

OLIVER O. LOZANO, PETITIONER, VS. HON. COMMISSIONER HAYDEE B. YORAC OF THE COMMISSION ON ELECTIONS, RESPONDENTS.*G.R. No. 94521. October 28, 1991*

Ponente: REGALADO, J.

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Petitioner Oliver O. Lozano filed these two special civil actions for certiorari, namely: G.R. No. 94521 which seeks the review of the undated order[1] of respondent Commissioner Haydee B. Yorac denying the motion for her voluntary inhibition and/or disqualification in SPC No. 88-040, entitled "Oliver O. Lozano, et al. vs. Mayor Jejomar C. Binay"; and G.R. No. 94626 which prays for a reversal of the en banc resolution[2] promulgated by respondent Commission on Elections (COMELEC) on August 7, 1990[3] dismissing the disqualification petition and criminal complaint for vote buying against respondent Mayor Jejomar C. Binay in connection with the January 18, 1988 local elections, and its minute resolution of August 15, 1990[4] denying due course to petitioner's motion for reconsideration.

The backdrop of this case on record reveals the following antecedent facts:

1. On January 11, 1988, prior to the January 18, 1988 local elections, petitioner and Bernadette Agcorpa, a registered voter of Makati, filed with the COMELEC a petition for disqualification against then candidate for mayor Jejomar C. Binay on the ground that respondent Binay used P9.9 million of municipal funds to enhance his candidacy and his entire ticket under the Lakas ng Bansa.
2. The disqualification case was assigned to the Second Division of the COMELEC composed of Commissioner Haydee B. Yorac, as presiding officer, and Commissioners Andres R. Flores and Magdara B. Dimaampao, as members.
3. The Second Division, through its Presiding Commissioner, referred the case to the Law Department of respondent commission for preliminary investigation of the criminal aspect. On February 4, 1988, Binay filed his counter-affidavit with said department.
4. On June 21, 1988, petitioner filed an Omnibus Motion praying for the inhibition and/or disqualification of Commissioners Yorac and Africa. This was the first of several motions for inhibition filed by petitioner before respondent commission. Petitioner also prayed that the disqualification petition be referred for consideration en banc. Commissioner Yorac denied the motion for inhibition. On August 10, 1988, the COMELEC en banc denied the prayer that the case be heard en banc, ruling that "no substantial reason exists why this case should be taken en banc; and considering finally that the case is set for hearing by the Second Division."
5. On October 26, 1988, petitioner Lozano himself filed a second motion to disqualify Commissioner Yorac because she postponed *motu proprio* a hearing set on the ground that she will study the issue of jurisdiction. Said motion was denied.
6. On November 3, 1988, the COMELEC en banc promulgated Resolution No. 2050 which provides that petitions

for disqualification filed prior to the January 18, 1988 local elections based on Section 68 of the Omnibus Election Code but not resolved before the elections shall be referred for preliminary investigation to the Law Department which shall submit its report to the Commission en banc. Pursuant to said resolution, the Second Division on even date referred back the disqualification case against respondent Binay to the Law Department "before taking any action thereon."

7. On November 8, 1988, petitioner filed another motion praying that the disqualification case be heard and decided en banc invoking therein COMELEC Resolution No. 2050. Instead of issuing a formal resolution, respondent COMELEC authorized then Chairman Hilario G. Davide, Jr. (now a member of this Court) to reply to petitioner's counsel.

8. On May 23, 1990, the Law Department submitted its investigation report[5] recommending that criminal charges be filed against respondent Binay for violation of Section 261(a) of the Omnibus Election Code, as follows:

"PREMISES CONSIDERED, the Law Department (Investigation and Prosecution Division) RECOMMENDS as follows:

1. To file the necessary information against Mayor Jejomar Binay before the proper Regional Trial Court of the National Capital Region for violation of Section 261(a) of the Omnibus Election Code, the prosecution thereof to be handled by the Special Prosecution Committee;
2. To dismiss the charge against Mayor Jejomar Binay for threats and intimidation under Section 261(e) of the Omnibus Election Code for lack of evidence; and
3. To dismiss the charge against Conchitina Bernardo for insufficiency of evidence."

