EN BANC

[G.R. No. 244274, September 03, 2019]

NORMAN CORDERO MARQUEZ, PETITIONER, VS. COMMISSION ON ELECTIONS, RESPONDENT.

D E C I S I O N

JARDELEZA, J.:

The question presented is whether the Commission on Elections (COMELEC) may use lack of proof of financial capacity to sustain the financial rigors of waging a nationwide campaign, by itself, as a ground to declare an aspirant for senator a nuisance candidate. We hold that the COMELEC may not.

On October 15, 2018, petitioner Norman Cordero Marquez (Marquez) filed his Certificate of Candidacy (CoC) for the position of senator in the May 13, 2019 national and local elections. He is a resident of Mountain Province, a real estate broker, and an independent candidate.[1]

On October 22, 2018, the COMELEC Law Department, *motu proprio*, filed a petition[2] to declare Marquez a nuisance candidate. The Law Department argued that: (1) Marquez was "virtually unknown to the entire country except maybe in the locality where he resides;"[3] and (2) though a real estate broker, he, absent clear proof of financial capability, "will not be able to sustain the financial rigors of a nationwide campaign."[4]

Marquez countered that he: is the co-founder and sole administrator of Baguio Animal Welfare (BAW), an animal advocacy group, and is thus, known in various social media and websites;[5] is a member of relevant task forces and advisory committees;[6] is in regular consultations with government offices to discuss animal welfare issues and concerns;[7] has been interviewed in television and radio shows; [8] has travelled all over to promote his advocacy;[9] and has received donations and contributions from supporters.[10]

He argues that the COMELEC should not discount "the potential for vastly untapped sector of animal lovers, raisers and handlers, and the existing local and foreign benefactors and donors who are willing and capable to (*sic*) subsidize the expenses of a social-media-enhanced national campaign."[11]

The COMELEC First Division on December 6, 2018, cancelled Marquez' CoC,[12] citing this Court's ruling in *Martinez III v. House of Representatives Electoral Tribunal and Benhur L. Salimbangon (Martinez III)*[13] that "[i]n elections for national positions x x x the sheer logistical challenge posed by nuisance candidates gives compelling reason for the Commission to exercise its authority to eliminate

nuisance candidates who obviously have no financial capacity or serious intention to mount a nationwide campaign."[14] The amounts set forth in Section 13 of Republic Act No. (RA) 7166[15] "would at least require [Marquez] to prove that he can mount a viable nationwide campaign" and "x x x running as an independent further decreases a candidate's chances with even more limited resources at his disposal." [16]

Marquez filed a motion for reconsideration[17] which the COMELEC *En Banc* denied on January 23, 2019.[18] Hence, this petition.[19]

The main issue presented is whether the COMELEC committed grave abuse of discretion in declaring Marquez a nuisance candidate for his failure to prove his financial capability to mount a nationwide campaign.

Marquez maintains that he has a *bona fide* intention to run for office and can sustain a nationwide campaign "given the campaign-enhanced support from existing and expanded donors base, locally and internationally, and the overwhelming hospitality and endorsement of pet organizations and animal-based livelihood groups all over the Philippines."[20] Section 13 of RA 7166 "represent(s) expense ceilings but not necessarily the actual expenses that a candidate must spend out of his personal resources."[21]

More so, "the power of social media has emerged as a potent, yet cost effective, element in the candidate's ability to wage a nationwide campaign."[22] Given the advent of social media and "the spirit of the new-generation-internet-based campaigns," Marquez maintains he is capable of launching a "revolutionary" and "unprecedented internet-powered online campaign, coupled with host-dependent campaign sorties, on a nationwide scope" that will not require the "unwarranted exorbitant costs associated with the traditional cash-dependent campaigns of the other Senatorial candidates."[23]

He prays that a writ of injunction and temporary restraining order (TRO) be issued to prevent the COMELEC from deleting his name in the final list of senatorial candidates in the printed ballots and to enjoin COMELEC to include his name in all the certified list of senatorial candidates issued for public information until after the Court shall have resolved the petition.[24]

