

ATTY. PABLO B. FRANCISCO, PETITIONER, VS. COMMISSION ON ELECTIONS AND ATTY. JOHNIELLE KEITH P. NIETO, RESPONDENTS.*G.R. No. 230249. April 24, 2018*

Ponente: VELASCO JR., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-230249/>**VELASCO JR., J.:****Nature of the Case**

This treats of the petition for certiorari under Rule 64, in relation to Rule 65, of the Rules of Court filed by Atty. Pablo B. Francisco (Francisco), which seeks to nullify the February 2, 2017 Resolution[1] of the public respondent Commission on Elections (COMELEC) En Banc. The assailed ruling dismissed Francisco's Petition for Disqualification against private respondent Atty. Johnielle Keith P. Nieto (Nieto).

The Facts

Francisco is a registered voter in Cainta, Rizal, while Nieto was elected as mayor of the same municipality in 2013. Nieto filed a certificate of candidacy (COC) to signify his bid for re-election for the 2016 National and Local Elections.

On April 8, 2016, Francisco filed before the COMELEC a Petition for Disqualification against Nieto, docketed as SPA 16-062(DC), alleging that on April 1-2, 2016, respondent made financial contributions out of the government coffers for the asphalt-paving of the road entrance along Imelda Avenue of Cainta Green Park Village. This, according to petitioner, amounted to the expending of public funds within forty-five (45) days before the 2016 polls and to illegal contributions for road repairs, respectively punishable under Sees. 261(v)[2] and 104[3] of Batas Pambansa Blg. 881, otherwise known as the Omnibus Election Code (OEC). Petitioner further claimed that the said asphalt paving was one of the accomplishments that respondent reported on his Facebook page.

In his Answer filed on April 22, 2016, Nieto countered that the questioned asphaltting project was subjected to public bidding on March 15, 2016, with a Notice of Award issued on March 21, 2016. Thus, the asphaltting project falls within the excepted public works mentioned in Sec. 261(v)(l)(b) of the OEC.

During the preliminary conference on May 5, 2016, the counsels for the parties marked their respective pieces of evidence. Thereafter, an Order was issued giving them ten (10) days to file their respective memoranda. The COMELEC would receive copies of the memoranda on May 16, 2016 and, thereafter, the case was deemed submitted for resolution. In the interim, Nieto would be re-elected as municipal mayor of Cainta, Rizal, having garnered the plurality of votes upon the conclusion of the 2016 polls.

Ruling of the COMELEC

On August 16, 2016, the COMELEC Second Division promulgated a Resolution[4] dismissing the Petition for Disqualification against Nieto, and ruled in the following wise:

From the foregoing, it is clear that a candidate cannot be disqualified without a prior finding that he or she is

suffering from a disqualification provided by law or the Constitution. To be sure, in order to disqualify a candidate there must be a declaration by a final judgment of a competent court that the candidate sought to be disqualified is guilty of or found by the Commission to be suffering from any disqualification provided by law or the Constitution.

In the instant case, this Commission (Second Division) finds no such prior declaration by a final judgment of a competent court or of a finding of the Commission that Respondent is guilty of the acts complained of Whether or not the Respondent is guilty of the alleged acts is a prejudicial question which should be determined first in a proper proceedings (sic) before a tribunal with competent jurisdiction. In the absence of such prior finding of a competent tribunal, the Commission has no basis to disqualify Respondent. That said, the case must be dismissed.

WHEREFORE, premises considered, the instant Petition is DISMISSED.

SO ORDERED.[5]

The COMELEC Second Division anchored its ruling on the Court's landmark decision in *Poe-Llamanzares v. COMELEC*[6] (Poe) wherein the Court enunciated thusly:

Clearly, the amendment done in 2012 is an acceptance of the reality of absence of an authorized proceeding for determining before election the qualifications of candidate. Such that, as presently required, to disqualify a candidate there must be a declaration by a final judgment of a competent court that the candidate sought to be disqualified "is guilty of or found by the Commission to be suffering from any disqualification provided by law or the Constitution."

Insofar as the qualification of a candidate is concerned, Rule 25 and Rule 23 are flip sides of one to the other. Both do not allow, are not authorizations, are not vestment of jurisdiction, for the COMELEC to determine the qualification of a candidate. The facts of qualification must beforehand be established in a prior proceeding before an authority properly vested with jurisdiction. The prior determination of qualification may be by statute, by executive order or by a judgment of a competent court or tribunal. (emphasis added)

On September 8, 2016, petitioner moved for reconsideration from the COMELEC Second Division's Resolution before the COMELEC En Banc, arguing in the main that there need not be a final judgment by a competent court that the candidate sought to be disqualified is guilty of or is suffering from any disqualification. He also stressed that since the act complained of can only be committed within forty-five (45) days before the election, it would be impossible to secure a conviction prior to initiating the disqualification proceedings.

