 40.

[3] Id. at 19 – 30.

[4] Id. at 42 – 48.

[5] Section 5 (2) The party-list representatives shall constitute twenty per centum of the total number of representatives including those under the party-list. For three consecutive terms after the ratification of this Constitution, one-half of the seats allocated to party-list representatives shall be filled, as provided by law, by selection or election from the labor, peasant, urban poor, indigenous cultural communities, women, youth, and such other sectors as may be provided by law except the religious sector.

[6] Section 6. Refusal and/or Cancellation of Registration. The COMELEC may motu proprio or upon verified complaint of any interested party, remove or cancel, after due notice and hearing, the registration of any national, regional or sectoral party, or organization or coalition on any of the following grounds:

(1) It is a religious sect or denomination, organization or association organized for religious purposes.

xxx

[7] Section 6. Qualification of nominees. - A party-list nominee must be:

xxx

7. One who belongs to the marginalized and underrepresented sector/s, the sectoral party, organization,

political party or coalition he seeks to represent; xxx

[8] Rollo, pp. 132 – 146.

[9] See Order dated July 26, 2010, id. at 57.

[10] Supra note 1.

[11] Id. at 56 – 58.

[12] Id. at 55.

[13] Supra note 2.

[14] Omnibus Motion (A) Supplement to the Motion for Reconsideration and (B) Manifestation dated August 2, 2010, id. at 59 – 67.

[15] Id. at 252 – 257.

[16] Petition, id. at 7-8.

[17] Comment of Private Respondents, id. at 100-131; Comment filed by the Office of the Solicitor General for Public Respondent COMELEC, id. at 370-394.

[18] Abayon v. House of Representative Electoral Tribunal, G.R. Nos. 189466 and 189506, February 11, 2010, 612 SCRA 375, 381.

[19] Id. at 385.

[20] Sec.7. xxx Unless otherwise provided by this Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Supreme Court on certiorari by the aggrieved party within thirty days from receipt of a copy thereof.

[21] Sec.1 – Petition for Certiorari; and Time to File. – Unless otherwise provided by law, or by any specific provisions in these Rules, any decision, order or ruling of the Commission may be brought to the Supreme Court on certiorari by the aggrieved party within thirty (30) days from its promulgation.

[22] Estoya v. Abraham-Singson, Adm. Matter No. RTJ-91-758, September 26, 1994, 237 SCRA 1, 19.

[23] Supra note 4.

[24] Id. at 49-54.

[25] Id. at 398.

[26] Id.

[27] Id. at 402.

[28] Id. at 259.

[29] Id. at 399.

[30] Supra note 11.

[31] Supra note 2.

[32] See Estrada v. People of the Philippines, G.R. No. 162371, August 25, 2005, 468 SCRA 233, 244- 245.

[33] Order dated July 26, 2010, rollo, p. 58.

[34] Aguilar, et al. v. Court of Appeals, et al., G.R. No. 120972, July 19, 1999, 310 SCRA 393, 402. See also NIA Consult, Inc. v. National Labor Relations Commission, G.R. No. 108278, January 2, 1997, 266 SCRA 17, 22-23.

[35] Mateo v. Court of Appeals, G.R. No. 83354, April 25, 1991, 196 SCRA 280, 284.

[36] Rollo, pp. 19-30.

[37] Supra note 15.

[38] SECTION 4. Hearing of motion. – Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.

Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.

[39] SECTION 5. Notice of hearing. – The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion.

[40] Preysler, Jr. v. Manila Southcoast Development Corporation, G.R. No. 171872, June 28, 2010, 621 SCRA 636, 643.

[41] Order dated July 26, 2010, rollo, pp. 57-58.

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