

**GUILLERMO R. SANCHEZ, AND CARLITO T. TAN, PETITIONERS, VS.
THE COMMISSION ON ELECTIONS AND ITS COMMISSIONERS,
ZACARIAS V. PIZARRO, JR., IN HIS CAPACITY AS CITY ELECTION
REGISTRA...**

G.R. Nos. 94459-60. January 24, 1991

Ponente: BIDIN, J.

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BIDIN, J.:

This is a petition for prohibition and injunction, with prayer for the issuance of a temporary restraining order, seeking to enjoin respondent Commission on Elections (hereinafter COMELEC) and the Election Registrar of Butuan City, from implementing Minute Resolution No. 90-0590 adopted by the COMELEC on June 27, 1990, directing the holding of recall proceedings against petitioners herein on August 11, 18 and 25, 1990.

The facts are undisputed.

On February 5, 1990, private respondents Emmanuel R. Balanon, a defeated candidate for City Mayor and Manuel D. Canete filed separate notices of recall against petitioners, Guillermo R. Sanchez and Carlito T. Tan, incumbent city mayor and vice-mayor, respectively, of Butuan City, before the City Election Registrar.

On February 9, 1990, respondent City Election Registrar Pizarro approved the schedule of signing to be conducted from Mondays to Fridays beginning February 14, 1990 to March 15, 1990, as well as the designated five (5) signing centers for the purpose. In approving the schedule of signing, respondent City Election Registrar acted "in line with the guidelines provided in Sec. 6 and other provisions of Comelec Resolution No. 1612" (Annex "C" of the petition).

On February 19, 1990, private respondents filed a proposal to amend the recall proceedings with the Election Registrar seeking to increase the number of signing centers from the original five (5) to sixteen (16) and the signing day to include Saturdays and Sundays (Annex "E" of the petition).

Petitioners filed their opposition thereto, contending among others, that there is no valid ground to justify the amendment of the recall proceedings already underway.

On March 2, 1990, petitioners filed their "petition to deny the proposed amendments of schedule of signing" of the recall proceedings with the COMELEC upon learning that the proposed amendments have been indorsed to the latter.

On the same date, respondent COMELEC issued Minute Resolution No. 90-0254 suspending the recall proceedings against petitioners until the funding requirements therefor shall have been adequately clarified (Annex "K" of the petition).

On May 23, 1990, respondent COMELEC promulgated Resolution No. 2272, providing for the rules and regulations on the recall of elective provincial, city and municipal officials (Annex "N" of the petition).

On June 27, 1990, respondent COMELEC issued Minute Resolution No. 90-0590 (Annex "0-2" of the petition) declaring as null and void the signing process conducted under Resolution No. 1612, said resolution having been superseded by Resolution No. 2272 and setting the date for the signing process on August 11, 18 and 25 1990.

Alleging lack or excess of jurisdiction or with grave abuse of discretion on the part of respondent COMELEC in issuing Resolution No. 2272 and Minute Resolution No. 90--0590, petitioners filed this instant petition for prohibition and injunction with prayer for the issuance of a temporary restraining order.

On August 9, 1990, the Court, without giving due course to the petition, resolved to require respondents to comment thereon and to issue a temporary restraining order directed against public respondents to cease and desist from proceeding with the recall-signing process scheduled on August 11, 18 and 25, 1990.

Private respondents filed their comment on September 4, 1990, while public respondents filed their comment on October 23, 1990. The Court considers the comments filed as answers to the petition and gives due course to the same.

Petitioners contend that Resolution No. 2272 is unconstitutional there being no legislative enactment yet on mechanism of recall as mandated under Sec. 3, Art. X of the Constitution.

We find the contention devoid of merit.

While it is true that Sec. 3, Art. X of the Constitution mandates the Congress to enact a local government code providing among others for an effective mechanism of recall, nothing in said provision could be inferred the repeal of BP 337, the local government code existing prior to the adoption of the 1987 Constitution. Sec. 3, Art. X of the Constitution merely provides that the local government code to be enacted by Congress shall be "more responsive" than the one existing at present. Until such time that a more responsive and effective local government code is enacted, the present code shall remain in full force and effect. Thus, under Sec. 3, Art. XVIII, "(a)ll existing laws, decrees, executive orders, proclamations, letters of instructions and other executive issuances not inconsistent with this Constitution shall remain operative until amended, repealed, or revoked."