The Office of the Solicitor General (OSG), representing the COMELEC, seeks the dismissal of the petition because the issues raised involve errors of judgment not reviewable through a special civil action for *certiorari* under Rule 65 of the Rules of Court.[25] Marquez essentially questions the COMELEC's appreciation of facts that led to its determination of the issue of whether he should be declared a nuisance candidate.[26]

The OSG rejects Marquez' argument that "the principles enunciated by this Court in *Pamatong v. COMELEC*[27] (*Pamatong*) and *Martinez III* have been rendered irrelevant in light of the emerging power of social media."[28]

The OSG also argues that the COMELEC acted within its jurisdiction. Section 69 of

Batas Pambansa Bilang (BP) 881, also known as the Omnibus Election Code (OEC) is a valid limitation on the privilege to seek elective office. Citing *Pamatong* and *Martinez III,* the OSG argues that the State has a compelling interest to ensure that its electoral exercises are rational, objective and orderly. Thus, the COMELEC may exercise its authority to eliminate candidates who obviously have no financial capacity or serious intention to mount a nationwide campaign. The OSG also noted that, the Court already applied COMELEC Resolution No. 6452 dated December 10, 2003 in appreciating the instances where the COMELEC may *motu proprio* refuse to give due course to or cancel a CoC. Among those instances listed are some of the requirements that Marquez claims ought to have been incorporated in the election rules and regulations. He thus cannot claim that there are no rules incorporating the standards applied by the COMELEC in finding him a nuisance candidate.[29]

Marquez also failed to prove that he is financially capable of waging a nationwide campaign for the 2019 elections. He did not substantiate his claim of capability to utilize the social media to launch an effective campaign. His allegation that statistics are in his favor to win the election was unsubstantiated. Thus, his claim that his campaign would not require the "unwarranted exorbitant costs associated with the traditional cash-dependent campaigns of the other senatorial candidates" has no leg to stand on.[30]

Consequently, the OSG opposes Marquez' prayer for the issuance of a writ of injunction and TRO.

We grant the petition.

I

The Court is well aware that the May 13, 2019 national and local elections have concluded, with the proclamation of the top 12 candidates receiving the highest number of votes as senators-elect. This development would ordinarily result in the dismissal of the case on the ground of mootness. Since a judgment in one party's (*i.e.*, Marquez) favor will not serve any useful purpose nor have any practical legal effect because, in the nature of things, it cannot be enforced,[31] the Court would normally decline jurisdiction over it.[32]

The Court's power to adjudicate is limited to actual, ongoing controversies. Paragraph 2, Section 1, Article VIII of the 1987 Constitution provides that "judicial power includes the duty of the courts of justice **to settle actual controversies** involving rights which are legally demandable and enforceable x x x." Thus, and as a general rule, this Court will not decide moot questions, or abstract propositions, or declare principles or rules of law which cannot affect the result as to the thing in issue in the case before it.[33]

Such rule, however, admits of exceptions. A court will decide a case which is otherwise moot and academic if it finds that: (a) there was a grave violation of the Constitution; (2) the case involved a situation of exceptional character and was of paramount public interest; (3) the issues raised required the formulation of controlling principles to guide the Bench, the Bar and the public; and (4) the case was capable of repetition yet evading review.[34]

We find that the fourth exception obtains in this case.

At this point, tracing the history of the capable of repetition yet evading review exception to the doctrine on mootness is in order.

The United States (U.S.) Supreme Court first laid down the exception in 1911, in *Southern Pacific Terminal Company v. Interstate Commerce Commission.*[35] In that case, the Interstate Commerce Commission ordered appellants to cease and desist from granting a shipper undue preference over wharfage charges. The questioned Order, which was effective for about two years expired while the case inched its way up the appellate process, and before a decision could be rendered by the U.S. Supreme Court. The Court refused to dismiss the appeal as moot, holding:

> x x x The questions involved in the orders of the Interstate Commerce Commission are usually continuing (as are manifestly those in the case at bar) and their consideration ought not to be, as they might be, defeated, by short term orders, capable of repetition, yet evading review, and at one time the Government and at another time the carriers have their rights determined by the Commission without a chance of redress.[36]

The exception would find application in the 1969 election case of *Moore v. Ogilvie*.[37] Petitioners were independent candidates from Illinois for the offices of electors for President and Vice President of the U.S., for the 1968 election. They questioned an Illinois statute which required candidates for the post of such electors to be nominated by means of signatures of at least 25,000 qualified voters, provided the 25,000 signatures include the signatures of 200 qualified voters spread from each of at least 50 counties. While petitioners filed petitions containing 26,500 signatures of qualified Voters, they failed to satisfy the proviso.

