

EN BANC

[G.R. No. 199139, September 09, 2014]

**ELSIE S. CAUSING, PETITIONER, VS. COMMISSION ON
ELECTIONS AND HERNAN D. BIRON, SR., RESPONDENTS.**

DECISION

BERSAMIN, J.:

The issue is whether the relocation of the petitioner by respondent Municipal Mayor during the election period from her office as the Local Civil Registrar to the Office of the Mayor just a few steps away constituted a prohibited act under the *Omnibus Election Code* and the relevant Resolution of the Commission on Elections.

The Case

Petitioner Elsie Causing (Causing) assails the Resolution of the Commission on Elections En Banc (COMELEC *En Banc*) promulgated on September 9, 2011 dismissing her complaint-affidavit dated June 8, 2010 docketed as E.O. Case No. 10-131 entitled *Elsie S. Causing v. Hernan D. Biron, Sr.* charging Municipal Mayor Hernan D. Biron, Sr. (Mayor Biron) of Barotac Nuevo, Iloilo with violating COMELEC Resolution No. 8737 in relation to Section 261 (g), (h), and (x) of the *Omnibus Election Code*.^[1]

Antecedents

On January 1, 1993, Causing assumed office as the Municipal Civil Registrar of Barotac Nuevo, Iloilo. On May 28, 2010, Mayor Biron issued Memorandum No. 12, Series of 2010,^[2] which reads:

Office Order No. 12
Series of 2010

MRS. ELSIE S. CAUSING
Municipal Civil Registrar
LGU Barotac Nuevo

Exigencies of service so requiring, you are hereby detailed at the Office of the Municipal Mayor effective upon receipt of this Order and shall likewise receive direct orders from the undersigned as to particular functions our office may require from time to time.

For your information and strict compliance.

x x x x

On the same date, Mayor Biron also issued Office Order No. 13 detailing Catalina V. Belonio (Belonio), another municipal employee, to the office of the Local Civil Registrar of Barotac Nuevo, Iloilo to assume the functions and duties as Local Civil Registrar-designate effective upon receipt of the order. Office Order No. 13 reads:

Office Order No. 13
Series of 2010

MS. CATALINA V. BELONIO
Administrative Officer III
Office of the Municipal Mayor

Exigencies of service so requiring, you are hereby detailed at the Office of the Local Civil Registrar and assume the functions and duties as LCR-Designate effective upon receipt of this Order.

As such, you are hereby authorized to sign and issue documents relative thereto including the claim for travel allowance and seminar expenses.

For you information and compliance.

x x x x^[3]

On June 1, 2010, Mayor Biron issued to Causing Memorandum No. 17, Series of 2010, and Memorandum No. 17-A, Series of 2010, respectively reading as follows:

Memorandum No. 17

You are hereby directed to report to the Office of the Mayor effective immediately upon receipt of this Order and signing of MCR documents shall likewise be done at my office where you will be provided with a table for this particular function.

For clarity purposes preparation of such documents relative to civil registration provided for under R.A. No. 9048 and R.A. 9255 shall be done at the office of MCR, after which, the said documents shall be forwarded to you for your signature.

Additional duties and functions shall likewise be under my direct supervision.

Office Order No. 12 issued on May 28, 2010 is hereby repealed accordingly.

For your strict compliance.^[4]

Memorandum No. 17-A

You are hereby directed to report to the Office of the Mayor effective immediately upon receipt of this Order. You have to take action on R.A. 9048 and sign MCR documents at my office where you will be provided with a table for this particular function.

For clarity purposes, preparation of documents relative to civil registration shall be done at the office of MCR, after which, the said completed documents shall be forwarded to you for your signature.

Additional duties and functions shall likewise be under my direct supervision.

Office Order No. 12 issued on May 28, 2010 is hereby repealed accordingly.

For your strict compliance.^[5]

In view of the foregoing issuances by Mayor Biron, Causing filed the complaint-affidavit dated June 8, 2010 in the Office of the Regional Election Director, Region VI, in Iloilo City, claiming that Office Order No. 12 dated May 28, 2010 issued by Mayor Biron ordering her detail to the Office of the Municipal Mayor, being made within the election period and without prior authority from the COMELEC, was illegal and violative of Section 1, Paragraph A, No. 1, in connection with Section 6 (B) of COMELEC Resolution No. 8737, Series of 2009, to wit:

x x x x

5. The issuance of Office Order No. 12 dated May 28, 2010 by the municipal mayor ordering my detail at the Office of the Municipal Mayor, made within the election period and without prior written authority from the COMELEC is illegal and violative of Section 1, Paragraph A, No 1 in connection with Section 6 (B) of COMELEC Resolution No. 8737 (Series of 2009) otherwise known as " In the Matter of Enforcing the Prohibition against appointment or hiring of new employees, creating or filing of new positions, giving any salary increase or transferring or detailing any officer or employee in the civil service and suspension of local elective officials in connection with the May 10, 2010 national and local elections;'

x x x x

8. Further, said transfer of detail does not fall under any of the exceptions to the requirement of prior authority from the COMELEC, as provided under Section 7 of COMELEC Resolution No. 8737.

x x x x^[6]