Despite these strong asseverations, however, the COMELEC En Banc found no reason to disturb the ruling of the Second Division. Instead, the seven-person Commission echoed the pronouncement that for a petition for disqualification to prosper, there must be "a declaration by a final judgment of a competent court that the candidate sought to be disqualified is guilty of or found by the Commission to be suffering from any disqualification provided by law or the Constitution." The COMELEC En Banc then deemed that the denial of the petition is the only course of action it could take under the premises. Thus, in its assailed February 2, 2017 Resolution, the electoral tribunal held:

Although the ruling enunciated by the Supreme Court in [Poe] has effectively emasculated the Commission's power under COMELEC Resolution No. 9523 to disqualify a candidate, it cannot decline to apply such ruling in view of the principle that "judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines."

As such, Petitioner's reliance on the cases cited in the Motion for Reconsideration is misplaced, considering that the Poe case is now the controlling doctrine on the matter having been decided in 2016 and thus supersedes any previous ruling on the matter.

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Consequently, having no leg to stand on, the instant Motion for Reconsideration is DENIED and the Resolution of the Commission (Second Division) is hereby AFFIRMED.[7]

Hence, the instant recourse.

The Issues

The issues to be resolved by this Court can be condensed to the following:

- Whether or not the COMELEC acted in grave abuse of discretion in ruling that a petition for disqualification under Sec. 68 of the OEC cannot prosper without a prior judgment finding the respondent guilty of an election offense.
- Whether or not petitioner sufficiently established by substantial evidence that respondent violated Secs. 261(v) and 104 of the OEC.

Petitioner bewails that the COMELEC abruptly dismissed the disqualification case. According to petitioner, the situation ushered in by the COMELEC ruling would render toothless Section 68 of the OEC against election irregularities because of the virtual impossibility of compliance with the prior ruling requirement. He also asserts that Poe does not apply to candidates for local posts.

In his Comment, respondent Nieto cited the Poe ruling and averred that since there was no prior declaration by a final judgment of a competent court or of a finding of the Commission that he is guilty of the acts complained of, the COMELEC Second Division had no basis to disqualify him. Nieto likens the requirement of a prior ruling to a prejudicial question that must first be determined in a proper proceeding before a tribunal with competent jurisdiction.

Moreover, Nieto reiterated the defense that the asphaltting project is outside the ambit of the ban against the expenditure of public funds since it was contracted prior to the 45-day period before the scheduled elections. It was, thus, an infrastructure activity lawfully entered into by the local government unit of Cainta. In addition, no public funds were disbursed for the project during the ban since all expenses were for the account of the winning bidder, Franzcor Trading and Construction.

The Office of the Solicitor General (OSG), representing the government, in its Comment took a stance different from that of the COMELEC. The OSG argued that Article IX-C, Section 2(2) and (3) of the Constitution granted the COMELEC the quasi-judicial power to decide all questions affecting elections, except those involving the right to vote. This power further finds legal mooring in the dual aspect of the prohibited acts constituting the grounds for disqualification under Section 68 of the OEC. Lastly, the OSG posited that the context of the Poe ruling bars its application to local elective officials since the discussions were aptly made within the confines of a national candidate for the presidency.

The Court's Ruling

Petitioner is correct in his contention that a prior judgment is not a precondition to filing a Petition for Disqualification. Nevertheless, the petition must necessarily fail for lack of substantial evidence to establish that private respondent committed an election offense.

Petitioner failed to comply with the material date rule

Before We discuss the merits of the case, the Court observes that petitioner failed to state the material dates to establish that the instant recourse was timely interposed. The petitioner merely stated that he received a copy of

the COMELEC's Resolution denying his motion for reconsideration on February 20, 2017, and that he was filing this petition within thirty (30) days from the said date on March 22, 2017.[8]

The allegation is not sufficient. Rule 64, Section 3 of the Rules of Court prescribes the period for elevating the COMELEC's ruling to this Court thusly:

Section 3. Time to file petition. - The petition shall be filed within thirty (30) days from notice of the judgment or final order or resolution sought to be reviewed. The filing of a motion for new trial or reconsideration of said judgment or final order or resolution, if allowed under the procedural rules of the Commission concerned, shall interrupt the period herein fixed. If the motion is denied, the aggrieved party may file the petition within the remaining period, but which shall not be less than five (5) days in any event, reckoned from notice of denial.

Clear from the provision is that the intervening period petitioner utilized in moving for reconsideration before the COMELEC must be deducted from the thirty (30)-day period for resorting to a Rule 64 petition. As held in *Pates v. COMELEC*,^[9] the fresh period rule in *Neypes v. Court of Appeals*^[10] that resets the period of the filing of an appeal from the date of receipt of the ruling on reconsideration is applicable only in civil cases, not in election controversies. Filing a motion for reconsideration before the COMELEC then almost guarantees that the full 30-day period could not be availed of.

