

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON. HENRY B. BASILLA, SALVACION COLAMBOT, SPOUSES JAIME AND ADORACION TAYONG AND MELCHOR YANSON, RESPONDENTS.

G.R. Nos. 83938-40. November 06, 1989

Ponente: FELICIANO, J.

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FELICIANO, J.:

As an aftermath of the May 1987 congressional elections in Masbate, complaints for violations of Section 261 of the Omnibus Election Code (B.P. Big. 881) were filed with the Office of the Provincial Fiscal of Masbate against the private respondents as follows:

1)

by Jolly Fernandez, then Officer-in-Charge of the Office of the Governor, against the spouses Jaime and Adoracion Tayong — for violation of Section 261, paragraph a-1, for vote-buying;

2)

by Ladislao Bataliran against Salvacion Colambot — for violation of Section 261, paragraph a-1, also for vote buying; and

3) by PC/Sgt. Arturo Rebaya against Melchor Yanson — for violation of Section 261, paragraph p, for carrying of deadly weapon.

After preliminary investigation of the foregoing complaints, the Provincial Fiscal of Masbate filed in the Regional Trial Court, Branch 49, Cataingan, Masbate, the following criminal complaints: (1) Criminal Case No. 324 against the spouses Tayong; (2) Criminal Case No. 326 against Salvacion Colambot; and (3) Criminal Case No. 375 against Melchor Yanson.

In three (3) separate orders, all dated 6 October 1987, and identical in tenor save for the names of the accused, respondent Judge Henry Basilla *motu proprioproprio* dismissed the three (3) informations filed by the Provincial Fiscal, giving the following justification:

"x x x

x x x

x x x

The record shows that the complainant filed the complaint with the fiscal and not with the COMELEC. The COMELEC did not investigate the case.

The Constitution of the Republic of the Philippines says:

'Sec. 2(6) of Art. IX (C). The Commission on Election shall exercise the following powers and functions:

x x x

x x x

x x x

x x x; investigate and, when appropriate, prosecute cases of violation of election laws, including acts or omissions, constituting election frauds offenses, malpractices.'

The Omnibus Election Code of the Philippines (B.P. Big. 881) says:

'Sec. 265. Prosecution. — The Commission shall, through its duly authorized legal officers, have the exclusive power to conduct preliminary investigation of all election offenses punishable under this Code, and to prosecute the same. The Commission may avail of the assistance of other prosecuting arms of the government; Provided, however, that in the event that the Commission fails to act on any complaint within four months from his filing, the complainant may file the complaint with the office of the fiscal or with the Ministry of Justice for proper investigation and prosecution, if warranted. (Sec. 182, 1978, EC; and Sec. 66, B.P. 697)'

In the landmark case of *De Jesus vs. People*, No. 60998, February 22, 1983, 120 SCRA 760, the Supreme Court ruled:

'The grant to the COMELEC of the power, among others, to enforce and administer all laws relative to the conduct of election and the concomitant authority to investigate and prosecute election offenses is not without compelling reason. The evident constitutional intendment in bestowing this power to the COMELEC is to ensure the free, orderly and honest conduct of elections, failure of which would result in the frustration of the true will of the people and make a mere idle ceremony of the sacred right and duty of every qualified citizen to vote. To divest the COMELEC of the authority to investigate and prosecute election offenses committed by public officials in relation to their office would thus seriously impair its effectiveness in achieving this clear constitutional mandate.'

Consistently, and lately, in *Corpu[s], et al. vs. Tanodbayan of the Philippines, et al*, No. 62075, April 15, 1987, our Supreme Court rules:

'An examination of the provisions of the Constitution and the Election Code of 1978 reveals the clear intention to place in the COMELEC exclusive jurisdiction to investigate and prosecute election offenses committed by any person, whether private individual or public officer or employee, and in the latter instance, irrespective of whether the offense is committed in relation to his official duties or not. In other words, it is the nature of the offense and not the personality of the offender that matters. As long as the offense is an election offense jurisdiction over the same rests exclusively with the COMELEC, in view of its all embracing power over the conduct of election.'