9. On July 2, 1990, petitioner filed a motion praying that the disqualification case be resolved jointly with the investigation report of the Law Department.

10. On July 9, 1990, petitioner filed a third motion for the voluntary inhibition and/or disqualification of Commissioner Yorac for having issued a previous memorandum addressed to the chairman and members of respondent commission expressing her opinion that Binay should first be convicted by the regular courts of the offense of vote buying before he could be disqualified. The full text of said memorandum[6] reads:

"I submit for the Commission's consideration the matter of the procedural problems in the above case.

"The chronology of events, so far as this case is concerned, is as follows:

1. SPC No. 88-040 for the disqualification of Jejomar Binay, then candidate for Mayor of Makati was filed on January 11, 1988. It was assigned to the Second Division.
2. On July 29, 1988, petitioners filed a motion to set the case for hearing alleging that the Commission on Audit (COA) had officially confirmed the allegations of the complainants.
3. Hearings were actually conducted on August 11, September 12, October 12 and October 19, 1988.
4. On November 3, 1988, the Commission en banc adopted Resolution No. 88-2050, which, inter alia provides that:

1. x x x

In case such complaint was not resolved before the election, the commission may motu proprio, or on motion of any of the parties, refer the complaint to the Law Department of the Commission as an instrument of the latter in

the exercise of its exclusive power to conduct a preliminary investigation of all cases involving criminal infractions of the election laws. Such recourse may be availed of irrespective of whether the respondent has been elected or has lost in the election;

x x x

3. The Law Department shall terminate the preliminary investigation within thirty (30) days from receipt of the referral and shall submit its study, report and recommendation to the Commission en banc within five (5) days from the conclusion of the preliminary investigation. If it makes a prima facie finding of guilt, it shall submit with such study the information for filing with the appropriate court.

5. On the same date, conformable with Resolution No. 88-2050, the Second Division referred SPC No. 88-040 to the Law Department.

6. In the course of the investigation by the Law Department, the case became entangled with procedural difficulties the resolution of which has been sought in the Second Division.

"My own personal thinking on the matter is that since the preliminary investigation is the determination of criminal liability, with the administrative consequence of removal imposable only as long term sanction, i.e., after final criminal conviction, the matter of procedure in the preliminary investigation is one that should be addressed to the commission en banc rather than to either of its divisions."

11. In On August 2, 1990, petitioner received a notice setting the promulgation of judgment en banc for August 6, 1990. Petitioner on August 3, 1990 filed an objection to the promulgation of judgment en banc, allegedly because there was no showing that the case was referred to the commission en banc upon unanimous vote of all the members of the Second Division.

12. In its aforesaid August 7, 1990 resolution which is herein assailed, the COMELEC en banc dismissed the petition for disqualification and the criminal complaint for vote buying against respondent Binay. During the promulgation of judgment, petitioner asked that the same be suspended until after the resolution of the legal issues raised involving constitutional and jurisdictional questions. Commissioner Yorac was likewise requested by petitioner to decide the motion for her inhibition. In her undated order subject of the petition in G.R. No. 94521, as stated in limine, Commissioner Yorac denied the motion for her inhibition, stating that:

"During the deliberations on this case, I seriously considered inhibiting myself from despite participating and voting despite the flimsy basis which was cited for it. But I became convinced, from the information that was coming in, that the motion was really part of a numbers game, being played out on the basis of information emanating from the Commission itself as to the developments in the deliberation and the voting. Reliable information also shows that approaches have been made to influence the voting.

"It is for this reason that I do not inhibit myself from the voting in this case consistent with my reading of the law and the evidence."

13. The aforesaid resolution of August 7, 1990 dismissed the petition for disqualification for lack of merit. The motion for reconsideration filed by herein petitioner was denied in a resolution dated August 15, 1990, on the ground that "pursuant to Section 1(d), Rule 13 of the Comelec Rules of Procedure, a motion for reconsideration of an en banc ruling of the Commission is one of the prohibited pleadings, and therefore not allowed under the Rules."

Succinctly condensed, the petition filed against respondents COMELEC and Binay raises the following issues:

1. Contrary to the requirement under Section 2, Rule 3 of the COMELEC Rules of Procedure, SPC NO. 88-040 was referred to the Commission en banc without the required unanimous vote of all the members of the Second

Division.

