

FELIPE EVARDONE, PETITIONER, VS. COMMISSION ON ELECTIONS, ALEXANDER APELADO, VICTORINO E. ACLAN AND NOEL A. NIVAL, RESPONDENTS.

G.R. No. 94010, December 02, 1991

Ponente: PADILLA, J.

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PADILLA, J.:

These two (2) consolidated petitions have their origin in en banc Resolution No. 90-0557 issued by the respondent Commission on Elections (COMELEC) dated 20 June 1990 which approved the recommendation of the Election Registrar of Sulat, Eastern Samar to hold and conduct the signing of the petition for recall of the incumbent Mayor of Sulat, Eastern Samar, on 14 July 1990.

G.R. No. 94010 is a petition for prohibition with an urgent prayer for immediate issuance of a restraining order and/or writ of preliminary injunction to restrain the holding of the signing of the petition for recall on 14 July 1990.

G.R. No. 95063 is a petition for review on certiorari which seeks to set aside en banc Resolution No. 90-0660 of the respondent COMELEC nullifying the signing process held on 14 July 1990 in Sulat, Eastern Samar for the recall of Mayor Evardone of said municipality and en banc Resolution No. 90-0777 denying petitioners' motion for reconsideration, on the basis of the temporary restraining order issued by this Court on 12 July 1990 in G.R. No. 94010.

Felipe Evardone (hereinafter referred to as Evardone) is the mayor of the Municipality of Sulat, Eastern Samar, having been elected to the position during the 1988 local elections. He assumed office immediately after proclamation.

On 14 February 1990, Alexander R. Apelado, Victorino E. Aclan and Noel A. Nival (hereinafter referred to as Apelado, et al.) filed a petition for the recall of Evardone with the Office of the Local Election Registrar, Municipality of Sulat.

In a meeting held on 20 June 1990, the respondent COMELEC issued Resolution No. 90-0557, approving the recommendation of Mr. Vedasto B. Sumbilla, Election Registrar of Sulat, Eastern Samar, to hold on 14 July 1990 the signing of the petition for recall against incumbent Mayor Evardone of the said Municipality.

On 10 July 1990, Evardone filed before this Court a petition for prohibition with urgent prayer for immediate issuance of restraining order and/or writ of preliminary injunction, which was docketed as G.R. No. 94010.

On 12 July 1990, this Court resolved to issue a temporary restraining order (TRO), effective immediately and continuing until further orders from the Court, ordering the respondents to cease and desist from holding the signing of the petition for recall on 14 July 1990, pursuant to respondent COMELEC's Resolution No. 2272 dated 23 May 1990.

On the same day (12 July 1990), the notice of TRO was received by the Central Office of the respondent COMELEC. But it was only on 15 July 1990 that the field agent of the respondent COMELEC received the telegraphic notice of the TRO - a day after the completion of the signing process sought to be temporarily stopped by the TRO.

In an en banc resolution (No. 90-0660) dated 26 July 1990, the respondent COMELEC nullified the signing process held in Sulat, Eastern Samar for being violative of the order (the TRO) of this Court in G.R. No. 94010. Apelado, et al., filed a motion for reconsideration and on 29 August 1990, the respondent COMELEC denied said motion holding that:

"x x x. The critical date to consider is the service or notice of the Restraining Order on 12 July 1990 upon the principal i.e. the Commission on Election, and not upon its agent in the field." [1]

Hence, the present petition for review on certiorari in G.R. No. 95063 which seeks to set aside en banc Resolution No. 90-0660 of respondent COMELEC.

In G.R. No. 94010, Evardone contends that:

"I. The COMELEC committed grave abuse of discretion in approving the recommendation of the Election Registrar of Sulat, Eastern Samar to hold the signing of the petition for recall without giving petitioner his day in court.

II. The COMELEC likewise committed grave abuse of discretion amounting to lack or excess of jurisdiction in promulgating Resolution No. 2272 on May 22, 1990 which is null and void for being unconstitutional." [2]

In G.R. No. 95063, Apelado, et al., raises the issue of whether or not the signing process of the petition for recall held on 14 July 1990 has been rendered nugatory by the TRO issued by this court in G.R. No. 94010 dated 12 July 1990 but received by the COMELEC field agent only on 15 July 1990.