In the case at bar, petitioner failed to indicate when he received a copy of the August 16, 2016 Resolution of the COMELEC Second Division, from which he moved for reconsideration on September 8, 2016. The Court is then unable to determine how many days should be deducted from his period for filing a Rule 64 petition and, consequently, if the instant recourse had been filed on time. The particular date of receipt is of utmost significance in this case since petitioner cannot deny that he availed of the full 30-day period from February 20, 2017 to March 22, 2017. This means that unless petitioner filed his motion for reconsideration on the very same day he received the COMELEC's August 16, 2016 Resolution, the instant petition had been filed out of time. In any case, non-compliance with the material date rule, in itself, is already a ground for dismissal.^[11]

Revisiting Poe and strengthening the jurisdiction of the COMELEC

Public respondent COMELEC relied heavily on the Court's pronouncement in *Poe* when it dismissed the election controversy. The Court, however, takes this opportunity to rectify Our position in *Poe* and to uphold the jurisdiction of the COMELEC as strengthened under the present Constitution.

For perspective, the COMELEC was never part of the original version of the 1935 Constitution. Prior to its creation, it was the then Department of Interior, through an Executive Bureau then directly, that superintended the conduct of elections.^[12] The Courts were charged with resolving questions affecting the right to vote as well as contested elections of local elective officials, while the Secretary of Interior was vested with the authority to enforce the election laws and assign local authorities to perform ministerial duties relative thereto.

The close official relationship between the President and the Secretary of Interior, however, aroused suspicion that the latter had been administering election statutes not for the purpose of securing honest and free elections, but to serve the political interest of the party in power to which they belonged. They were never entirely free from suspicion of acting with partisan bias. And this general dissatisfaction and distrust over the manner the elections were conducted at that time impelled the National Assembly to propose the creation of the COMELEC by constitutional amendment.^[13]

Through a plebiscite held on June 17, 1940, several amendments were introduced to the 1935 Constitution: modifying the term of office of the President and the Vice-President from six (6) years to four (4) years, but with

re-election for another term establishing a bicameral Congress composed of the Senate as the upper house and the House of Representatives as the lower house; and creating an independent COMELEC.

Since its creation, the COMELEC's power had been increased in each incarnation of the Constitution to reflect the country's awareness of the need to provide greater regulation and protection to our electoral processes and to ensure their integrity.[14] To demonstrate, Article X, Section 2 of the 1935 Constitution, as amended, declares the power of the electoral commission thusly:

Section 2. The Commission on Elections shall have exclusive charge of the enforcement and administration of all laws relative to the conduct of elections and shall exercise all other functions which may be conferred upon it by law. It shall decide, save those involving the right to vote, all administrative questions affecting elections, including the determination of the number and location of polling places, and the appointment of election inspectors and of other election officials. All law enforcement agencies and instrumentalities of the Government, when so required by the Commission, shall act as its deputies for the purpose of insuring free, orderly, and honest election. The decisions, orders, and rulings of the Commission shall be subject to review by the Supreme Court.

No pardon, parole, or suspension of sentence for the violation of any election law may be granted without the favorable recommendation of the Commission. (emphasis added)

Thus, the administrative control over the conduct of elections erstwhile exercised by the Secretary of Interior was shifted to the COMELEC. Under its constitutional mandate, it was tasked with "the enforcement and administration of all laws relative to the conduct of elections" and bestowed the power to "decide save those involving the right to vote, all administrative questions affecting elections." But since its authority to decide was circumscribed to administrative questions, the courts retained their original powers over local election contests.

It was not until the enactment of the 1973 Constitution when the power of the COMELEC to resolve election controversies was institutionalized. Through Article XII (C), Section 2 of the 1973 Constitution, the powers of the COMELEC were expanded to the following:

SEC. 2. The Commission on Elections shall have the following powers and functions:

- (1) Enforce and administer all laws relative to the conduct of elections.
- (2) Be the sole judge of all contests relating to the elections, returns, and qualifications of all Members of the Batasang Pambansa and elective provincial and city officials.
- (3) Decide, save those involving the right to vote, administrative questions affecting elections, including the determination of the number and location of polling places, the appointment of election officials and inspectors, and the registration of voters.
- (4) Deputize, with the consent or at the instance of the President, law enforcement agencies and instrumentalities of the Government, including the armed forces of the Philippines, for the purpose of ensuring free, orderly, and honest elections.
- (5) Register and accredit political parties subject to the provisions of Section eight hereof
- (6) Recommend to the Batasang Pambansa effective measures to minimize election expenses and prohibit all forms of election frauds and malpractices, political opportunism, ghost or nuisance candidacy, or other similar acts.
- (7) Submit to the President, the Prime Minister, and the Batasang Pambansa a report on the conduct and manner of each election.

(8) Perform such other functions as may be provided by law. (emphasis added)

As aptly observed in *Mendoza v. COMELEC* (*Mendoza*),^[15] these powers of the COMELEC have been enhanced in scope and details under the 1987 Constitution. Article X (C), Section 2 of the Constitution embodies the myriad of powers bestowed upon the polling body, viz:

SECTION 2. The Commission on Elections shall exercise the following powers and functions:

(1) Enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall.

