

JOSE MARI EULALIO C. LOZADA AND ROMEO B. IGOT, PETITIONERS, VS. THE COMMISSION ON ELECTIONS, RESPONDENT.

G.R. No. 59068. January 27, 1983

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

This is a petition for mandamus filed by Jose Mari Eulalio C. Lozada and Romeo B. Igot as a representative suit for and in behalf of those who wish to participate in the election irrespective of party affiliation, to compel the respondent COMELEC to call a special election to fill up existing vacancies numbering twelve (12) in the Interim Batasan Pambansa. The petition is based on Section 5(2), Article VIII of the 1973 Constitution which reads:

"(2) In case a vacancy arises in the Batasang Pambansa eighteen months or more before a regular election, the Commission on Election shall call a special election to be held within sixty (60) days after the vacancy occurs to elect the Member to serve the unexpired term."

Petitioner Lozada claims that he is a taxpayer and a bonafide elector of Cebu City and a transient voter of Quezon City, Metro Manila, who desires to run for the position in the Batasan Pambansa; while petitioner Romeo B. Igot alleges that, as a taxpayer, he has standing to petition by mandamus the calling of a special election as mandated by the 1973 Constitution. As reason for their petition, petitioners allege that they are ". . . deeply concerned about their duties as citizens and desirous to uphold the constitutional mandate and rule of law . . ."; that they have filed the instant petition "on their own and in behalf of all other Filipinos since the subject matters are of profound and general interest."

The respondent COMELEC, represented by counsel, opposes the petition alleging, substantially, that 1) petitioners lack standing to file the instant petition for they are not the proper parties to institute the action; 2) this Court has no jurisdiction to entertain this petition; and 3) Section 5(2), Article VIII of the 1973 Constitution does not apply to the Interim Batasan Pambansa.

The petition must be dismissed.

I

As taxpayers, petitioners may not file the instant petition, for nowhere therein is it alleged that tax money is being illegally spent. The act complained of is the inaction of the COMELEC to call a special election, as is allegedly its ministerial duty under the constitutional provision abovesited, and therefore, involves no expenditure of public funds. It is only when an act complained of, which may include a legislative enactment or statute, involves the illegal expenditure of public money that the so-called taxpayer suit may be allowed.[1] What the case at bar seeks is one that entails expenditure of public funds which may be illegal because it would be spent for a purpose—that of calling a special election—which, as will be shown, has no authority either in the Constitution or a statute.

As voters, neither have petitioners the requisite interest or personality to qualify them to maintain and prosecute the present petition. The unchallenged rule is that the person who impugns the validity of a statute must have a

personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement.[2] In the case before Us, the alleged inaction of the COMELEC to call a special election to fill-up the existing vacancies in the Batasan Pambansa, standing alone, would adversely affect only the generalized interest of all citizens. Petitioners' standing to sue may not be predicated upon an interest of the kind alleged here, which is held in common by all members of the public because of the necessarily abstract nature of the injury supposedly shared by all citizens. Concrete injury, whether actual or threatened, is that indispensable element of a dispute which serves in part to cast it in a form traditionally capable of judicial resolution.[3] When the asserted harm is a "generalized grievance" shared in substantially equal measure by all or a large class of citizens, that harm alone normally does not warrant exercise of jurisdiction.[4] As adverted to earlier, petitioners have not demonstrated any permissible personal stake, for, petitioner Lozada's interest as an alleged candidate and as a voter is not sufficient to confer standing. Petitioner Lozada does not only fail to inform the Court of the region he wants to be a candidate but makes indiscriminate demand that special election be called throughout the country. Even his plea as a voter is predicated on an interest held in common by all members of the public and does not demonstrate any injury specially directed to him in particular.

II

The Supreme Court's jurisdiction over the COMELEC is only to review by certiorari the latter's decision, orders or rulings. This is as clearly provided in Article XII-C, Section 11 of the New Constitution which reads:

"Any decision, order, or ruling of the Commission may be brought to the Supreme Court on certiorari by the aggrieved party within thirty days from his receipt of a copy thereof."

There is in this case no decision, order or ruling of the COMELEC which is sought to be reviewed by this Court under its certiorari jurisdiction as provided for in the aforequoted provision, which is the only known provision conferring jurisdiction or authority on the Supreme Court over the COMELEC. It is not alleged that the COMELEC was asked by petitioners to perform its alleged duty under the Constitution to call a special election, and that COMELEC has issued an order or resolution denying such petition.