2. The minute resolution of August 15, 1990 is null and void for having been issued without prior notice to the parties and without fixing a date for the promulgation thereof.

3. Respondent commission committed a grave abuse of discretion amounting to lack of jurisdiction in not finding Binay guilty of vote-buying, contrary to the evidence presented by petitioner.[7]

In G.R. No. 94521, this Court issued on August 16, 1990 a temporary restraining order[8] ordering respondent Commissioner Yorac to cease and desist from participating in the deliberation and resolution of the motion for reconsideration dated August 9, 1990 filed in SPC No. 88-040, entitled "Oliver O. Lozano, et al. vs. Jejomar C. Binay." The order was served in the office of Commissioner Yorac on August 17, 1990 at 11:25 A.M.[9] It appears, however, that the motion for reconsideration was denied by respondent commission en banc in a resolution dated August 15, 1990, copy of which was served on petitioner on August 17, 1990 at 12:35 P.M. Consequently, the issue on the inhibition and disqualification of Commissioner Yorac has been rendered moot and academic.

Granting arguendo that the petition for inhibition of Commissioner Yorac has not been mooted by the resolution en banc dismissing the main case for disqualification, petitioner's postulation that she should have inhibited herself from hearing the main case, for allegedly having prejudged the case when she advanced the opinion that respondent Binay could only be disqualified after conviction by the regional trial court, is of exiguous validity. In the first place, the COMELEC Rules of Procedure, specifically Section 1, Rule 4 thereof, prohibits a member from, among others, sitting in a case in which he has publicly expressed prejudgment as may be shown by convincing proof. There is no showing that the memorandum wherein Commissioner Yorac rendered her opinion was ever made public either by publication or dissemination of the same to the public. Furthermore, the opinion of Commissioner Yorac was based on prior cases for disqualification filed with the COMELEC wherein prior conviction of the respondent was considered a condition sine qua non for the filing of the disqualification case.[10] We accordingly find no compelling reason to inhibit Commissioner Yorac from participating in the hearing and decision of the case.

Similarly, we find the petition in G.R. No. 94626 devoid of merit. Petitioner first avers that under Section 2, Rule 3 of the COMELEC Rules of Procedure, a case pending in a division may be referred to and decided by the Commission en banc only on a unanimous vote of all the members of the division. It is contended that SPC No. 88-040 which was pending before the COMELEC's Second Division was referred to the Commission en banc without the required unanimous vote of all the division members, petitioner alleging that Commissioner Andres R. Flores voted for the referral of the petition for disqualification to the division. It is, therefore, the submission of petitioner that the resolution of the Commission en banc dated August 17, 1990 is null and void for lack of jurisdiction and for being unconstitutional.

The argument of petitioner is not well taken. COMELEC Resolution No. 2050 issued by the commission en banc on November 3, 1988 is the applicable law in this disqualification case. It provides:

x x x

"RESOLVED, as it hereby resolves, to formulate the following rules governing the disposition of cases of disqualification filed by virtue of Section 68 of the Omnibus Election Code in relation to Section 6 of R.A. 6646 otherwise known as the Electoral Reforms Law of 1987:

1. Any complaint for the disqualification of a duly registered candidate based upon any of the grounds specifically enumerated under Section 68 of the Omnibus Election Code, filed directly with the Commission before an election in which the respondent is a candidate, shall be inquired into by the Commission for the

purpose of determining whether the acts complained of have in fact been committed. Where the inquiry by the Commission results in a finding before election, that the respondent candidate did in fact commit the acts complained (of), the Commission shall order the disqualification of the respondent candidate from continuing as such candidate.

In case such complaint was not resolved before the election, the Commission may *motu proprio*, or on motion of any of the parties, refer the complaint to the Law Department of the Commission as the instrument of the latter in the exercise of its exclusive power to conduct a preliminary investigation of all cases involving criminal infractions of the election laws. Such recourse may be availed of irrespective of whether the respondent has been elected or has lost in the election.

