

EN BANC

[G.R. No. 215847, January 12, 2016]

GOV. EXEQUIEL B. JAVIER, PETITIONER, VS. COMMISSION ON ELECTIONS, CORNELIO P. ALDON, AND RAYMUNDO T. ROQUERO, RESPONDENTS.

D E C I S I O N

BRION, J.:

This is a petition for *certiorari* under Rule 65 in relation to Rule 64 of the Rules of Court, filed to challenge the January 12, 2015 *per curiam* order of the Commission on Elections (COMELEC/*The Commission*) en banc in SPA No. 13-254 (DC).^[1] The Commission granted the petition to disqualify the petitioner Exequiel Javier and to annul his proclamation as the duly elected governor of Antique.

THE ANTECEDENTS

On December 3, 1985, the Batasang Pambansa enacted the Omnibus Election Code (*Election Code*)^[2] **Section 261(d) and (e)** of this Code prescribe the following elements of coercion as an election offense:

Section 261. Prohibited Acts. -The following shall be guilty of an election offense: x x x

(d) *Coercion of subordinates.* -

(1) Any **public officer**, or any officer of any public or private corporation or association, or any head, superior, or administrator of any religious organization, or any employer or landowner who **coerces or intimidates or compels, or in any manner influence, directly or indirectly, any of his subordinates** or members or parishioners or employees or house helpers, tenants, overseers, farm helpers, tillers, or lease holders **to aid, campaign or vote for or against any candidate or any aspirant** for the nomination or selection of candidates.

(2) Any **public officer** or any officer of any commercial, industrial, agricultural, economic or social enterprise or public or private corporation or association, or any head, superior or administrator of any religious organization, or any employer or landowner who **dismisses or threatens to dismiss, punishes or threatens to punish** by reducing his salary, wage or compensation, or by demotion, transfer, **suspension**, separation, excommunication, ejectment, or causing him annoyance in the performance of his job or in his membership, **any subordinate** member or affiliate, parishioner, employee or house helper, tenant,

overseer, farm helper, tiller, or lease holder, for disobeying or not complying with any of the acts ordered by the former **to aid, campaign or vote for or against any candidate, or any aspirant for the nomination or selection of candidates.**

(e) Threats, intimidation, terrorism, use of fraudulent device or other forms of coercion. - Any person who, directly or indirectly, threatens, intimidates or actually causes, inflicts or produces any violence, injury, punishment, damage, loss or disadvantage upon any person or persons or that of the immediate members of his family, his honor or property, or uses any fraudulent device or scheme to compel or induce the registration or refraining from registration of any voter, or the participation in a campaign or refraining or desistance from any campaign, or the casting of any vote or omission to vote, or any promise of such registration, campaign, vote, or omission therefrom, (emphases supplied)

Coercion, as an election offense, is punishable by imprisonment of not less than one year but not more than six years.^[3] Notably, Section 68 of the Election Code provides that the Commission may administratively disqualify a candidate who violates Section 261(d) or (e).

On February 20, 1995, Congress enacted Republic Act No. 7890 amending the definition of Grave Coercion under the Revised Penal Code.^[4] It increased the penalty for coercion committed in violation of a person's right to suffrage to *prision mayor*. Further, Section 3 of R.A. 7890 expressly repealed Section 26, paragraphs (d)(1) and (2) of the Election Code.

On April 3, 2012, COMELEC issued **Resolution No. 9385**^[5] fixing the calendar of activities for the May 2013 elections. The resolution set the election period from January 13, 2013 until June 12, 2013.

On September 3, 2012, Valderrama Municipal Vice-Mayor Christopher B. Maguad filed an administrative complaint for Gross Misconduct/Dereliction of Duty and Abuse of Authority against Valderrama Mayor Mary Joyce U. Roquero (*Mayor Roquero*). This complaint was docketed as Administrative Case No. 05-2012.

On November 9, 2012, the Sangguniang Panlalawigan (SP) issued **Resolution No. 291-2012** recommending to Antique Governor Exequiel Javier (*Gov. Javier*) the preventive suspension of Mayor Roquero.