The principal issue for resolution by the Court is the constitutionality of Resolution No. 2272 promulgated by respondent COMELEC on 23 May 1990 by virtue of its powers under the Constitution and Batas Pambansa Blg. 337 (Local Government Code). The resolution embodies the general rules and regulations on the recall of elective provincial, city and municipal officials.

Evardone maintains that Article X, Section 3 of the 1987 Constitution repealed Batas Pambansa Blg. 337 in favor of one to be enacted by Congress. Said Section 3 provides:

"Sec. 3. The Congress shall enact a local government code which shall provide for a more responsive and accountable local government structure instituted through a system of decentralization with effective mechanisms of recall, initiative, and referendum, allocate among the different local government units their powers, responsibilities, and resources, and provide for the qualifications, election, appointment and removal, term, salaries, powers and functions and duties of local officials, and all other matters relating to the organization and operation of the local units."

Since there was, during the period material to this case, no local government code enacted by Congress after the effectivity of the 1987 Constitution nor any law for that matter on the subject of recall of elected government officials, Evardone contends that there is no basis for COMELEC Resolution No. 2272 and that the recall proceedings in the case at bar is premature.

The respondent COMELEC, in its Comment (G.R. No. 94010), avers that:

"The constitutional provision does not refer only to a local government code which is in futurum but also in esse. It merely sets forth the guidelines which Congress will consider in amending the provisions of the present

Local Government Code. Pending the enactment of the amendatory law, the existing Local Government Code remains operative. The adoption of the 1987 Constitution did not abrogate the provisions of BP No. 337, unless a certain provision thereof is clearly irreconcilable with the provisions of the 1987 Constitution. In this case, Sections 54 to 59 of Batas Pambansa No. 337 are not inconsistent with the provisions of the Constitution. Hence, they are operative."[3]

We find the contention of the respondent COMELEC meritorious.

Article XVIII, Section 3 of the 1987 Constitution expressly provides that all existing laws not inconsistent with the 1987 Constitution shall remain operative, until amended, repealed or revoked. Republic Act No. 7160 providing for the Local Government Code of 1991, approved by the President on 10 October 1991, specifically repeals B.P. Blg. 337 as provided in Sec. 534, Title Four of said Act. But the Local Government Code of 1991 will take effect only on 1 January 1992 and therefore the old Local Government Code (B.P. Blg. 337) is still the law applicable to the present case. Prior to the enactment of the new Local Government Code, the effectiveness of B.P. Blg. 337 was expressly recognized in the proceedings of the 1986 Constitutional Commission. Thus -

"MR. NOLLEDO. Besides, pending the enactment of a new Local Government Code under the report of the Committee on Amendments and Transitory Provisions, the former Local Government Code, which is Batas Pambansa Blg. 337 shall continue to be effective until repealed by the Congress of the Philippines."[4]

Chapter 3 (Sections 54 to 59) of B.P. Blg. 337 provides for the mechanism for recall of local elective officials. Section 59 expressly authorizes the respondent COMELEC to conduct and supervise the process of and election on recall and in the exercise of such powers, promulgate the necessary rules and regulations.

The Election Code contains no special provisions on the manner of conducting elections for the recall of a local official. Any such election shall be conducted in the manner and under the rules on special elections, unless otherwise provided by law or rule of the COMELEC.[5] Thus, pursuant to the rule-making power vested in respondent COMELEC, it promulgated Resolution No. 2272 on 23 May 1990.

We therefore rule that Resolution No. 2272 promulgated by respondent COMELEC is valid and constitutional. Consequently, the respondent COMELEC had the authority to approve the petition for recall and set the date for the signing of said petition.

The next issue for resolution is whether or not the TRO issued by this Court rendered nugatory the signing process of the petition for recall held pursuant to Resolution No. 2272.