2. Any complaint for disqualification based on Section 68 of the Omnibus Election Code in relation to Section 6 of Rep. Act No. 6646 filed after the election against a candidate who has already been proclaimed as winner shall be dismissed as a disqualification case. However, the complaint shall be referred for preliminary investigation to the Law Department of the Commission.

Where a similar complaint is filed after election but before proclamation of the respondent candidate, the complaint shall, nevertheless, be dismissed as a disqualification case. However, the complaint shall be referred for preliminary investigation to the Law Department. If, before proclamation; the Law Department makes a *prima facie* finding of guilt and the corresponding information has been filed with the appropriate trial court, the complainant may file a petition for suspension of the proclamation of the respondent with the court before which the criminal case is pending and the said court may order the suspension of the proclamation if the evidence of guilt is strong.

3. The Law Department shall terminate the preliminary investigation within thirty (30) days from receipt of the referral and shall submit its study, report and recommendation to the Commission *en banc* within five (5) days from the conclusion of the preliminary investigation. If it makes a *prima facie* finding of guilt, it shall submit with such study the information for filing with the appropriate court.[11]

x x x

Contrary to petitioner's submission that said resolution has been repealed by the COMELEC Rules of Procedure which took effect on November 15, 1988, there is nothing in the resolution which appears to be inconsistent with the procedural rules issued by the COMELEC.

Firstly, Resolution No. 2050 was passed by reason of the variance in opinions of the members of respondent commission on matters of procedure in dealing with cases of disqualification filed pursuant to Section 68 of the Omnibus Election Code in relation to Section 6 of Republic Act No. 6646, or the Electoral Reforms Law of 1987, and the manner of disposing of the same had not been uniform. Hence, the COMELEC decided to lay down a definite policy in the disposition of these disqualification cases. With this purpose in mind, the Commission *en banc* adopted Resolution No. 2050. The transitory provision under Section 2, Rule 44 of the COMELEC Rules of Procedure provides that these rules shall govern all cases pending at the time of effectivity thereof, except to the extent that in the opinion of the commission, or the court in appropriate cases, an application would not be feasible or would work injustice, in which event the former procedure shall apply. We believe that Resolution No. 2050 qualifies and should be considered as an exception to the generally retroactive effect of said rules.

Secondly, prior to the issuance of Resolution No. 2050, petitioner had filed several motions with the Second Division asking for the referral of the disqualification case to the Commission *en banc*. After the COMELEC *en banc* issued Resolution No. 2050, petitioner filed another motion for the referral of the case to the Commission *en banc*, specifically invoking Resolution No. 2050.[12] In the words of petitioner in his said motion, under the aforesaid resolution, "once the petition for disqualification is forwarded to the Law Department, the case is

deemed en banc because the report is submitted En Banc by the Law Department." Petitioner having invoked the jurisdiction of the Commission en banc is now estopped from questioning the same after obtaining an adverse judgment therefrom.

Thirdly, Commissioner Andres R. Flores, who opined that the disqualification case should first be resolved by the Second Division, has since then clarified his position after he was reminded that Resolution No. 2050, which he had admittedly "completely forgotten" had "laid down a definite policy on the disposition of disqualification cases contemplated in Section 68 of the Omnibus Election Code." [13]

Lastly, Resolution No. 2050 specifically mandates a definite policy and procedure for disqualification cases. The COMELEC Rules of Procedure speak of special actions, which include disqualification cases, in general. Hence, as between a specific and a general rule, the former shall necessarily prevail.

Anent the propriety of the issuance of the resolution denying petitioner's motion for reconsideration, suffice it to say that the requirement of notice in the promulgation of resolutions and decisions of the COMELEC embodied in Section 5 of Rule 18 of the Rules does not apply in the case at bar for the simple reason that a motion for reconsideration of an en banc ruling, resolution, order or decision is not allowed under Section 1, Rule 13 thereof.