(2) Exercise exclusive original jurisdiction over all contests relating to the elections, returns, and qualifications of all elective regional, provincial, and city officials, and appellate jurisdiction over all contests involving elective municipal officials decided by trial courts of general jurisdiction, or involving elective barangay officials decided by trial courts of limited jurisdiction.

Decisions, final orders, or rulings of the Commission on election contests involving elective municipal and barangay offices shall be final, executory, and not appealable.

(3) Decide, except those involving the right to vote, all questions affecting elections, including determination of the number and location of polling places, appointment of election officials and inspectors, and registration of voters.

(4) Deputize, with the concurrence of the President, law enforcement agencies and instrumentalities of the Government, including the Armed Forces of the Philippines, for the exclusive purpose of ensuring free, orderly, honest, peaceful, and credible elections.

(5) Register, after sufficient publication, political parties, organizations, or coalitions which, in addition to other requirements, must present their platform or program of government and accredit citizens' arms of the Commission on Elections. Religious denominations and sects shall not be registered. Those which seek to achieve their goals through violence or unlawful means, or refuse to uphold and adhere to this Constitution, or which are supported by any foreign government shall likewise be refused registration.

Financial contributions from foreign governments and their agencies to political parties, organizations, coalitions, or candidates related to elections constitute interference in national affairs, and, when accepted, shall be an additional ground for the cancellation of their registration with the Commission, in addition to other penalties that may be prescribed by law.

(6) File, upon a verified complaint, or on its own initiative, petitions in court for inclusion or exclusion of voters; investigate and, where appropriate, prosecute cases of violations of election laws, including acts or omissions constituting election frauds, offenses, and malpractices.

(7) Recommend to the Congress effective measures to minimize election spending, including limitation of places where propaganda materials shall be posted, and to prevent and penalize all forms of election frauds, offenses, malpractices, and nuisance candidacies.

(8) Recommend to the President the removal of any officer or employee it has deputized, or the imposition of any other disciplinary action, for violation or disregard of, or disobedience to its directive, order, or decision.

(9) Submit to the President and the Congress a comprehensive report on the conduct of each election, plebiscite, initiative, referendum, or recall. (emphasis added)

Significantly, the present Constitution clarifies that the COMELEC retains its character as an administrative agency notwithstanding its authority to resolve election contests. As held in *Mendoza*:

As will be seen on close examination, the 1973 Constitution used the unique wording that the COMELEC shall be the sole judge of all contests, thus giving the appearance that judicial power had been conferred. This phraseology, however, was changed in the 1987 Constitution to give the COMELEC exclusive jurisdiction over all contests, thus removing any vestige of exercising its adjudicatory power as a court and correctly aligning it with what it is a quasi-judicial body.[16]

As enunciated, the COMELEC's adjudicative function over election contests is quasi-judicial in character since the COMELEC is a governmental body, other than a court, that is vested with jurisdiction to decide the specific class of controversies it is charged with resolving. In adjudicating the rights of persons before it, the COMELEC is not just empowered but is in fact required to investigate facts or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions from them as basis for their official action and exercise of discretion in a judicial nature.[17] This is simply in congruence with the concept of due process that all administrative adjudicatory bodies are enjoined to observe.

The COMELEC is, thus, fully-clothed with authority to make factual determinations in relation to the election contests before it. This has been the thrust of the decades worth of constitutional revisions that transformed the COMELEC from a purely administrative body, whose scope of decision-making is limited to those incidental to its duty to enforce election laws, to a polling commission that also exercises original and exclusive, as well as appellate, jurisdiction over election contests.

Considering the historical evolution of the COMELEC, the Court now declares that the polling body has full adjudicatory powers to resolve election contests outside the jurisdiction of the electoral tribunals. To rule otherwise would be an act of regression, contrary to the intent behind the constitutional innovations creating and further strengthening the Commission. There is no novelty in this pronouncement, but merely a reinstatement of Our consistent jurisprudence prior to Poe.

In the landmark case of *Aratea v. COMELEC*,[18] for instance, the COC of Romeo D. Lonzanida was cancelled and declared void ab initio because of his misrepresentation as to his eligibility. He knew fully well that he had been elected, and had served, as mayor of San Antonio, Zambales for more than three consecutive terms yet he still certified that he was eligible to run for mayor for the next succeeding term, thus constituting false material representation. No prior judgment recognizing Lonzanida's service for three terms was necessary to effect the cancellation of his COC.

In *Maquiling v. COMELEC*,[19] Linog G. Balua, through a petition treated as one for cancellation and/or denial of due course of COC, contended that Rommel Arnado is not a resident of Kauswagan, Lanao del Norte and that the latter is a foreigner based on a certification by the Bureau of Immigration indicating that Amado is American. The Court did not find issue in the COMELEC's authority to make a factual determination as to Amado's citizenship and residence, though We eventually reversed the COMELEC En Banc's ruling and reinstated that of its First Division based on Our own appreciation of the evidence on record.

And in *Cerafica v. COMELEC (Cerafica)*,[20] the Court reversed the COMELEC's ruling not because of any alleged lack of authority to make factual determinations as to the eligibility of a candidate, but, quite the contrary, because it did not make use of the same authority.

