

## EN BANC

[ G.R. No. 230249, April 24, 2018 ]

**ATTY. PABLO B. FRANCISCO, PETITIONER, VS. COMMISSION ON ELECTIONS AND ATTY. JOHNIELLE KEITH P. NIETO, RESPONDENTS.**

### D E C I S I O N

**VELASCO JR., J.:**

#### **Nature of the Case**

This treats of the petition for *certiorari* under Rule 64, in relation to Rule 65, of the Rules of Court filed by Atty. Pablo B. Francisco (Francisco), which seeks to nullify the February 2, 2017 Resolution<sup>[1]</sup> of the public respondent Commission on Elections (COMELEC) *En Banc*. The assailed ruling dismissed Francisco's Petition for Disqualification against private respondent Atty. Johnielle Keith P. Nieto (Nieto).

#### **The Facts**

Francisco is a registered voter in Cainta, Rizal, while Nieto was elected as mayor of the same municipality in 2013. Nieto filed a certificate of candidacy (COC) to signify his bid for re-election for the 2016 National and Local Elections.

On April 8, 2016, Francisco filed before the COMELEC a Petition for Disqualification against Nieto, docketed as SPA 16-062(DC), alleging that on April 1-2, 2016, respondent made financial contributions out of the government coffers for the asphalt-paving of the road entrance along Imelda Avenue of Cainta Green Park Village. This, according to petitioner, amounted to the expending of public funds within forty-five (45) days before the 2016 polls and to illegal contributions for road repairs, respectively punishable under Sees. 261(v)<sup>[2]</sup> and 104<sup>[3]</sup> of Batas Pambansa Blg. 881, otherwise known as the Omnibus Election Code (OEC). Petitioner further claimed that the said asphalt paving was one of the accomplishments that respondent reported on his Facebook page.

In his Answer filed on April 22, 2016, Nieto countered that the questioned asphaltting project was subjected to public bidding on March 15, 2016, with a Notice of Award issued on March 21, 2016. Thus, the asphaltting project falls within the excepted public works mentioned in Sec. 261(v)(l)(b) of the OEC.

During the preliminary conference on May 5, 2016, the counsels for the parties marked their respective pieces of evidence. Thereafter, an Order was issued giving them ten (10) days to file their respective memoranda. The COMELEC would receive copies of the memoranda on May 16, 2016 and, thereafter, the case was deemed submitted for resolution. In the interim, Nieto would be re-elected as municipal mayor of Cainta, Rizal, having garnered the plurality of votes upon the conclusion of

the 2016 polls.

### **Ruling of the COMELEC**

On August 16, 2016, the COMELEC Second Division promulgated a Resolution<sup>[4]</sup> dismissing the Petition for Disqualification against Nieto, and ruled in the following wise:

From the foregoing, it is clear that a candidate cannot be disqualified without a prior finding that he or she is suffering from a disqualification provided by law or the Constitution. To be sure, in order to disqualify a candidate there must be a declaration by a final judgment of a competent court that the candidate sought to be disqualified is guilty of or found by the Commission to be suffering from any disqualification provided by law or the Constitution.

In the instant case, this Commission (Second Division) finds no such prior declaration by a final judgment of a competent court or of a finding of the Commission that Respondent is guilty of the acts complained of. Whether or not the Respondent is guilty of the alleged acts is a prejudicial question which should be determined first in a proper proceedings (sic) before a tribunal with competent jurisdiction. In the absence of such prior finding of a competent tribunal, the Commission has no basis to disqualify Respondent. That said, the case must be dismissed.