Respondent COMELEC, in dismissing the petition for disqualification and in holding that respondent Binay is not guilty of vote buying, ruled as follows:

x x x

"The commission concurs with the findings of the Law Department on enumeration nos. 2 and 3 but rejects exception to the recommendation for prosecution of respondent Binay under no. 1 thereof, it appearing that there is a clear misappreciation of the evidence submitted considering the inconsistencies in the testimonies of material witnesses for the petitioners, as well as the correct interpretation and application of the law cited as basis for the prosecution of respondent Binay.

x x x

"The seventeen (17) affidavits submitted by petitioners attached to their original petition for disqualification dated January 11, 1988, differ from the twenty (20) affidavits attached to the memorandum of petitioners filed with the Commission (Second Division) on August 22, 1988. The records of the case do not show that these seventeen (17) affidavits attached to the original petition were affirmed by the affiants during the investigation conducted by the Law Department of this Commission. Of the twenty (20) affidavits appended to the Memorandum of August 22, 1988, only five (5) of the affiants were able to affirm their testimonies before hearing officer Alioden Dalaig of the Law Department of this Commission x x x.

x x x

"In his counter affidavit, respondent Jejomar C. Binay denied the allegations in the petition for disqualification and interposed the defense that:

"The Christmas gift-giving is an annual project of the Municipal Government of Makati ever since the time of Mayors Estrella and Yabut in the spirit of yuletide season wherein basic and essential items are distributed to the less fortunate and indigent residents of Makati out of funds appropriated for the purpose duly budgeted and subject to audit by the Commission on Audit and same were prepared sometime on October 1987 long before I filed my certificate of candidacy and ceased to be the Acting Mayor of Makati, x x x;

"The alleged ticket bearing my name, assuming its existence, indicates nothing of significance except that of a Christmas and New Year greeting and is not suggestive of anything which may be considered or interpreted to be political in nature such as indorsing my candidacy for that matter. x x x'

x x x

"It is undisputed that at the time the supposed 'gift-giving' transpired between the periods of December 22-30, 1987, respondent Binay was no longer Mayor of the Municipality of Makati having resigned from the position on December 2, 1987, to pursue his candidacy for re-election to the same position. The OIC Mayor of Makati on the dates complained of, December 22-30, 1987, was OIC Mayor Sergio S. Santos who stated in his affidavit dated February 4, 1988, that he was Officer in Charge of Makati, Metro Manila, from December 2, 1987 to February 2, 1988, and that as such he implemented on December 18, 1987 the municipal government's annual and traditional distribution of Christmas gifts.

"There is ample evidence to show that it was not respondent Binay who 'gave' the plastic bags containing Christmas gifts to the witnesses who executed affidavits for the petitioners. The 'giver' was in fact the Municipality of Makati. And this is evidenced by the following documents attached to the records of this case:

1. Certification dated January 11, 1988 issued by OIC Roberto A. Chang attached as Annex A to respondent Binay's counter affidavit dated February 5, 1988.
2. COA Report dated January 11, 1988 attached as Annex 'R' to the pleading denominated as Motion to Set Hearing filed by complainant Oliver Lozano dated July 26, 1988, filed in connection with SPC No. 88-040 for disqualification against respondent Binay;

"The findings of the COA Report itself (dated June 21, 1988) upon which petitioners rely heavily in their disqualification case against respondent Binay, identify the 'giver' of the Christmas gifts as the Municipality of Makati and not respondent Binay. x x x

x x x

"Respondent Binay's allegation that the gift giving was an annual project of the Municipal Government of Makati was not denied nor disputed by the petitioners who in fact made capital of the aforequoted findings of the Commission on Audit in their charge against respondent Binay for alleged misuse of public funds. Also, petitioners in their latest pleading filed with the Commission on July 2, 1990, entitled 'Motion To Resolve The Disqualification Case Jointly With The Investigation Report of the Law Department', instead of rebutting respondent Binay's allegation that the Christmas gift giving is an annual project of the Municipal Government of Makati ever since the time of Mayors Estrella and Yabut, merely stated that:

'x x x Assuming arguendo that Mayor Estrella had practiced this gift-giving every Christmas, the fact is, that there had been no electoral campaign on-going during such distribution and/or no election was scheduled during Mayor Estrella's tenure.

'This is also true in the case of Mayor Yabut'.