To reiterate, the COMELEC, as an adjunct to its adjudicatory power, may investigate facts or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions from them as basis for their official action. As held in *Cerafica*: [21]

The determination of whether a candidate is eligible for the position he is seeking involves a determination of fact where parties must be allowed to adduce evidence in support of their contentions. We thus caution the

Comelec against its practice of impetuous cancellation of COCs via minute resolutions adopting the recommendations of its Law Department when the situation properly calls for the case's referral to a Division for summary hearing.

It may be true that the sole ground for Petitions to Deny Due Course or to Cancel COC is false material representation compounded by intent to deceive on the part of the candidate and that the intent to deceive or mislead will be difficult, if not impossible, to ascertain absent an established fact that the candidate deviated from. Contrary to Poe, the Court categorically rules herein that the COMELEC can be the proper body to make the pronouncement against which the truth or falsity of a material representation in a COC can be measured. But lest it be misunderstood, these disquisitions will not by any means alter the outcome of Poe, for even if We dispense the requirement of a predicate judgment therein and uphold the jurisdiction of the COMELEC, the Court's conclusion would still find mooring on the factual findings on Poe's Filipino blood relation and residency.[22]

A predicate judgment is not required in Petitions for Disqualification

Moreover, the Commission gravely abused its discretion when it failed to appreciate the characteristics that distinguish Poe from the case at bar. It must be stressed that there is a world of difference between the remedies availed of in Poe and in the instant case. What is involved herein is a Petition for Disqualification under Sec. 68 of the OEC, whereas Poe was initiated by multiple Petitions to Deny Due Course or Cancel COC under Sec. 78 of the OEC.[23]

The statutory bases for the two distinct remedies read:

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

x x x x

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. x x x

x x x x

Sec. 78. Petition to deny due course to or cancel a certificate of candidacy. - A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by the person exclusively on the ground that any material representation contained therein as required under Section 74 hereof is false. The petition may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy and shall be decided, after due notice and hearing, not later than fifteen days before the election. (emphasis added)

The essence of a disqualification proceeding that invokes Sec. 68 of the OEC is to bar an individual from becoming a candidate or from continuing as a candidate for public office based not on the candidate's lack of qualification, but on his possession of a disqualification as declared by a final decision of a competent court, or as found by the Commission.[24] The jurisdiction of the COMELEC to disqualify candidates is limited to those enumerated in Section 68 of the OEC. All other election offenses are beyond the ambit of COMELEC jurisdiction.[25]

Meanwhile, for a Petition to Deny Due Course or to Cancel COC under Sec. 78 of the OEC to prosper, the

candidate must have made a material misrepresentation involving his eligibility or qualification for the office to which he seeks election, such as the requisite residency, age, citizenship or any other legal qualification necessary to run for elective office[26] enumerated under Sec. 74 of the OEC.[27] Moreover, the false representation under Sec. 78 must consist of a deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible.[28] The relief is granted not because of the candidate's lack of eligibility per se, but because of his or her false misrepresentation of possessing the statutory qualifications.

The doctrine in *Poe* was never meant to apply to Petitions for Disqualification. A prior court judgment is not required before the remedy under Sec. 68 of the OEC can prosper. This is highlighted by the provision itself, which contemplates of two scenarios: first, there is a final decision by a competent court that the candidate is guilty of an election offense and second, it is the Commission itself that found that the candidate committed any of the enumerated prohibited acts. Noteworthy is that in the second scenario, it is not required that there be a prior final judgment; it is sufficient that the Commission itself made the determination. The conjunction "or" separating "competent court" and "the Commission" could only mean that the legislative intent was for both bodies to be clothed with authority to ascertain whether or not there is evidence that the respondent candidate ought to be disqualified.

Furthermore, the quantum of proof necessary in election cases is, as in all administrative cases, substantial evidence. This is defined as such relevant evidence as a reasonable mind will accept as adequate to support a conclusion.[29] To impose prior conviction of an election offense as a condition sine qua non before a Petition for Disqualification can be launched would be tantamount to requiring proof beyond reasonable doubt, which is significantly beyond what our laws require.

Jurisprudence is rife with teachings on the separability of the criminal prosecution for election offenses or even the determination for probable cause to criminally charge a candidate for any election violation, from the administrative proceeding for disqualification. The Court even elucidated on the concept of this twin aspect in the case of *Ejercito v. COMELEC*,[30] viz:

x x x It has been repeatedly underscored that an election offense has its criminal and electoral aspects. While its criminal aspect to determine the guilt or innocence of the accused cannot be the subject of summary hearing, its electoral aspect to ascertain whether the offender should be disqualified from office can be determined in an administrative proceeding that is summary in character. This Court said in *Sunga v. COMELEC*:

It is worth to note that an election offense has criminal as well as electoral aspects. Its criminal aspect involves the ascertainment of the guilt or innocence of the accused candidate. Like in any other criminal case, it usually entails a full-blown hearing and the quantum of proof required to secure a conviction is beyond reasonable doubt. Its electoral aspect, on the other hand, is a determination of whether the offender should be disqualified from office. This is done through an administrative proceeding which is summary in character and requires only a clear preponderance of evidence. Thus, under Sec. 4 of the COMELEC Rules of Procedure, petitions for disqualification "shall be heard summarily after due notice." It is the electoral aspect that we are more concerned with, under which an erring candidate may be disqualified even without prior criminal conviction.

and equally in *Lanot v. COMELEC*:

x x x The electoral aspect of a disqualification case determines whether the offender should be disqualified from being a candidate or from holding office. Proceedings are summary in character and require only clear preponderance of evidence. An erring candidate may be disqualified even without prior determination of probable cause in a preliminary investigation. The electoral aspect may proceed independently of the criminal aspect, and vice-versa.

The criminal aspect of a disqualification case determines whether there is probable cause to charge a candidate for an election offense. The prosecutor is the COMELEC, through its Law Department, which determines whether probable cause exists. If there is probable cause, the COMELEC, through its Law Department, files the criminal information before the proper court. Proceedings before the proper court demand a full-blown hearing and require proof beyond reasonable doubt to convict. A criminal conviction shall result in the disqualification of the offender, which may even include disqualification from holding a future public office.

The Court's disquisitions in *Sunga v. COMELEC*[31] and *Lanot v. COMELEC*[32] centered on whether or not the polling body has the discretion to proceed with disqualification cases even after the elections had been concluded.

In *Sunga*, petitioner Manuel C. Sunga was a mayoralty candidate in the Municipality of Iguig, Cagayan in the May 1995 Elections. He filed a complaint accusing respondent, then incumbent mayor Ferdinand B. Trinidad, of using threats, intimidation, terrorism or other forms of coercion, in violation of the OEC. The COMELEC denied the complaint, ruling that petitions for disqualification filed after the conduct of the elections ought to be dismissed. In reversing the ruling of the tribunal, the Court held that neither the conclusion of the elections nor Trinidad's proclamation and assumption of office divested the COMELEC of authority and jurisdiction to decide the disqualification case.

Meanwhile, in *Lanot*, therein petitioners led by Henry P. Lanot filed a Petition for Disqualification against then incumbent Pasig City Mayor Vicente P. Eusebio for allegedly violating Section 261(a) of the OEC on the prohibition against vote-buying. The COMELEC First Division granted the petition, prompting Eusebio to move for reconsideration. At the time of the elections, the disqualification case was not yet resolved with finality. Thus, Eusebio's votes were still counted and canvassed, and he was proclaimed city mayor of Pasig. Thereafter, the COMELEC En Banc annulled the COMELEC First Division's disqualification order and referred the case to the COMELEC Law Department for preliminary investigation.

The Court agreed with *Lanot* that the COMELEC En Banc gravely abused its discretion when it ordered the dismissal of the disqualification case because of Eusebio's proclamation as city mayor and at the same time allowed the criminal aspect to proceed with preliminary investigation. *Lanot* highlighted the inconsistency by citing the teaching in *Sunga* that:

A candidate guilty of election offenses would be undeservedly rewarded, instead of punished, by the dismissal of the disqualification case against him simply because the investigating body was unable, for any reason caused upon it, to determine before the election if the offenses were indeed committed by the candidate sought to be disqualified. All that the erring aspirant would need to do is to employ delaying tactics so that the disqualification case based on the commission of election offenses would not be decided before the election. This scenario is productive of more fraud which certainly is not the main intent and purpose of the law.[33]

To then avoid the above-illustrated deleterious scenario, the Court instructed that the COMELEC should continue the trial and hearing of the disqualification case until judgment is rendered thereon, and to treat the criminal aspect of the case as a separate issue altogether.

The distinction between the electoral aspect from the criminal one was further amplified in *Ejercito*. There, the Court rebuked therein petitioner's assertion that the conduct of preliminary investigation to determine whether the acts enumerated under Section 68 of the OEC were indeed committed is a requirement prior to actual disqualification. Resultantly, the Court upheld the COMELEC's disqualification of petitioner Emilio Ramon Ejercito even though there has yet to be any finding of probable cause, let alone guilt, that he spent more than the threshold amount prescribed under Sections 100-103 of the OEC, an election offense under Section 262 of the same code.

Neither a prior conviction nor even a determination of probable cause is then a requirement before a Petition for Disqualification can be lodged. Credit must be given to petitioner for his apt observation that to rule otherwise would render inutile the remedy under Section 68 of the OEC insofar as the specific ground raised herein is concerned. Pertinently, Section 261(v) of the OEC and Rule 25, Section 3 of the COMELEC Rules of Procedure read:

Section 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 x x x (emphasis added)

Rule 25 - Disqualification of Candidates

x x x x

Section 3. Period to File Petition. - The Petition shall be filed any day after the last day for filing of certificates of candidacy, but not later than the date of proclamation. (emphasis added)

Clearly, the particular election offense and ground for disqualification imputed on respondent must necessarily be committed within forty-five (45) days before a regular election and within thirty (30) days before a special election. Meanwhile, the window for filing a Petition for Disqualification raising the same ground is between the day after the filing of a certificate of candidacy until the date of proclamation, which in the advent of automated elections could only take less than a week for local posts. Through its ruling, the COMELEC then effectively required petitioner to secure against Nieto a final judgment of guilt within the very limited timeframe, an almost impossible feat under the normal course of legal procedure.