IN THE LIGHT OF ALL THE FOREGOING, inasmuch as the election offense was not investigated and prosecuted by the COMELEC, the case is *motu proprio* dismissed."^[1]

The People moved for reconsideration of respondent Judge's orders, without success.

The instant Petition for Review assails the three (3) orders dismissing the three (3) criminal informations against the private respondents, as constituting grave abuse of discretion amounting to lack of jurisdiction. The Petition argues principally that the Commission on Elections ("Comelec") has authority to deputize the chief state prosecutors, provincial and city fiscals and their assistants, under Sections 2 (4) and (8), Article IX-C of the 1987 Constitution, and that the Comelec did deputize such prosecution officers to conduct preliminary investigation of complaints for alleged violation of election laws and to institute criminal informations therefor.

The Petition must be granted.

There is no dispute that the Comelec is vested with power and authority to conduct preliminary investigation of all election offenses punishable under the Omnibus Election Code and to prosecute such offenses in court. Section 265 of this Code reads as follows:

"Sec. 265. Prosecution. — The Commission shall, through its duly authorized legal officers, have the exclusive power to conduct preliminary investigation of all election offenses punishable under this Code, and to prosecute the same. The Commission may avail of the assistance of other prosecuting arms of the government: Provided, however, That in the event that the Commission fails to act on any complaint within four months from his filing, the complainant may file the complaint with the office of the fiscal or with the Ministry of Justice for proper investigation and prosecution, if warranted. (Sec. 182, 1973 EC; and Sec. 66, B.P. 697)" (Italics supplied)

We note that while Section 265 of the Code vests "exclusive power" to conduct preliminary investigation of election offenses and to prosecute the same upon the Comelec, it at the same time authorizes the Comelec to avail itself of the assistance of other prosecuting arms of the Government. Section 2 of Article IX-C of the 1987 Constitution clearly envisage that the Comelec would not be compelled to carry out all its functions directly and by itself alone:

"Section 2. The Commission on Elections shall exercise the following powers and functions:

(1) Enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall.

X X X

X X X

X X X

(4) Deputize, with the concurrence of the President, law enforcement agencies and instrumentalities of the Government, including the Armed Forces of the Philippines, for the exclusive purpose of ensuring free, orderly, honest, peaceful, and credible elections.

X X X

X X X

X X X

(6) File, upon a verified complaint, or on its own initiative, petitions in court for inclusion or exclusion of voters; investigate and, where appropriate, prosecute cases of violations of election laws, including acts or omissions constituting election frauds, offenses, and malpractices.

X X X

X X X

X X X

(8) Recommend to the President the removal of any officer or employee it has deputized, or the imposition of any other disciplinary action, for violation or disregard of, or disobedience to its directive, order, or decision.

X X X

X X X

X X X."

(Italics supplied)

The concurrence of the President with the deputation by Comelec of the prosecuting arms of the Government, was expressed in general terms and in advance in Executive Order No. 134, dated 27 February 1987, entitled "Enabling Act for the Elections for members of Congress on May 11, 1987, and for other purposes." Executive Order No. 134 provided in pertinent portion as follows:

"X X X

X X X

X X X

Sec. 11. Prosecution. — The Commission shall, through its duly authorized legal officers, have exclusive power to conduct preliminary investigation of all election offenses punishable as provided for in the preceding section, and to prosecute the same: Provided, That in the event that the Commission fails to act on any complaint within two (2) months from filing, the complainant may file the complaint with the Office of the Fiscal or with the Department of Justice for proper investigation and prosecution, if warranted.

The Commission may avail of the assistance of other prosecuting arms of the government" (Italics supplied)

On 9 March 1987, the Comelec enacted its Resolution No. 1862. The pertinent operative portions of this resolution are the following:

"X X X

X X X

X X X

NOW, THEREFORE, the Commission on Elections, by virtue of the powers vested in it by the Constitution of the Republic of the Philippines, the Omnibus Election Code and Executive Orders Nos. 50,94, 134 and 144, has RESOLVED to designate, as it hereby designates the Chief State Prosecutor, all Provincial and City Fiscals and their respective Assistants as its deputies in connection with the elections for Members of Congress on May 11, 1987, to perform the following duties and functions:

- Conduct preliminary investigation of complaints involving election offenses under the Omnibus Election Code which may be filed directly with them, or which may be endorsed to them by the Commission or its authorized representatives; and

- Whenever a prima facie case exists, file the proper information in court and prosecute the same.