"More, Petitioners' documentary evidence, among which are Exhibits 'A'; 'A-1'; 'A-2'; 'A-20'; 'B'; 'B-1'; 'B-2'; 'B-25'; 'C-1'; 'C-2'; 'C-27'; 'D'; 'E' and 'F', all show indubitably that the Christmas packages which were distributed between the periods of December 22-30, 1987, were ordered, purchased and paid for by the Municipality of Makati and not by respondent Binay. There is more than prima facie proofs to show that those gift packages received by the witnesses for petitioners were intended as Christmas presents to Makati's indigents in December 1988.

"It would therefore appear from the evidence submitted by the petitioners themselves that the giver, if any, of the Christmas gifts which were received by the witnesses for the petitioners was in fact, the Municipality of Makati and not respondent Jejomar C. Binay. The presence of respondent Binay, if at all true at the time the gifts were distributed by the Municipality of Makati to the recipients of the Christmas gifts, was incidental. It did not make respondent Binay as the 'giver' of those Christmas gifts. Nor did the giving of such gifts by the Municipal Government of Makati influence the recipients to vote for respondent Binay considering that the

affiants themselves who testified for the petitioners admitted and were aware that the gift packages came from the Municipality of Makati and not from respondent Jejomar C. Binay.

"The foregoing conclusion is confirmed by petitioners' witnesses in the persons of Lolita Azcarraga, Johnson Carillo, Rommel Capalungan, Renato Leonardo, Manuel Allado, Edwin Pascua, Wilberto Torres, Apolonio De Jesus, Caridad Reposar, Artemus Runtal and Jose Ermino who, in their sworn statements, uniformly described the gift package as labelled with the words 'Pamaskong Handog ng Makati', a clear indication that the 'giver' of the Christmas gifts was indeed the Municipality of Makati and not respondent Binay.

"There is one aspect of this case which somehow lends credence to respondent Binay's claim that the instant petition is a political harassment. It is noted by the commission that while the criminal indictment against respondent Binay is for alleged violation of Section 261(a) of the Omnibus Election Code, petitioners did not implead as party respondents the affiants who received the Christmas packages apparently in exchange for their votes. The law on 'vote buying' [Section 261(a) supra] also penalizes 'vote-buying' and 'vote-selling', then the present indictment should have been pursued against both respondent Binay and against the affiants, against the former for buying votes and against the latter for selling their votes." [14]

x x x

We uphold the foregoing factual findings, as well as the conclusions reached by respondent COMELEC, in dismissing the petition for the disqualification of respondent Binay. No clear and convincing proof exists to show that respondent Binay was indeed engaged in vote buying. The traditional gift giving of the Municipality of Makati during the Christmas season is not refuted. That it was implemented by respondent Binay as OIC Mayor of Makati at that time does not sufficiently establish that respondent was trying to influence and induce his constituents to vote for him. This would be stretching the interpretation of the law too far. Petitioner deduces from this act of gift giving that respondent was buying the votes of the Makati residents. It requires more than a mere tenuous deduction to prove the offense of vote buying. There has to be concrete and direct evidence or, at least, strong circumstantial evidence to support the charge that respondent was indeed engaged in vote buying. We are convinced that the evidence presented, as well as the facts obtaining in the case at bar, do not warrant such finding.

Finally, we have consistently held that under the 1935 and 1973 Constitutions, and the same is true under the present one, this Court cannot review the factual findings of the Commission on Elections absent a grave abuse of discretion and a showing of arbitrariness in its decision, order or resolution. Thus:

"The principal relief sought by petitioner is predicated on the certiorari jurisdiction of this court as provided in Section 11, Article XII-C, 1973 Constitution. It is, as explained in *Aratuc vs. Commission on Elections*, 'not as broad as it used to be' under the old Constitution and it 'should be confined to instances of grave abuse of discretion amounting to patent and substantial denial of due process.' Moreover, the legislative construction of the constitutional provision has narrowed down 'the scope and extent of the inquiry the Court is supposed to undertake to what is strictly the office of certiorari as distinguished from review.' And in *Lucman vs. Dimaporo*, a case decided under the Constitution of 1935, this Court, speaking through then Chief Justice Concepcion, ruled that 'this Court can not x x x review rulings or findings of fact of the Commission on Elections,' as there is 'no reason to believe that the framers of our Constitution intended to place the [said] Commission - created and explicitly made 'independent' by the Constitution itself - on a lower level' than statutory administrative organs (whose factual findings are not 'disturbed by courts of justice, except when there is absolutely no evidence or no substantial evidence in support of such findings.'). Factual matters were deemed not proper for consideration in proceedings brought either 'as an original action for certiorari or as an appeal by certiorari . . . [for] the main issue in . . . certiorari is one of jurisdiction - lack of jurisdiction or grave abuse of discretion amounting to excess of jurisdiction' while 'petitions for review on certiorari are limited to the consideration of questions of law.'