We are, therefore, constrained to rule that the COMELEC erred when, relying on Poe, it imposed the requirement of a prior court judgment before resolving the current controversy.

The records are bereft of evidence to hold that respondent violated Secs. 261(v) and 104 of the Omnibus Election Code

Notwithstanding the COMELEC's error in applying Poe, the petition must nevertheless fail. Though the COMELEC can properly take cognizance of the Petition for Disqualification without issue, petitioner miserably failed to tender evidence that respondent committed the election offenses imputed.

The quantum of proof necessary in election cases is substantial evidence, or such relevant evidence as a reasonable mind will accept as adequate to support a conclusion.[34] Corollarily, the rule is that he who alleges must prove.[35] Thus, the burden is on Francisco to establish through substantial evidence that Nieto unlawfully disbursed government funds during the election ban, a burden that Francisco failed to discharge.

There is simply a dearth of evidence to support petitioner's claim that respondent violated Sec. 261(v) of the OEC. To be sure, petitioner merely submitted the following to support his allegations:

- Pictures of the asphalt-paving along Imelda Avenue of Cainta Green Park Village, Barangay San Isidro, Cainta, Rizal;
- Picture of the Facebook page of the respondent acknowledging the project as one of the accomplishments of his administration; and

- Picture of a tarpaulin banner expressing gratitude for the asphalt-paving.

The photographs[36] petitioner presented depicting the construction and works done on the asphaltting project would only prove the fact of paving, which is not even contested. They do not, however, establish that respondent expended public funds or made financial contributions during the election prohibition.

On the other hand, respondent Nieto sufficiently parried the alleged commission of the election offenses by proving that the asphaltting project squarely falls under the exception in Sec. 261 (v)(1)(b). The provision states:

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 the following:

xxxx

b.

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 by contract; (emphasis added)

The Court is in concurrence with the observations of Commissioners Luie Tito F. Guia and Ma. Rowena Amelia V. Guanzon that the evidence on record sufficiently proved that the expenditure for the road repair is exempted from the prohibition under Sec. 261(v) of the OEC. Private respondent Nieto was able to show with competent evidence that the bidding for and the award of the subject project were regular and done consistent with existing laws. The charge for illegal contribution under Sec. 104 of the OEC has even less leg to stand on. There was no contribution to speak of since it was established that the asphaltting work was a government project and not a contribution.

Notably, private respondent adduced the following pieces of evidence to support his contention:

- A copy of the posting of the project in the Philippine Government Electronic Procurement System (PHILGEPS) website.[37] This indicates that the Bid Notice Abstract and Invitation to Bid for the subject project were posted on the website on February 25, 2016;
- A certified true copy of the Abstract of Bids[38] attested by the members of the Bids and Awards Committee, indicating that the bidding for the asphaltting project was held on March 15, 2016;
- A certified true copy of the Notice of Award[39] stating that, on March 21, 2016, the project was awarded in favor of the winning bidder, contractor Franzcor Trading and Construction;
- A letter[40] dated March 21, 2016 filed by respondent Nieto with the Acting Regional Election Director of COMELEC in Region IV-A submitting to the Commission the list of the infrastructure projects bid out, including the asphaltting project, which were awarded before March 25, 2016, the reckoning date of the forty-five day prohibition period and
- A certification[41] from the Election Officer of the COMELEC Region IV-A office acknowledging receipt of the letter.

To cast doubt on the sufficiency of respondent Nieto's evidence, petitioner Francisco points out that the following were never offered in evidence: (a) an ordinance enacted by the Sangguniang Bayan of Cainta authorizing the P6,000,000.00 expenditure for the project, (b) a certification from the proper accounting official that there is an appropriation by law of such amount and that the fund is available, and (c) an affidavit from the editor or publisher of a newspaper of general circulation that the Invitation to Bid had been published. However, petitioner is not excused from shifting the burden of proof to private respondent, especially since the latter has the presumption of regularity in his favor.[42] bolstered by evidence proving that the project was contracted outside the period of prohibition.

There being substantial evidence to support Nieto's defense that the construction procurement for the project was aboveboard, there is then no reason to disturb public respondent's rulings. No abuse of discretion, let alone one that is grave, can be attributed to the COMELEC Second Division in dismissing the Petition for Disqualification, nor to the COMELEC En Banc in denying petitioner's motion for reconsideration.