**WHEREFORE**, premises considered, the instant Petition is **DISMISSED**.

**SO ORDERED.**<sup>[5]</sup>

The COMELEC Second Division anchored its ruling on the Court's landmark decision in *Poe-Llamanzares v. COMELEC*<sup>[6]</sup> (*Poe*) wherein the Court enunciated thusly:

Clearly, the amendment done in 2012 is an acceptance of the reality of absence of an authorized proceeding for determining *before election* the qualifications of candidate. Such that, **as presently required, to disqualify a candidate there must be a declaration by a final judgment of a competent court that the candidate sought to be disqualified "is guilty of or found by the Commission to be suffering from any disqualification provided by law or the Constitution."**

Insofar as the qualification of a candidate is concerned, Rule 25 and Rule 23 are flip sides of one to the other. **Both do not allow, are not authorizations, are not vestment of jurisdiction, for the COMELEC to determine the qualification of a candidate. The facts of qualification must beforehand be established in a prior proceeding before an authority properly vested with jurisdiction.** The prior determination of qualification may be by statute, by executive order or by a judgment of a competent court or tribunal. (emphasis added)

On September 8, 2016, petitioner moved for reconsideration from the COMELEC Second Division's Resolution before the COMELEC *En Banc*, arguing in the main that there need not be a final judgment by a competent court that the candidate sought to be disqualified is guilty of or is suffering from any disqualification. He also stressed that since the act complained of can only be committed within forty-five (45) days before the election, it would be impossible to secure a conviction prior to initiating the disqualification proceedings.

Despite these strong asseverations, however, the COMELEC *En Banc* found no reason to disturb the ruling of the Second Division. Instead, the seven-person Commission echoed the pronouncement that for a petition for disqualification to prosper, there must be "a declaration by a final judgment of a competent court that the candidate sought to be disqualified is guilty of or found by the Commission to be suffering from any disqualification provided by law or the Constitution." The COMELEC *En Banc* then deemed that the denial of the petition is the only course of action it could take under the premises. Thus, in its assailed February 2, 2017 Resolution, the electoral tribunal held:

Although the ruling enunciated by the Supreme Court in [*Poe*] has effectively emasculated the Commission's power under COMELEC Resolution No. 9523 to disqualify a candidate, it cannot decline to apply such ruling in view of the principle that "*judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.*"

As such, Petitioner's reliance on the cases cited in the Motion for Reconsideration is misplaced, considering that the *Poe* case is now the controlling doctrine on the matter having been decided in 2016 and thus supersedes any previous ruling on the matter.

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Consequently, having no leg to stand on, the instant **Motion for Reconsideration is DENIED** and the **Resolution** of the Commission (Second Division) is hereby **AFFIRMED**.<sup>[7]</sup>

Hence, the instant recourse.

### **The Issues**

The issues to be resolved by this Court can be condensed to the following:

- I. Whether or not the COMELEC acted in grave abuse of discretion in ruling that a petition for disqualification under Sec. 68 of the OEC cannot prosper without a prior judgment finding the respondent guilty of an election offense.
- II. Whether or not petitioner sufficiently established by substantial evidence that respondent violated Secs. 261(v) and 104 of the OEC.

Petitioner bewails that the COMELEC abruptly dismissed the disqualification case. According to petitioner, the situation ushered in by the COMELEC ruling would render toothless Section 68 of the OEC against election irregularities because of the

virtual impossibility of compliance with the prior ruling requirement. He also asserts that *Poe* does not apply to candidates for local posts.

In his Comment, respondent Nieto cited the *Poe* ruling and averred that since there was no prior declaration by a final judgment of a competent court or of a finding of the Commission that he is guilty of the acts complained of, the COMELEC Second Division had no basis to disqualify him. Nieto likens the requirement of a prior ruling to a prejudicial question that must first be determined in a proper proceeding before a tribunal with competent jurisdiction.

Moreover, Nieto reiterated the defense that the asphaltting project is outside the ambit of the ban against the expenditure of public funds since it was contracted prior to the 45-day period before the scheduled elections. It was, thus, an infrastructure activity lawfully entered into by the local government unit of Cainta. In addition, no public funds were disbursed for the project during the ban since all expenses were for the account of the winning bidder, Franzcor Trading and Construction.

The Office of the Solicitor General (OSG), representing the government, in its Comment took a stance different from that of the COMELEC. The OSG argued that Article IX-C, Section 2(2) and (3) of the Constitution granted the COMELEC the quasi-judicial power to decide all questions affecting elections, except those involving the right to vote. This power further finds legal mooring in the dual aspect of the prohibited acts constituting the grounds for disqualification under Section 68 of the OEC. Lastly, the OSG posited that the context of the *Poe* ruling bars its application to local elective officials since the discussions were aptly made within the confines of a national candidate for the presidency.