"The aforementioned rule was reiterated in the cases of Ticzon and Bashier. Indeed, as early as the year 1938, applying Section 4, Article VI of the 1935 Constitution, this Court held that the Electoral Commission's 'exclusive jurisdiction' being clear from the language of the provision, 'judgment rendered . . . in the exercise of such an acknowledged power is beyond judicial interference, except 'upon a clear showing of such arbitrary and improvident use of the power as will constitute a denial of due process of law.' Originally lodged in the legislature, that exclusive function of being the 'sole judge' of contests 'relating to the election, returns and qualifications' of members of the legislature was transferred 'in its totality' to the Electoral Commission by the 1935 Constitution. That grant of power, to use the language of the late Justice Jose P. Laurel, 'was intended to be as complete and unimpaired as if it had remained originally in the legislature . . . ' x x x

"x x x A review of the respondent Commission's factual findings/conclusions made on the basis of the evidence evaluated is urged by the petitioner, 'if only to guard against or prevent any possible misuse or abuse of power.' To do so would mean 'digging into the merits and unearthing errors of judgment' rendered on matters within the exclusive function of the Commission, which is proscribed by the Aratuc and other decisions of this Court. x x x"[15]

The charge against respondent Binay for alleged malversation of public funds should be threshed out and adjudicated in the appropriate proceeding and forum having jurisdiction over the same. Consequently, it was properly dismissed by the Commission on Elections.

WHEREFORE, the questioned order of respondent Commissioner Haydee B. Yorac in G.R. No. 94521 and the challenged resolutions of respondent. Commission on Elections subject of the petition in G.R. No. 94626 are hereby AFFIRMED. The temporary restraining order issued in G.R. No. 94521 is hereby LIFTED and SET ASIDE.

SO ORDERED.

Fernan, C.J., Narvasa, Gutierrez, Jr., Cruz, Paras, Feliciano, Padilla, Bidin, Griño-Aquino, and Medialdea, JJ., concur.

Melencio-Herrera, J., on leave.

Davide, Jr., J., no part. As then Chairman of the COMELEC I participate in some incidents related to the issues in this petition.

[1] Annex O, Petition, G.R. No. 94521; Rollo, 93.

[2] Penned by Commissioner Dario C. Rama, with Commissioner Haydee B. Yorac, Alfredo E. Abueg, Jr., and Leopoldo L. Africa concurring, and Commissioners Andres R. Flores and Magdara B. Dimaampao dissenting on the same ground hereinafter clarified.

[3] Annex S, Petition, G.R. No. 94626; Rollo, 119.

[4] Annex U, id.; ibid., 160.

[5] Annex L, id.; ibid., 73.

[6] Annex Q, id.; ibid., 116.

[7] Rollo, G.R. No. 94626, 2-8.

[8] Rollo, G.R. No. 94521, 113-114.

[9] Ibid., id., 119.

[10] Annexes 4 and 5, Comment of the Solicitor General, G.R. No. 94521; Rollo, 148 and 161.

[11] Annex 2, id.; ibid., 144.

[12] Annex 6, id.; ibid., 172.

[13] Annex 10, id.; ibid., 179. Acting on the letter of Commissioner Flores on this matter, dated August 17, 1990, respondent commission resolved to direct that the same "be incorporated and form part of the record of the case so that the pertinent portion of his opinion which voted to return the case to the Second Division is pro tanto modified and he is just submitting his vote on the merit of this case to the Commission en banc."

[14] Rollo, G.R. No. 94626, 121-134.

[15] Padilla vs. Commission on Elections, et al., 137 SCRA 424 (1985).

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