In his counter-affidavit,^[7] Mayor Biron countered that the purpose of transferring the office of Causing was to closely supervise the performance of her functions after

complaints regarding her negative behavior in dealing with her co-employees and with the public transacting business in her office had been received;^[8] that as the local chief executive, he was empowered to take personnel actions and other management prerogatives for the good of public service; that Causing was not being stripped of her functions as the Municipal Civil Registrar; that she was not transferred or detailed to another office in order to perform a different function; and that she was not demoted to a lower position that diminished her salary and other benefits.^[9]

On March 1, 2011, Atty. Elizabeth Doronilla, the Provincial Election Supervisor (PES), recommended the dismissal of the complaint-affidavit for lack of probable cause to charge Mayor Biron with the violation of Section (h) of the *Omnibus Election Code*, as implemented by Resolution No. 8737.

On September 9, 2011, the COMELEC *En Banc* affirmed the findings and recommendation of PES Doronilla,^[10] observing that Mayor Biron did not transfer or detail Causing but only required her to physically report to the Mayor's office and to perform her functions thereat; and that he did not strip her of her functions as the Municipal Civil Registrar, and did not deprive her of her supervisory functions over her staff.^[11]

Hence, this petition for *certiorari*.

Issues

Causing submits that Office Order 12 and Office Order 13 were gross violations of COMELEC Resolution No. 8737, Series of 2009, that implemented Section 261 (g), (h), and (x) of the *Omnibus Election Code*; that the prohibition contained in said provisions covered any movement during the election period, whether it was by reassignment, appointment, promotion, or demotion, regardless of rank, level or salary of the affected personnel; that her detail to the Office of the Mayor was a clear case of personnel movement prohibited by law;^[12] and that Mayor Biron violated the provisions because he did not secure from the COMELEC the prior authority to transfer or detail her during the election period.^[13]

In addition, Causing claims that the COMELEC *En Banc* committed grave abuse of discretion in affirming the findings of PES Doronilla to the effect that there was no probable cause to hold Mayor Biron liable for violating the *Omnibus Election Code*; and that the COMELEC *En Banc* totally disregarded a crucial piece of evidence — the existence of Office Order No. 13 that had ordered the detail of Belonio as the Local Civil Registrar-designate.^[14]

In his comment,^[15] Mayor Biron insists that the petition for *certiorari* should be dismissed because of the petitioner's failure to file a motion for reconsideration in the COMELEC, and because of her failure to attach copies of equally important documents pertinent to the case.^[16] He emphasizes that Office Order No. 12 was issued by his office for the purpose of closely supervising her in performing her functions after complaints about her behavior in dealing with her co-workers and with the public transacting business in her office had been received by his office.^[17] He accuses her of willfully suppressing evidence, specifically the two office orders

that clarified that she would still be performing the functions of her office, albeit in the Office of the Mayor.^[18]

Mayor Biron reiterates his counter-affidavit, namely: (a) that there was no transfer or detail involved, and any movement of Causing, if at all, was a purely physical transfer, that is, only a few steps from her office to the Office of the Mayor, without any change in the present work, agency, position, rank and compensation;^[19] and (b) that granting without admitting that the movement constituted reassignment, the same was not covered by the provisions of COMELEC Resolution No. 8737, which expressly limited the prohibition to either transfer or detail only.^[20]

Mayor Biron posits that Office Order No. 13 purportedly ordering the detail of Belonio as Local Civil Registrar-designate was a mere piece of paper, which Belonio never received.^[21] He points out that his actions were upheld by the decision dated August 13, 2010 of the Regional Office of the Civil Service Commission dismissing the appeal by Causing of the assailed office orders.^[22]

Finally, Mayor Biron asserts that Causing did not demonstrate that the COMELEC *En Banc* committed grave abuse of discretion in affirming the findings that there was no probable cause to hold him liable for violation of the *Omnibus Election Code*.^[23]

On its part, the COMELEC, through the Office of the Solicitor General (OSG),^[24] defends its questioned resolution, stating that the words *transfer* and *detail*, having already acquired legislative and jurisprudential meanings, should not be understood in their literal sense; that Causing was neither transferred nor detailed; that she was not moved to a different office with the same rank, level and salary, or to another agency;^[25] and that Mayor Biron's act of transferring the office space of Causing was *intra vires*, and found legal support in the power of supervision and control accorded to local chief executives under the *Local Government Code*.^[26]

Ruling

The petition has no merit.

1.

Procedural Issue:

Causing did not file a motion for reconsideration before filing the petition for *certiorari*

Section 7, Article IX-A of the Constitution states that unless otherwise provided by the Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Court on *certiorari* by the aggrieved party within 30 days from receipt of a copy thereof. For this reason, the *Rules of Court* (1997) contains a separate rule (Rule 64) on the review of the decisions of the COMELEC and the Commission on Audit.^[27] Rule 64 is generally identical with *certiorari* under Rule 65,^[28] except as to the period of the filing of the petition for *certiorari*, that is, in the former, the period is 30 days from notice of the judgment or final order or resolution sought to be reviewed but, in the latter, not later than 60 days from notice of the judgment, order or resolution assailed.^[29]