Although the 1968 election was over by the time the case reached the U.S. Supreme Court for decision, the Court did not dismiss the case as moot, ruling that "the burden which x x x allowed to be placed on the nomination of candidates for statewide offices remains and controls future elections, as long as Illinois maintains her present system as she has done since 1935. The problem is therefore "capable of repetition, yet evading review.""'[38]

Similarly, the U.S. Supreme Court in 1973 applied the exception in *Roe v. Wade*[39] There, a pregnant woman in 1970 filed a petition challenging the anti-abortion statutes of Texas and Georgia. The case was not decided until 1973 when petitioner was no longer pregnant. Despite being mooted, the U.S. Supreme Court ruled on the merits of the petition, explaining:

> The usual rule in federal cases is that an actual controversy must exist at stages of appellate or *certiorari* review, and not simply at the date the action is initiated.
>
> **But when, as here, pregnancy is a significant fact in the litigation, the normal 266-day human gestation period is so short that the pregnancy will come to term before the usual appellate process is complete. If that termination makes a case moot, pregnancy**

> **litigation seldom will survive much beyond the trial stage, and appellate review will be effectively denied**. Our law should not be that rigid. Pregnancy often comes more than once to the same woman, and in the general population, if man is to survive, it will always be with us. Pregnancy provides a classic justification for a conclusion of nonmootness. It truly could be "capable of repetition, yet evading review."[40] (Citations omitted; emphasis supplied.)

By 1975, the U.S. Supreme Court would lay down two elements required to be present in a case before the exception applies. In *Weinstein v. Bradford*,[41] the Court, explaining its ruling in *Sosna v. Iowa*,[42] clarified that in the absence of a class action, the "capable of repetition yet evading review" doctrine was limited to the situation where two elements combined: (1) the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration; and (2) there was a reasonable expectation that the same complaining party would be subjected to the same action again.[43]

In Our jurisdiction, the Court would first apply the exception in *Alunan III v. Mirasol*, [44] an election case. There, petitioners assailed a Department of Interior and Local Government (DILG) Resolution exempting the City of Manila from holding elections for the *Sangguniang Kabataan* (SK) on December 4, 1992. Petitioners argued that the elections previously held on May 26, 1990 were to be considered the first under the Local Government Code. The Court was then confronted with the issue of whether the COMELEC can validly vest in the DILG control and supervision of the SK Elections. While the second elections were already held on May 13, 1996, during the pendency of the petition, the Court ruled that the controversy raised is capable of repetition yet evading review because the same issue is "**likely to arise in connection with every SK election and yet, the question may not be decided before the date of such elections**."[45]

The Court would then apply the exception in the subsequent cases of *Sanlakas v. Executive Secretary,*[46] *David v. Macapagal-Arroyo*[47] *Belgica v. Ochoa*[48] and in the more recent case of *Philippine Association of Detective and Protective Agency Operators (PADPAO) v. COMELEC*.[49]

Here, it was only on January 23, 2019 that the COMELEC *En Banc* rendered its assailed ruling and ultimately decided that Marquez is a nuisance candidate. After receiving a copy of the Resolution[50] on January 28, 2019, he filed this petition on February 14, 2019. Meanwhile, the COMELEC finalized the list of senatorial candidates on January 31, 2019[51] started printing ballots for national candidates on February 9, 2019[52] and completing the printing of the same on April 26, 2019. [53] Given this chronology of events, this Court was little wont to issue a TRO, as the same would only delay the conduct of the May 13, 2019 elections.

Moreover, given that the COMELEC appears to be applying the same rule with respect to other aspiring candidates,[54] there is reason to believe that the same issue would likely arise in future elections. Thus, the Court deems it proper to exercise its power of judicial review to rule with finality on whether lack of proof of