Even from the standpoint of an action for mandamus, with the total absence of a showing that COMELEC has unlawfully neglected the performance of a ministerial duty, or has refused on being demanded, to discharge such a duty; and as demonstrated above, it is not shown, nor can it ever be shown, that petitioners have a clear right to the holding of a special election which is equally the clear and ministerial duty of COMELEC to respect, mandamus will not lie.[5] The writ will not issue in doubtful cases.[6]

It is obvious that the holding of special elections in several regional districts where vacancies exist, would entail huge expenditure of money. Only the Batasan Pambansa can make the necessary appropriation for the purpose, and this power of the Batasan Pambansa may neither be subject to mandamus by the courts much less may COMELEC compel the Batasan to exercise its power of appropriation. From the role Batasan Pambansa has to play in the holding of special elections, which is to appropriate the funds for the expenses thereof, it would seem that the initiative on the matter must come from said body, not the COMELEC, even when the vacancies would occur in the regular not interim Batasan Pambansa. The power to appropriate is the sole and exclusive prerogative of the legislative body, the exercise of which may not be compelled through a petition for mandamus. What is more, the provision of Section 5(2), Article VIII of the Constitution was intended to apply to vacancies in the regular National Assembly, now Batasan Pambansa, not to the Interim Batasan Pambansa, as will presently be shown.

III

Perhaps the strongest reason why the aforecited provision of the Constitution is not intended to apply to the Interim National Assembly as originally envisioned by the 1973 Constitution is the fact that as passed by the Constitutional Convention, the Interim National Assembly was to be composed by the delegates to the Constitutional Convention, as well as the then incumbent President and Vice-President, and the members of the Senate and House of Representatives of Congress under the 1935 Constitution. With such number of representatives representing each congressional district, or a province, not to mention the Senators, there was felt absolutely no need for filling vacancies occurring in the Interim National Assembly, considering the uncertainty of the duration of its existence. What was in the mind of the Constitutional Convention in providing for special elections to fill up vacancies is the regular National Assembly, because a province or representative district would have only one representative in the said National Assembly.

Even as presently constituted where the representation in the Interim Batasan Pambansa is regional and sectoral, the need to fill up vacancies in the Body is neither imperative nor urgent. No district or province would ever be left without representation at all, as to necessitate the filling up of vacancies in the Interim Batasan Pambansa. There would always be adequate representation for every province which only forms part of a certain region, specially considering that the Body is only transitory in character.

The unmistakable intent of the Constitutional Convention as adverted to is even more positively revealed by the fact that the provision of Section 5(2) of Article VIII of the New Constitution is in the main body of the said Constitution, not in the transitory provisions in which all matters relating to the Interim Batasan Pambansa are found. No provision outside of Article VIII on the "Transitory Provisions" has reference or relevance to the Interim Batasan Pambansa.

Also under the original provision of the Constitution (Section 1, Article XVII — Transitory Provisions), the Interim National Assembly had only one single occasion on which to call for an election, and that is for the election of members of the regular National Assembly. The Constitution could not have at that time contemplated to fill up vacancies in the Interim National Assembly the composition of which, as already demonstrated, would not raise any imperious necessity of having to call special elections for that purpose, because the duration of its existence was neither known or pre-determined. It could be for a period so brief that the time prescriptions mentioned in Section 5(2), Article VIII of the Constitution cannot be applicable.

The foregoing observations make it indubitably clear that the aforementioned provision for calling special elections to fill up vacancies apply only to the regular Batasan Pambansa. This is evident from the language thereof which speaks of a "vacancy in the Batasan Pambansa," which means the regular Batasan Pambansa as the same words "Batasan Pambansa" found in all the many other sections of Article VIII, undoubtedly refer to the regular Batasan, not the interim one. A word or phrase used in one part of a Constitution is receive the same interpretation when used in every other part, unless it clearly appears, from the context or otherwise, that a different meaning should be applied.[7]

WHEREFORE, the petition is hereby dismissed.

SO ORDERED.

Aquino, Concepcion, Jr., Guerrero, Plana, Escolin, Vasquez, Relova and Gutierrez, Jr., JJ., concur.

Fernando, C.J., Makasiar and Melencio-Herrera, JJ., in the result.

Teehankee, J., took no part.

Abad Santos, J., reserves his vote.

[1] *Flast vs. Cohen*, 392 U.S. 383 (1960), *Pascual vs. Secretary of Public Works*, 110 Phil. 331 (1960).

[2] *People vs. Vera*, 65 Phil. 56 (1937).

[3] *Schlesigner vs. Reservist Comm. to Stop the War*, 418 U.S. 208, 94 S Ct. 2925, 41 F Ed. 2d 706 (1974) citing *Flast vs. Cohen*.

[4] *Ibid*.

[5] *Lemi vs. Valencia*, 26 SCRA 203.

[6] *Taboy vs. Court of Appeals*, 105 SCRA 759; *Valdez vs. Gutierrez*, 23 SCRA 661; *Alzate vs. Aldana*, 8 SCRA 219.

[7] 16 C.J.S. 88-89, citing *Carter vs. Cain*, 14 S.W. 2d 250, 199 Ark. 79; *Whittemore v. Terral*, 215 S.W. 686, 140 Ark 493; citing *Spring Canyon Coal Co. v. Industrial Commission*, 74 Utah 103, 277 P 206; *Alexander v. Alexandria*, 5 Cranch (US) 1, 3 L ed 19.

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