

**EUGENIO &#8220;JING-JING&#8221; FAELNAR, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, HON. RAMON CODILLA, IN HIS CAPACITY AS PRESIDING JUDGE OF THE RTC, BRANCH 19, CEBU CITY, AND COMMISSION O...**

*G.R. Nos. 140850-51. May 04, 2000*

Ponente: MENDOZA, J.

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**MENDOZA, J.:**

This is a petition for certiorari to set aside the order, dated July 29, 1999, of the Regional Trial Court, Branch 19, Cebu City, denying petitioner's motion to quash in Criminal Cases Nos. CBU-49941[1] and 49942,[2] and the order, dated October 4, 1999, denying petitioner's motion for reconsideration.

The facts are as follows:

On April 8, 1997, petitioner Eugenio Faelnar filed a certificate of candidacy for the position of Barangay Chairman of Barangay Guadalupe, Cebu City in the May 12, 1997 barangay elections. The following day, on April 9, 1997, a basketball tournament, dubbed the "2nd JING-JING FAELNAR'S CUP," opened at the Guadalupe Sports Complex and lasted up to April 30, 1997. This gave rise to a complaint for electioneering filed against petitioner and Cecilio Gillamac by Antonio Luy. The complaint alleged that the basketball tournament was actually a campaign gimmick staged outside the campaign period which officially started on May 1, 1997, in violation of the Omnibus Election Code. Luy alleged that: (1) during the tournament, a streamer bearing petitioner's name was placed on the facade of the Guadalupe Sports Complex; (2) petitioner's name was repeatedly mentioned over the microphone during the games; (3) the tournament was widely published in the local newspaper; and (4) a raffle sponsored by Cecilio Gillamac was held with home appliances given away as prizes.

Petitioner denied participation in the tournament and claimed that its major sponsor was Gillamac Marketing, Inc. He contended that the same was purely a sporting event for the benefit of the youth.

The complaint was investigated by Atty. Edwin Cadungog, election officer of Cebu City, who later recommended the dismissal of the charges against petitioner and Gillamac. On the other hand, the Law Department of the COMELEC recommended the filing of a case against petitioner and Gillamac for violation of §80,[3] in relation to §262,[4] of the Omnibus Election Code, and §50 of COMELEC Resolution No. 2888, in relation to §12 of Republic Act No. 6679.[5]

In its Resolution No. 97-3040, dated September 16, 1997, the COMELEC en banc resolved to dismiss the case. However, on motion of Antonio Luy, the COMELEC reconsidered its action and ordered the filing of the necessary Informations against petitioner and Gillamac.

Accordingly, petitioner and Gillamac were formally charged in the Regional Trial Court, Cebu City under two Informations in Criminal Cases Nos. CBU-49941 and CBU-49942.

Petitioner moved to quash the information or, in the alternative, for reinvestigation of the case, contending that Resolution No. 97-3040, which dismissed the complaint against him, was immediately executory and could no longer be reconsidered.

Petitioner's motion was denied by the trial court in an order dated July 29, 1999. He moved for reconsideration, but his motion was likewise denied by the court in its order, dated October 4, 1999. Hence this petition.

Petitioner reiterates his argument in the trial court that COMELEC Resolution No. 97-3040, which dismissed the complaint against him, can no longer be reconsidered by the COMELEC. He contends that under the Rules of Procedure of the COMELEC, the dismissal of the complaint was immediately final and executory. Additionally, he avers that Antonio Luy's Motion for Reconsideration of Resolution No. 97-3040 is a prohibited pleading under the Commission's Rules of Procedure. He avers that since the resolution in question was immediately final and executory, it was no longer within the power of the COMELEC to reconsider. Consequently, Resolution No. 98-2914, in directing the filing of charges in court, was "ultra-vires," and the Informations filed against him should have been quashed.[6]

The petition is without merit.

First. While the instant petition challenges the trial court's orders denying petitioner's motion to quash the complaints in Criminal Cases Nos. CBU-49941 and 49942, the grounds relied upon by petitioner are directed at the validity of Resolution No. 98-2914 of the COMELEC. Thus, petitioner prays that said resolution be declared null and void.[7]

This petition is nothing but an attempt to circumvent a final resolution of the COMELEC.