In Governor Zosimo J. Paredes, et al. vs. Executive Secretary to the President of the Philippines, et al.,[6] this Court held:

"x x x. What is sought in this suit is to enjoin respondents particularly respondent Commission from implementing Batas Pambansa Blg. 86 specifically 'from conducting, holding and undertaking the plebiscite provided for in said act.' The petition was filed on December 5, 1980. There was a plea for a restraining order, but Proclamation No. 2034 fixing the date for such plebiscite on December 6, 1980 had been issued as far as back as November 11, 1980. Due to this delay in filing this suit, attributable solely to petitioners, there was no time even to consider such a plea. The plebiscite was duly held. The certificate of canvass and proclamation of the result disclosed that out of 2,409 total votes cast in such plebiscite, 2,368 votes were cast in favor of the creation of the new municipality, which, according to the statute, will be named municipality of Aguinaldo. There were only 40 votes cast against. As a result, such municipality was created. There is no turning back the clock. The moot and academic character of this petition is thus apparent."

In the present case, the records show that Evardone knew of the Notice of Recall filed by Apelado, et al. on or about 21 February 1990 as evidenced by the Registry Return Receipt; yet, he was not vigilant in following up and

determining the outcome of such notice. Evardone alleges that it was only on or about 3 July 1990 that he came to know about the Resolution of respondent COMELEC setting the signing of the petition for recall on 14 July 1990. But despite his urgent prayer for the issuance of a TRO, Evardone filed the petition for prohibition only on 10 July 1990.

Indeed, this Court issued a TRO on 12 July 1990 but the signing of the petition for recall took place just the same on the scheduled date through no fault of the respondent COMELEC and Apelado, et al. The signing process was undertaken by the constituents of the Municipality of Sulat and its Election Registrar in good faith and without knowledge of the TRO earlier issued by this Court. As attested by Election Registrar Sumbilla, about 2,050 of the 6,090 registered voters of Sulat, Eastern Samar or about 34% signed the petition for recall. As held in *Paredes vs. Executive Secretary*[7] there is no turning back the clock.

"The right to recall is complementary to the right to elect or appoint. It is included in the right of suffrage. It is based on the theory that the electorate must maintain a direct and elastic control over public functionaries. It is also predicated upon the idea that a public office is 'burdened' with public interests and that the representatives of the people holding public offices are simply agents or servants of the people with definite powers and specific duties to perform and to follow if they wish to remain in their respective offices." [8]

Whether or not the electorate of the Municipality of Sulat has lost confidence in the incumbent mayor is a political question. It belongs to the realm of politics where only the people are the judge. [9] "Loss of confidence is the formal withdrawal by an electorate of their trust in a person's ability to discharge his office previously bestowed on him by the same electorate." [10] The constituents have made a judgment and their will to recall the incumbent mayor (Evardone) has already been ascertained and must be afforded the highest respect. Thus, the signing process held last 14 July 1990 in Sulat, Eastern Samar, for the recall of Mayor Felipe P. Evardone of said municipality is valid and has legal effect.

However, recall at this time is no longer possible because of the limitation provided in Sec. 55 (2) of B.P. Blg. 337, which states:

"SEC. 55. Who May Be Recalled; Ground for Recall; When Recall May not be Held. - x x x

(2) No recall shall take place within two years from the date of the official's assumption of office or one year immediately preceding a regular local election."

The Constitution has mandated a synchronized national and local election prior to 30 June 1992, or more specifically, as provided for in Article XVIII, Sec. 5 - on the second Monday of May, 1992. [11] Thus, to hold an election on recall approximately seven (7) months before the regular local election will be violative of the above provisions of the applicable Local Government Code (B.P. Blg. 337).

ACCORDINGLY, both petitions are DISMISSED for having become moot and academic.

SO ORDERED.

Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Bidin, Grino-Aquino, Medialdea, Regalado, Davide, Jr., and Romero, JJ., concur.

Fernan, C.J., on leave.

[1] G.R. No. 95063, Rollo, p. 16

[2] G.R. No. 94010, Rollo, p. 4

[3] G.R. No. 94010, Rollo, p. 50

[4] Record of the Constitutional Commission, Vol. III, p. 400

[5] ANTONIO ORENDAIN, PHILIPPINE LOCAL GOVERNMENT ANNOTATED (1983)

[6] G.R. No. 55628, March 2, 1984, 128 SCRA 6

[7] Supra.

[8] Orendain, supra, p. 87

[9] Lawyers' League For A Better Philippines vs. President Corazon C. Aquino, G.R. Nos. 73748, 73972, 73990, May 22, 1986

[10] Orendain, supra, p. 87

[11] Governor Emilio M. R. Osmeña, et al. vs. Commission, et al., G.R. No. 100318, 30 July 1991

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