

PABLITO V. SANIDAD, PETITIONER, VS. THE COMMISSION ON ELECTIONS, RESPONDENT.

G.R. No. 90878. January 29, 1990

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This is a petition for certiorari assailing the constitutionality of Section 19 of Comelec Resolution No. 2167 on the ground that it violates the constitutional guarantees of the freedom of expression and of the press.

On October 23, 1989, Republic Act No. 6766, entitled "AN ACT PROVIDING FOR AN ORGANIC ACT FOR THE CORDILLERA AUTONOMOUS REGION" was enacted into law. Pursuant to said law, the City of Baguio and the Cordilleras which consist of the provinces of Benguet, Mountain Province, Ifugao, Abra and Kalinga-Apayao, all comprising the Cordillera Autonomous Region, shall take part in a plebiscite for the ratification of said Organic Act originally scheduled last December 27, 1989 which was, however, reset to January 30, 1990 by virtue of Comelec Resolution No. 2226 dated December 27, 1989.

The Commission on Elections, by virtue of the power vested by the 1987 Constitution, the Omnibus Election Code (BP 881), said R.A. 6766 and other pertinent election laws, promulgated Resolution No. 2167, to govern the conduct of the plebiscite on the said Organic Act for the Cordillera Autonomous Region.

In a petition dated November 20, 1989, herein petitioner Pablito V. Sanidad, who claims to be a newspaper columnist of the "OVERVIEW" for the BAGUIO MIDLAND COURIER, a weekly newspaper circulated in the City of Baguio and the Cordilleras, assailed the constitutionality of Section 19 of Comelec Resolution No. 2167, which provides:

"Section 19. Prohibition on columnist, commentators or announcers. — During the plebiscite campaign period, on the day before and on plebiscite day, no mass media columnist, commentator, announcer, or personality shall use his column or radio or television times to campaign for or against the plebiscite issues."

It is alleged by petitioner that said provision is void and unconstitutional because it violates the constitutional guarantees of the freedom of expression and of the press enshrined in the Constitution.

Unlike a regular newsreporter or news correspondent who merely reports the news, petitioner maintains that as a columnist, his column obviously and necessarily contains and reflects his opinions, views and beliefs on any issue or subject about which he writes. Petitioner believes that said provision of COMELEC Resolution No. 2167 constitutes a prior restraint on his constitutionally-guaranteed freedom of the press and further imposes subsequent punishment for those who may violate it because it contains a penal provision, as follows:

"Article XIII, Section 122, Election Offenses and Banned Acts or Activities. — Except to the extent that the same may not be applicable to a plebiscite, the banned acts/activities and offenses defined in and penalized by the Omnibus Election Code (Sections 261, 262, 263 and 264, Article XXII, B.P. Blg. 881) and the pertinent provisions of R.A. No. 6646 shall be applicable to the plebiscite governed by this Resolution."

Petitioner likewise maintains that if media practitioners were allowed to express their views, beliefs and opinions on the issue submitted to a plebiscite, it would in fact help in the government drive and desire to disseminate information, and hear, as well as ventilate, all sides of the issue.

On November 28, 1989, We issued a temporary restraining order enjoining respondent Commission on Elections from enforcing and implementing Section 19 of Resolution No. 2167. We also required the respondent to comment on the petition.

On January 9, 1990, respondent Commission on Elections, through the Office of the Solicitor General filed its Comment.

Respondent Comelec maintains that the questioned provision of Comelec Resolution No. 2167 is not violative of the constitutional guarantees of the freedom of expression and of the press. Rather, it is a valid implementation of the power of the Comelec to supervise and regulate media during election or plebiscite periods as enunciated in Article IX-C, Section 4 of the 1987 Constitution of the Republic of the Philippines.

It is stated further by respondent that Resolution 2167 does not absolutely bar petitioner from expressing his views and/or from campaigning for or against the Organic Act. He may still express his views or campaign for or against the act through the Comelec space and airtime. This is provided under Sections 90 and 92 of BP 881:

"Section 90. Comelec space. — The Commission shall procure space in at least one newspaper of general circulation in every province or city: Provided, however, That in the absence of said newspaper, publication shall be done in any other magazine or periodical in said province or city, which shall be known as "Comelec Space" wherein candidates can announce their candidacy. Said space shall be allocated, free of charge, equally and impartially within the area in which the newspaper is circulated.

"Section 92. Comelec time. — The Commission shall procure radio and television time to be known as "Comelec Time" which shall be allocated equally and impartially among the candidates within the area of coverage of all radio and television stations. For this purpose, the franchise of all radio broadcasting and television stations are hereby amended so as to provide radio or television time, free of charge, during the period of the campaign."