Considering that the present local government code (BP 337) is still in effect, respondent COMELEC's promulgation of Resolution No. 2272 is therefore valid and constitutional, the same having been issued pursuant to Sec. 59 of BP 337. It reads:

"Sec. 59. Supervision by the Commission on Elections. – The Commission on Elections shall conduct and supervise the process of and election on recall in the manner and time herein provided and, in pursuance thereof, promulgate the necessary rules and regulations."

Petitioners next argue that respondent COMELEC acted in excess of jurisdiction or with grave abuse of discretion when it adopted Minute Resolution No. 90-0590 declaring as null and void the signing process conducted under Resolution No. 1612.

We agree. Minute Resolution No. 90-0590 dated June 27, 1990, resolved to:

- a) declare as null and void the signing process conducted under Resolution No. 1612, said Resolution having been superseded by Resolution No. 2272; and
- b) set the date for the signing process on August 11, 18 and 25, 1990.

Respondent COMELEC issued said minute resolution using as basis Resolution No. 2272. The Court notes, however, that Resolution No. 2272 was promulgated on May 23, 1990 and took effect on June 2, 1990, seven (7) days after its publication (Sec. 16, Res. No. 2272) on May 26, 1990. By the time it took effect, three (3) months

have already elapsed after the first notice of recall of petitioners was filed on February 5, 1990.

In giving Min. Res. No. 90-0590 retroactive effect based on Res. No. 2272, respondent COMELEC violated the fundamental rule on applicability of laws. Art. 4 of the Civil Code provides that "(l)aws shall have no retroactive effect unless the contrary is provided." No retroactive effect had been provided in Resolution No. 2272. As aforesaid, Resolution No. 2272 took effect seven (7) days after its publication or on June 2, 1990.

The non-applicability of Resolution No. 2272 to the case at bar becomes even more apparent because it would in effect nullify the first notice of recall filed on February 5, 1990 for failure to comply with the procedure laid down therein, to wit:

"Sec. 5. Schedule and place of signing of the petition. – The Election Registrar shall submit to the Commission on Elections, not later than ten (10) days after the filing of the notice of recall, the schedule of the signing of the petition to recall for approval and funding.

xxx

"Sec. 6. Publication of schedule for the public signing of the petition. – Immediately upon receipt of the approval of the schedule xxx the Provincial Election Supervisor, in case the petition involves a provincial official, shall direct all Election Registrars in the province to post copies of the approved schedule on their city/municipal bulletin boards xxx. If the recall involves a city or municipal official, the Election Registrar shall do the same as aforesaid. (Underscoring supplied)

In brief, Resolution No. 2272 contemplates the approval of the schedule of the signing of the petition to recall by the COMELEC. In the case at bar, however, the schedule of signing was approved by the city election registrar.

Yet, while respondent COMELEC resolved to declare as null and void the signing of the petition to recall (Min. Res. No. 90-0590), it nevertheless held in effect that the notice of recall filed under the provisions of Resolution No. 1612 as valid by scheduling the dates of signing the petition to recall on August 11, 18 and 25, 1990.

The scenario would then be one resolution (Res. No. 1612) governing the filing of notice for recall and its approval and the other resolution (Res. No. 2272) governing the schedule and number of days for signing. A single petition for recall governed by two differing resolutions! At this point, even private respondents and the Solicitor General agree that this cannot be done without being inconsistent and illogical.

The Court holds, therefore, that the recall proceedings conducted as a result of the notice of recall filed pursuant to the provisions of Resolution No. 1612 must be continued under the schedule originally approved by the city election registrar counted from the time the same was suspended by respondent COMELEC (Minute Resolution No. 90-0254), considering that Resolution No. 2272 has no retroactive effect.

WHEREFORE, the petition is GRANTED. Public respondents are hereby enjoined from implementing Resolution No. 2272 and Minute Resolution No. 90-0590 is hereby declared null and void for having been issued with grave abuse of discretion. Public respondents are further ordered to continue with the recall proceedings originally commenced under the provisions of Resolution No. 1612. The temporary restraining order previously issued having become functus officio, the same is hereby lifted and set aside.

SO ORDERED.

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

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