Resolution No. 98-2914 was promulgated by the COMELEC en banc on October 29, 1998. Petitioner's remedy was to seek its annulment by way of a special civil action of certiorari under Rule 65 of the Rules of Court. Rule 64, §2 provides:

SEC. 2. Mode of Review. -- A judgment or final order or resolution of the Commission on Elections and the Commission on Audit may be brought by the aggrieved party to the Supreme Court on certiorari under Rule 65, except as hereinafter provided.

Sec. 3 of said Rule provides that such petition shall be filed within 30 days from notice of the resolution sought to be reviewed. No such petition was ever filed. The present petition to set aside the orders of the trial court denying its motion to quash and motion for reconsideration was filed only on November 12, 1999, more than a year after Resolution No. 98-2914 was promulgated on October 29, 1998. Consequently, the resolution is now final and binding upon the parties.

Even if said resolution is erroneous for being contrary to the provisions of the Rules of Procedure of the COMELEC, the same is not void. Since it has become final and executory, it is already binding and effective.[8]

Second. The above discussion should be enough to dispose of this petition. However, we think there is an important question of law that must not be left undecided, i.e., is the resolution of the COMELEC dismissing the criminal complaint for violation of the election laws immediately final and executory, as petitioner contends?

The contention is untenable. In support of his claims, petitioner cites Rule 13, §1(d) of the Rules of Procedure of the COMELEC which provides:

SECTION 1. What pleadings are not allowed. - The following pleadings are not allowed:

....

(d) motion for reconsideration of an en banc ruling, resolution, order or decision; . . .

The above quoted provision, however, is taken from the 1988 COMELEC Rules of Procedure which has already been amended. The 1993 Rules of Procedure, now provides:

Rule 13. - Prohibited Pleadings.

SECTION 1. What pleadings are not allowed. -- The following pleadings are not allowed:

. . . .

(d) motion for reconsideration of an en banc ruling, resolution, order or decision except in election offense cases;...(Emphasis added).

Under the present rule, therefore, a motion for reconsideration of a ruling, resolution or decision of the COMELEC en banc is allowed in cases involving election offenses.

Here, there is no question that what is involved is a resolution of the COMELEC en banc in an election offense. Hence, a motion for reconsideration of such resolution is allowed under the Rules of Procedure of the COMELEC.

Petitioner likewise invokes Rule 34, §10 of the COMELEC Rules of Procedure which provides that --

SEC. 10. Appeals from the Action of the State Prosecutor, Provincial or City Fiscal. -- Appeals from the resolution of the State Prosecutor, or Provincial or City Fiscal on the recommendation or resolution of investigating officers may be made only to the Commission within ten (10) days from receipt of the resolution of said officials, provided, however that this shall not divest the Commission of its power to motu proprio review, revise, modify or reverse the resolution of the chief state prosecutor and/or provincial/city prosecutors. The decision of the Commission on said appeals shall be immediately executory and final. (Emphasis added)

Even a cursory reading of the above rule, however, will show that it governs appeals from the action of the State Prosecutor or Provincial or City Fiscal on the recommendation or resolution of investigating officers. The present case does not involve such an appeal but a resolution of the COMELEC itself in the exercise of its exclusive power to conduct preliminary investigation of election offense cases.[9] Such distinction can be easily explained.

In cases where the State Prosecutor, or Provincial or City Fiscal exercises the delegated power[10] to conduct preliminary investigation of election offense cases, after the investigating officer submits his recommendation, said officers already resolve the issue of probable cause. From such resolution, appeal to the COMELEC lies. As the exercise by the Commission of its review powers would, at this point, already constitute a second look on the issue of probable cause, the COMELEC's ruling on the appeal would be immediately final and executory.