Preliminary investigation of cases filed directly with, or endorsed to, Provincial and City fiscals, and/or their respective Assistants shall be conducted immediately and shall be finished within thirty (30) days from the filing thereof and, for this purpose, they are enjoined to hold office on a twenty-four (24) hour basis during the registration of voters on April 11 and 12, 1987, on Election Day on May 11, 1987, and until midnight on Revision Day on May 2, 1987.

Provincial and City Fiscals and their respective Assistants shall submit to the Commission a report on every case directly filed with them and thereafter, monthly progress reports on the status of the cases handled by them, including those endorsed by the Commission or its authorized representatives.

This Resolution shall take effect immediately."[2] (*Italics supplied*)

The contention of private respondents that the deputation by the Comelec of the prosecuting arms of the Government would be warranted only before the elections and only to ensure free, honest, orderly, peaceful and credible elections, that is, to perform the peace-keeping functions of policemen, lack substance. There is nothing in Section 2 (4) of Article IX-C of the Constitution which requires such a pinched and niggardly interpretation of the authority of the Comelec to appoint as its deputies, officials or employees of other agencies and instrumentalities of the government. The prompt investigation and prosecution and disposition of election offenses constitute an indispensable part of the task of securing free, orderly, honest, peaceful and credible elections. The investigation and prosecution of election offenses are, in an important sense, more important than the maintenance of physical order in election precincts. Without the assistance of provincial and city fiscals and their assistants and staff members, and of the state prosecutors of the Department of Justice, the prompt and fair investigation and prosecution of election offenses committed before or in the course of nationwide elections would simply not be possible, unless, perhaps, the Comelec had a bureaucracy many times larger than what it actually has. Moreover, the prosecution officers designated by the Comelec become deputies or agents of the Comelec and pro tanto subject to the authority, control and supervision of the Comelec in respect of the particular functions covered by such deputation. The acts of such deputies within the lawful scope of their delegated authority are, in legal contemplation, the acts of the Comelec itself. The only limitation the Constitution itself places upon the Comelec's authority over its deputies relates to the enforcement of such authority through administrative sanctions. Such sanctions — e.g., suspension or removal — may be recommended by the Comelec to the President (Sec. 2 [8], Article IX-C, 1987 Constitution) rather than directly imposed by the Comelec, evidently, to pre-empt and avoid potential difficulties with the executive department of the Government where the prosecution and other officers deputized are ordinarily located.

All this the respondent Judge disregarded when he *motu proprio* dismissed the criminal informations filed in this case. The cases he cited in his identical orders — *De Jesus v. People*, 120 SCRA 760 (1983) and *Corpus, etal v. Tanodbayan*, 149SCRA 281 (1987) can offer him no comfort at all; for these cases do not relate to the authority of the Comelec to deputize the regular prosecution arms of the Government for the investigation and prosecution of election offenses and those cases are not in conflict with our ruling here.

WHEREFORE, the Petition for Review on Certiorari is hereby GRANTED due course and the Orders of the trial court all dated October 6, 1987 in Criminal Cases Nos. 324, 326 and 375 and the Order dated December 7, 1987

in the same cases denying the People's Motion for Reconsideration, are hereby **SET ASIDE** and **ANNULLED**. The trial court is **ORDERED** to proceed forthwith with the continuation of Criminal Cases Nos. 324, 326 and 375 and until termination thereof. Costs against private respondents.

SO ORDERED.

Fernan, C.J. (Chairman), Gutierrez, Jr., Bidin, and Cortes, JJ., concur.

[1] Orders in Criminal Cases Nos. 326, 324 and 375; Rollo, pp. 24-32.

[2] Rollo, pp. 19-20.

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