On November 21, 2012, Mayor Roquero filed a petition for *certiorari* and prohibition with prayer for the issuance of a temporary restraining order (TRO) before the Regional Trial Court (RTC), Branch 12, Antique, against Gov. Javier and the members of the SP to restrain them from proceeding with Administrative Case No. 05-2012. The petition was docketed as **Special Civil Action No. 12-11-86**.

The case was re-raffled to the RTC, Branch 11 which issued a writ of preliminary injunction.

Gov. Javier, Vice-Governor Dimamay, and the members of the SP filed a petition for *certiorari* with urgent prayer for TRO and preliminary injunction before the CA, docketed as CA-G.R. SP-07307.

On December 18, 2012, COMELEC issued **Resolution No. 9581**^[6] prohibiting any public official from suspending any elective provincial, city, municipal, or barangay officer during the election period for the May 13, 2013 elections. This resolution implements Section 261 (x)^[7] of the Election Code.

On January 15, 2013, the CA issued a TRO in CA-G.R. SP-07307.

On January 16, 2013, the RTC, Branch 11 promulgated its judgment granting *certiorari* and prohibition. It ordered the SP to cease and desist from further proceeding with Administrative Case No. 05-2012. It likewise ordered Gov. Javier to refrain from implementing **SP Resolution No. 291-2012** and from preventively suspending Mayor Roquero.

On January 23, 2013, Gov. Javier issued **Executive Order No. 003, S. 2013**, preventively suspending Mayor Roquero for thirty (30) days.

On February 7, 2013, the SP of Antique issued a decision finding Mayor Roquero guilty of **Grave Misconduct in relation with Section 3(e) of R. A. 3019, the Anti-Graft and Corrupt Practices Act**, and **Grave Abuse of Authority** in relation with Section 5(e) of R.A. No. 6713. The SP suspended her for four (4) months.

Mayor Roquero filed an Election Offense complaint against Gov. Javier for violating Section 261(x) of the Election Code. The case was filed before the COMELEC Law Department and docketed as **Election Offense Case (EOC) No. 13-025**.

Meanwhile (or on March 15, 2013), the CA granted the writ of preliminary injunction filed by Gov. Javier, et al., in CA-G.R. SP-07307. It enjoined Judge Nery Duremdes of the RTC, Branch 11 from conducting further proceedings in SPL Civil Action No. 12-11-86.

On March 22, 2013, private respondents Cornelio P. Aldon (*Aldon*) and Raymundo T. Roquero (*Roquero*) also filed a petition for disqualification before the Commission against Gov. Javier, Vice-Governor Rosie A. Dimamay, and the other members of the SP. The case was docketed as COMELEC **Special Action (SPA) No. 13-254 (DC.)**

Aldon and Roquero sought to disqualify Gov. Javier and the other incumbent officials from running in the 2013 elections on the ground that the latter committed the election offenses of **Coercion of Subordinates** [Sec. 261(d)] and **Threats, Intimidation, Terrorism x x x or Other Forms of Coercion** [Sec. 261(e)] by suspending Mayor Roquero. They alleged that the suspension was political harassment calculated to intimidate the Roqueros into backing out of the 2013 elections.^[8]

On April 29, 2013, the Clerk of the Commission conducted a conference hearing between the parties.

On April 30, 2013, Gov. Javier (together with the SP Members) filed a motion to

dismiss with answer *ex abundante ad cautelam*.

After the May 13, 2013 Elections, only Gov. Javier and SP Members Tobias M. Javier, Edgar D. Denosta, Teopisto C. Estaris, Jr., and Victor R. Condez were proclaimed winners. Hence, the Commission considered the disqualification cases against the losing candidates moot.

On October 3, 2014, the COMELEC Second Division issued a resolution in **SPA No. 13-254 (DC)** disqualifying Gov. Javier and annulling his proclamation as the Governor of Antique. The resolution was penned by Commissioner Elias R. Yusoph.