On the other hand, if the preliminary investigation of a complaint for election offense is conducted by the COMELEC itself, its investigating officer prepares a report upon which the Commission's Law Department makes its recommendation to the COMELEC en banc on whether there is probable cause to prosecute. It is thus the COMELEC en banc which determines the existence of probable cause.[11] Consequently, an appeal to the Commission is unavailing. Under the present Rules of Procedure of the COMELEC, however, a motion for reconsideration of such resolution is allowed. This effectively allows for a review of the original resolution, in the same manner that the COMELEC, on appeal or motu proprio, may review the resolution of the State Prosecutor, or Provincial or City Fiscal.

Reliance by petitioner upon Rule 34, §10 of the COMELEC Rules of Procedure is thus without any basis.

WHEREFORE, the petition for certiorari is DENIED.

**SO ORDERED.**

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Panganiban, Quisumbing, Buena, Gonzaga-Reyes, Ynares-Santiago, and De Leon, Jr., JJ., concur.

Melo, Kapunan, and Purisima, JJ., on leave.

Pardo, J., no part - was COMELEC Chairman at that time.

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[1] For violation of §50 of COMELEC Resolution No. 2888, in relation to §12 of Republic Act No. 6679.

[2] For violation of §80, in relation to §262 of the Omnibus Election Code.

[3] SEC. 80. Election campaign or partisan political activity outside campaign period.-- It shall be unlawful for any person, whether or not a voter or candidate, or for any party, or association of persons, to engage in an election campaign or partisan political activity except during the campaign period: Provided; That political parties may hold political conventions or meetings to nominate their official candidates within thirty days before the commencement of the campaign period and forty-five days for Presidential and Vice-Presidential election. (Sec. 35, 1978 EC)

[4] SEC. 262. Other election offenses. -- Violation of the provisions, or pertinent portions, of the following sections of this Code shall constitute election offenses: Sections 9, 18, 74, 75, 76, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 122, 123, 127, 128, 129, 132, 134, 135, 145, 148, 150, 152, 172, 173, 174, 178, 180, 182, 184, 185, 186, 189, 190, 191, 192, 194, 195, 196, 197, 198, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 223, 229, 230, 231, 233, 234, 235, 236, 239, and 240.

[5] An Act to Amend R.A. No. 6653 to Postpone the Barangay Elections to March 28, 1989, Prescribing Additional Rules Governing The Conduct Of Barangay Elections And For Other Purposes.

[6] Petition, pp. 7-10; Rollo, pp. 9-12. Petitioner cites Rule 117, §3 of the Rules of Criminal Procedure which provides that --

SEC. 3. Grounds. -- The accused may move to quash the complaint or information on any of the following grounds:

....

(c) That the office who filed the information had no authority to do so;

....

[7] Petition, p. 11; Rollo, p. 13.

[8] See Mercado v. Court of Appeals, 162 SCRA 75 (1988)

[9] Comelec Rules of Procedure, Rule 34, §1 provides that:

SECTION 1. Authority of the Commission to Prosecute Election Offenses. -- The Commission shall have the exclusive power to conduct preliminary investigation of all election offenses punishable under the election laws and to prosecute the same, except as may otherwise be provided by law.

[10] The basis of such power is Rule 34, §2 of the COMELEC Rules of Procedure which provides that --

SEC. 2. Continuing Delegation of Authority to Other Prosecution Arms of the Government. -- The Chief State Prosecutor, all Provincial and City Fiscals, and/or their respective assistants are hereby given continuing authority, as deputies of the Commission, to conduct preliminary investigation of complaints involving election offenses under the election laws which may be filed directly with them, or which may be indorsed to

them by the Commission or its duly authorized representatives and to prosecute the same. Such authority may be revoked or withdrawn any time by the Commission whenever in its judgment such revocation or withdrawal is necessary to protect the integrity of the Commission, promote the common good, or when it believes that successful prosecution of the case can be done by the Commission.

[11] Rule 34, §9(b) of the COMELEC Rules of Procedure provides that --

(b) In cases investigated by the lawyers or the field personnel of the Commission, the Director of the Law Department shall review and evaluate the recommendation of said legal officer, prepare a report and make a recommendation to the Commission affirming, modifying or reversing the same which shall be included in the agenda of the succeeding meeting en banc of the Commission. If the Commission approves the filing of an information in court against the respondent/s, the Director of the Law Department shall prepare and sign the information for immediate filing with the appropriate court.

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