WHEREFORE, premises considered, the instant petition is DISMISSED for lack of merit. The Court declares that in a Petition for Disqualification under Section 68 of the Omnibus Election Code, a prior judgment by a competent court that the candidate is guilty of an election offense is not required before the said petition can be entertained or given due course by the Commission on Elections.

SO ORDERED.

Sereno, C.J., on leave.

Carpio, [**] Leonardo-De Castro, Peralta, Bersamin, Del Castillo, Perlas-Bernabe, Leonen, Jardeleza, Caguioa, Martires, Tijam, Reyes, Jr., and Gesmundo, JJ., concur.

[**] Acting Chief Justice.

[1] Rollo, pp. 23-28.

[2] Section 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 x x x

[3] Sec. 104. Prohibited donations by candidates, treasurers of parties or their agents. - No candidate x x x shall during the campaign period. x x x directly or indirectly, make any donation, contribution or gift in cash or in kind, or undertake or contribute to the construction or repair of roads, bridges, school buses, puericulture centers, medical clinics and hospitals, churches or chapels, cement pavements, or any structure for public use or for the use of any religious or civic organization. x x x

[4] Rollo, pp. 87-92.

[5] Id. at 91-92.

[6] G.R. Nos. 221697 & 221698-700, March 8, 2016.

[7] Rollo, p. 27.

[8] Id. at 4.

[9] G.R. No. 184915, June 30, 2009.

[10] G.R. No. 141524, September 15, 2005, 469 SCRA 633.

[11] Lapid v. Laurea, G.R. No. 139607, October 28, 2002.

[12] See <<https://www.comelec.gov.ph/?r=AboutCOMELEC/CitizensChartcr/HistoryofCOMELEC>>.

[13] Id.

[14] Mendoza v. Commission on Election, G.R. No. 188308, October 15, 2009.

[15] Supra note 14.

[16] Id.

[17] Id.

[18] G.R. No. 195229, October 9, 2012.

[19] G.R. No. 195649, April 16, 2013.

[20] G.R. No. 205136, December 2, 2014.

[21] Id.

[22] Poe's status as a natural-born Filipino was established through the intent of the framers of the 1935 Constitution, presumptions, and generally accepted principles of international law. Meanwhile, her compliance with the residency requirement was founded on case law and evidence.

[23] a. SPA No. 15-001(DC) was a petition filed by Estrella Elamparo to deny due course or cancel Poe's COC on the ground Poe allegedly committed material misrepresentation in indicating in her COC that she is a natural-born Filipino and a resident of the Philippines for at least ten (10) years and eleven (11) months up to the day before the May 9, 2016 elections;

b. SPA No. 15-002(DC) was a petition to disqualify filed by Francisco S. Tatad, alleging that Poe lacks the requisite citizenship and residency to qualify her for the presidency. Though denominated as a petition to disqualify, the grounds relied upon were not those enumerated in either Sections 12 or 68 of the OEC;

c. SPA No. 15-007(DC) was a petition filed by Antonio P. Contreras to cancel Poe's COC on the ground that she allegedly did not possess the ten-year residency required for the candidacy; and

d. SPA No. 15-139(DC) was a petition filed by Amado D. Valdez to deny de course or cancel the COC of Poe, alleging that her repatriation did not bestow upon her the status of a natural-born citizen, and that she could not have established her residence in the country prior to her repatriation.

[24] Fermin v. COMELEC, 595 Phil. 449 (2008).

[25] Ejercito v. COMELEC, G.R. No. 212398, November 25, 2014.

[26] Villafuerte v. COMELEC, G.R. No. 206698, February 25, 2014.

[27] Section 74. Contents of certificate of candidacy. - The certificate of candidacy shall state that the person

filing it is announcing his candidacy for the office stated therein and that he is eligible for said office; if for Member of the Batasang Pambansa, the province, including its component cities, highly urbanized city or district or sector which he seeks to represent; the political party to which he belongs; civil status; his date of birth; residence; his post office address for all election purposes; his profession or occupation; that he will support and defend the Constitution of the Philippines and will maintain true faith and allegiance thereto; that he will obey the laws, legal orders, and decrees promulgated by the duly constituted authorities; that he is not a pennant resident or immigrant to a foreign country; that the obligation imposed by his oath is assumed voluntarily, without mental reservation or purpose of evasion; and that the facts stated in the certificate of candidacy are true to the best of his knowledge.

[28] Villafuerte v. COMELEC, supra note 26.

[29] Sabili v. COMELEC, G.R. No. 193261, April 24, 2012.

[30] Supra note 25.

[31] G.R. No. 125629, March 25, 1998.

[32] G.R. No. 164858, November 16, 2006.

[33] Supra note 32.

[34] Section 5, Rule 133 of the Rules of Court.

[35] Lim v. Equitable PCI Bank, G.R. No. 183918, January 15, 2014.

[36] Rollo, pp. 43-46.

[37] Id. at 58.

[38] Id. at 59.

[39] Id. at 60.

[40] Id. at 62.

[41] Id. at 61.

[42] Rule 131, Section 3. Disputable presumptions. - The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

x x x x

(m) That official duty has been regularly performed.

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