### **The Court's Ruling**

Petitioner is correct in his contention that a prior judgment is not a precondition to filing a Petition for Disqualification. Nevertheless, the petition must necessarily fail for lack of substantial evidence to establish that private respondent committed an election offense.

#### ***Petitioner failed to comply with the material date rule***

Before We discuss the merits of the case, the Court observes that petitioner failed to state the material dates to establish that the instant recourse was timely interposed. The petitioner merely stated that he received a copy of the COMELEC's Resolution denying his motion for reconsideration on February 20, 2017, and that he was filing this petition within thirty (30) days from the said date on March 22, 2017.<sup>[8]</sup>

The allegation is not sufficient. Rule 64, Section 3 of the Rules of Court prescribes the period for elevating the COMELEC's ruling to this Court thusly:

**Section 3. Time to file petition.** - The petition shall be filed within thirty (30) days from notice of the judgment or final order or resolution sought to be reviewed. The filing of a motion for new trial or reconsideration of said judgment or final order or resolution, if allowed under the procedural rules of the Commission concerned, shall interrupt the period herein fixed. If the motion is denied, the aggrieved party may file the petition

within the remaining period, but which shall not be less than five (5) days in any event, reckoned from notice of denial.

Clear from the provision is that the intervening period petitioner utilized in moving for reconsideration before the COMELEC must be deducted from the thirty (30)-day period for resorting to a Rule 64 petition. As held in *Pates v. COMELEC*,<sup>[9]</sup> the fresh period rule in *Neypes v. Court of Appeals*<sup>[10]</sup> that resets the period of the filing of an appeal from the date of receipt of the ruling on reconsideration is applicable only in civil cases, not in election controversies. Filing a motion for reconsideration before the COMELEC then almost guarantees that the full 30-day period could not be availed of.

In the case at bar, petitioner failed to indicate when he received a copy of the August 16, 2016 Resolution of the COMELEC Second Division, from which he moved for reconsideration on September 8, 2016. The Court is then unable to determine how many days should be deducted from his period for filing a Rule 64 petition and, consequently, if the instant recourse had been filed on time. The particular date of receipt is of utmost significance in this case since petitioner cannot deny that he availed of the full 30-day period from February 20, 2017 to March 22, 2017. This means that unless petitioner filed his motion for reconsideration on the very same day he received the COMELEC's August 16, 2016 Resolution, the instant petition had been filed out of time. In any case, non-compliance with the material date rule, in itself, is already a ground for dismissal.<sup>[11]</sup>

### ***Revisiting Poe and strengthening the jurisdiction of the COMELEC***

Public respondent COMELEC relied heavily on the Court's pronouncement in *Poe* when it dismissed the election controversy. The Court, however, takes this opportunity to rectify Our position in *Poe* and to uphold the jurisdiction of the COMELEC as strengthened under the present Constitution.

For perspective, the COMELEC was never part of the original version of the 1935 Constitution. Prior to its creation, it was the then Department of Interior, through an Executive Bureau then directly, that superintended the conduct of elections.<sup>[12]</sup> The Courts were charged with resolving questions affecting the right to vote as well as contested elections of local elective officials, while the Secretary of Interior was vested with the authority to enforce the election laws and assign local authorities to perform ministerial duties relative thereto.

The close official relationship between the President and the Secretary of Interior, however, aroused suspicion that the latter had been administering election statutes not for the purpose of securing honest and free elections, but to serve the political interest of the party in power to which they belonged. They were never entirely free from suspicion of acting with partisan bias. And this general dissatisfaction and distrust over the manner the elections were conducted at that time impelled the National Assembly to propose the creation of the COMELEC by constitutional amendment.<sup>[13]</sup>

Through a plebiscite held on June 17, 1940, several amendments were introduced to the 1935 Constitution: modifying the term of office of the President and the Vice-President from six (6) years to four (4) years, but with re-election for another term