The COMELEC held that the preventive suspension of Mayor Roquero under **Executive Order No. 003** violated the election period ban because it was not for the purpose of applying the Anti-Graft and Corrupt Practices Act. It also considered the Commission's findings in **EOC No. 13-025** that there was substantial evidence showing that Gov. Javier acted in bad faith when he suspended Mayor Roquero as a form of punishment for opposing him.^[9]

The COMELEC ruled that Gov. Javier's act of preventively suspending Mayor Roquero during the election period ban *fell within the contemplation of Section 261 (d) of the Election Code, which is a ground for disqualification under Section 68*. It held that while Section 261(d) of the Election Code was repealed by Republic Act No. 7890, it did not remove coercion "as a ground per se for disqualification under [Section] 68." In fact, R.A. 7890 made Coercion (an election offense) a felony with a higher penalty.^[10] The COMELEC added that the general repealing clause of R.A. No. 7890 cannot impliedly repeal Section 68 because the latter was "not absolutely and irreconcilably incompatible with Article 286."^[11]

Commissioner Luie Tito F. Guia dissented from the resolution. Commissioner Guia reasoned that the legal basis to dismiss Gov. Javier no longer exists because Section 3 of Republic Act No. 7890 had repealed Section 261(d) of the Election Code. Commissioner Arthur D. Lim took no part in the vote because he did not participate in the deliberations.

With the votes tied at 1-1-1 (one voted to grant, one dissenting, and one not participating), the case failed to obtain the necessary majority. Consequently on October 14, 2014, the COMELEC Second Division issued an order elevating the case to the en banc for its disposition.^[12]

The Commission *en banc* agreed, as a matter of internal arrangement, to submit their respective opinions explaining their respective votes or their concurrence with either Commissioner Yusoph or Commissioner Guia.

Three (3) Commissioners concurred with Commissioner Yusoph: Chairman Sixto Brillantes, Jr., Commissioner Lucenito Tagle, and Commissioner Arthur Lim. Commissioner Christian Robert Lim joined Commissioner Guia's dissent. Commissioner Al A. Parreno did not participate in the vote as he was away on official business. Thus, the vote was 4-2-1 in favor of disqualification; in a *per curiam* order promulgated on January 12, 2015, the Commission *en banc* disqualified Gov. Javier and annulled his proclamation as the governor of Antique.

On January 20, 2015, Gov. Javier filed the present petition for *certiorari* under Rule 65 in relation with Rule 64 of the Rules of Court.

THE PETITION

The petitioner argues that the Commission *en banc* committed grave abuse of discretion because: (1) its January 12, 2015 order was arrived at on the basis of an "internal arrangement; and (2) the order did not obtain a majority vote because Commissioner Arthur Lim should not have been allowed to participate.

The petitioner also asserts that the Commission erred in ruling that R.A. 7890 did not remove Section 261(d) of the Election Code as a ground for administrative disqualification. Finally, the petitioner maintains that the Commission unconstitutionally set the Election Period for the May 13, 2013 elections in violation of Article IX-C, Section 9 of the Constitution, Sec. 62 (c) of the Local Government Code, and Section 8 of Republic Act No. 7056.^[13]

In its comment on the petition, COMELEC, through the Office of the Solicitor General (OSG), counters that it did not abuse its discretion in issuing the January 12, 2015 order disqualifying Gov. Javier. The Commission insists that the procedure observed during the proceedings was not infirm and that there was no legal impediment for Commissioner Arthur Lim to participate in the *en banc* vote.

On the alleged errors of law, the Commission insists that there was legal basis to disqualify Gov. Javier under both Sections 261 (d) and (e) of the Election Code; the repeal of Section 261(d) by R.A. 7890 did not ipso facto remove coercion as a ground for disqualification under Section 68 of the Election Code. It added that Section 261(e), on the other hand, has not been repealed, either expressly or impliedly.

Finally, the Commission asserts that COMELEC Resolution No. 9581 fixing the date of the election period is expressly authorized by Article IX, Section 9 of the Constitution and Section 8 of Republic Act No. 7056.

Based on these submissions, the following issues now confront the Court:

I.

Whether the Commission gravely abused its discretion when it issued Resolution No. 9581 fixing the 2013 election period from January 13, 2013 until June 12, 2013, for the purpose of determining administrative and criminal liability for election offenses.

II.

Whether the Commission erred in ruling that R.A. No. 7890 did not remove coercion as a ground for disqualification under Section 68 of the Election Code.

III.