Respondent Comelec has relied much on Article IX-C of the 1987 Constitution and Section 11 of R.A. 6646 as the basis for the promulgation of the questioned Section 19 of Comelec Resolution 2167.

Article IX-C of the 1987 Constitution provides:

"The Commission may, during the election period, supervise or regulate the enjoyment or utilization of all franchises or permits for the operation of transportation and other public utilities, media of communication or information, all grants, special privileges, or concessions granted by the Government or any subdivision, agency or instrumentality thereof, including any government-owned or controlled corporation or its subsidiary. Such supervision or regulation shall aim to ensure equal opportunity, time, and space, and the right to reply, including reasonable, equal rates therefor, for public information campaigns and forums among candidates in connection with the objective of holding free, orderly, honest, peaceful and credible elections."

Similarly, Section 11 of Republic Act No. 6646 (The Electoral Reform Law of 1987) likewise provides:

"Prohibited forms of election Propaganda. — In addition to the forms of election propaganda prohibited under Section 85 of Batas Pambansa Blg. 881, it shall be unlawful: x x x

"(b) for any newspaper, radio, broadcasting or television station, or other mass media, or any person making use of the mass media to sell or to give free of charge print space or air time for campaign or other political purposes except to the Commission as provided under Sections 90 and 92 of Batas Pambansa Blg. 881. Any

mass media columnist, commentator, announcer, or personality who is a candidate for any elective office shall take a leave of absence from his work as such during the campaign period." (Emphasis ours)

However, it is clear from Art. IX-C of the 1987 Constitution that what was granted to the Comelec was the power to supervise and regulate the use and enjoyment of franchises, permits or other grants issued for the operation of transportation or other public utilities, media of communication or information to the end that equal opportunity, time and space, and the right to reply, including reasonable, equal rates therefor, for public information campaigns and forums among candidates are ensured. The evil sought to be prevented by this provision is the possibility that a franchise holder may favor or give any undue advantage to a candidate in terms of advertising space or radio or television time. This is also the reason why a "columnist, commentator, announcer, or personality, who is a candidate for any elective office is required to take a leave of absence from his work during the campaign period (2nd par. Section 11(b) R.A. 6646). It cannot be gainsaid that a columnist or commentator who is also a candidate would be more exposed to the voters to the prejudice of other candidates unless required to take a leave of absence.

However, neither Article IX-C of the Constitution nor Section 11(b), 2nd par. of R.A. 6646 can be construed to mean that the Comelec has also been granted the right to supervise and regulate the exercise by media practitioners themselves of their right to expression during plebiscite periods. Media practitioners exercising their freedom of expression during plebiscite periods are neither the franchise holders nor the candidates. In fact, there are no candidates involved in a plebiscite. Therefore, Section 19 of Comelec Resolution No. 2167 has no statutory basis.

In the case of *Badoy, Jr. v. Comelec*, L-32546, Oct. 16, 1970, where the constitutionality of the prohibition of certain forms of election propaganda was assailed, We ruled therein that the prohibition is a valid exercise of the police power of the state "to prevent the perversion and prostitution of the electoral apparatus and of the denial of equal protection of the laws." The evil sought to be prevented in an election which led to Our ruling in that case does not obtain in a plebiscite. In a plebiscite, votes are taken in an area on some special political matter unlike in an election where votes are cast in favor of specific persons for some office. In other words, the electorate is asked to vote for or against issues, not candidates in a plebiscite.

Anent Respondent Comelec's argument that Section 19 of Comelec Resolution 2167 does not absolutely bar petitioner-columnist from expressing his views and/or from campaigning for or against the organic act because he may do so through the Comelec space and/or Comelec radio/television time, the same is not meritorious. While the limitation does not absolutely bar petitioner's freedom of expression, it is still a restriction on his choice of the forum where he may express his view. No reason was advanced by respondent to justify such abridgement. We hold that this form of regulation is tantamount to a restriction of petitioner's freedom of expression for no justifiable reason.

Plebiscite issues are matters of public concern and importance. The people's right to be informed and to be able to freely and intelligently make a decision would be better served by access to an unabridged discussion of the issues, including the forum. The people affected by the issues presented in a plebiscite should not be unduly burdened by restrictions on the forum where the right to expression may be exercised. Comelec spaces and Comelec radio time may provide a forum for expression but they do not guarantee full dissemination of information to the public concerned because they are limited to either specific portions in newspapers or to specific radio or television times.

ACCORDINGLY, the instant petition is GRANTED. Section 19 of Comelec Resolution No. 2167 is declared null and void and unconstitutional. The restraining order herein issued is hereby made permanent.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Cortes, Griño-Aquino, and Regalado, JJ., concur.

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