

## EN BANC

[ G.R. No. 193643, January 29, 2013 ]

**ANTONIO D. DAYAO, ROLANDO P. RAMIREZ AND ADELIO R. CAPCO, PETITIONERS, VS. COMMISSION ON ELECTIONS AND LPG MARKETERS ASSOCIATION, INC., RESPONDENTS.**

[G.R. NO. 193704]

**FEDERATION OF PHILIPPINE INDUSTRIES, INC., PETITIONER, VS. COMMISSION ON ELECTIONS AND LPG MARKETERS ASSOCIATION, INC., RESPONDENTS.**

### D E C I S I O N

**REYES, J.:**

#### The Case

At bench are consolidated<sup>[1]</sup> petitions for *certiorari* under Rule 65 of the Rules of Court, with prayer for the issuance of a temporary restraining order, seeking the annulment of the Resolutions of the Commission on Elections (COMELEC) dated August 5, 2010<sup>[2]</sup> and September 6, 2010.<sup>[3]</sup>

The first assailed resolution denied the complaint filed by petitioners Antonio D. Dayao, Rolando P. Ramirez, Adelio R. Capco and Federation of Philippine Industries, Inc. (FPII) for the cancellation of the registration of private respondent LPG Marketers Association, Inc. (LPGMA) as a sectoral organization under the Party-List System of Representation. The second assailed resolution denied reconsideration.

#### The Facts

The individual petitioners are dealers of different brands of liquefied petroleum gas (LPG)<sup>[4]</sup> while petitioner FPII is an association comprised of entities engaged in various industries in the country.<sup>[5]</sup>

Private respondent LPGMA is a non-stock, non-profit association of consumers and small industry players in the LPG and energy sector who have banded together in order to pursue their common objective of providing quality, safe and reasonably priced gas and oil products.<sup>[6]</sup> The group advocates access to reasonably priced LPG by household consumers.<sup>[7]</sup>

On May 21, 2009, LPGMA sought to advance its cause by seeking party-list accreditation with the COMELEC, through a petition for registration as a sectoral organization for the purpose of participating in the May 10, 2010 elections under Republic Act (R.A.) No. 7941 or the Party-List System Act. LPGMA claimed that it

has special interest in the LPG industry and other allied concerns. It averred that one of its programs is the promotion of fair trade practices and prevention of re-entry of cartels and monopolies by actively pursuing the initial gains of oil deregulation, and vigilant advocacy for the curtailment of bureaucratic and regulatory procedures and governmental practices detrimental to the entry, development and well-being of small LPG entrepreneurs.<sup>[8]</sup>

After the requisite publication, verification and hearing,<sup>[9]</sup> and without any apparent opposition, LPGMA's petition was approved by the COMELEC in its Resolution dated January 5, 2010.<sup>[10]</sup>

Four (4) months thereafter, individual petitioners lodged before the COMELEC a complaint for the cancellation of LPGMA's registration as a party-list organization.<sup>[11]</sup> They were later on joined by FPII as a complainant-in-intervention.<sup>[12]</sup>

The complaint was docketed as SPP No. 10-010 and it proffered in essence that LPGMA does not represent a marginalized sector of the society because its incorporators, officers and members are not marginalized or underrepresented citizens since they are actually marketers and independent re-fillers of LPG that control 45% of the national LPG retail market and have significant ownership interests in various LPG refilling plants. To buttress the complaint, FPII emphasized that the business of marketing and refilling LPG requires substantial working capital as it involves the purchase of LPG from importers or big oil players in the country, establishment of refilling plants and safety auxiliary equipments, purchase or lease of thousands of LPG containers, mobilization of a marketing, distribution and delivery network. FPII also alleged that LPGMA is a mere lobby group that espouses their own interests before the Congress and the Department of Energy.

In response, LPGMA countered that Section 5(2), Article VI of the 1987 Constitution does not require that party-list representatives must be members of the marginalized and/or underrepresented sector of the society.

It also averred that the ground cited by the petitioners is not one of those mentioned in Section 6 of R.A. No. 7941 and that petitioners are just trying to resurrect their lost chance to oppose the petition for registration.<sup>[13]</sup>

In its first assailed Resolution dated August 5, 2010,<sup>[14]</sup> the COMELEC dismissed the complaint for two reasons. *First*, the ground for cancellation cited by the petitioners is not among the exclusive enumeration in Section 6 of R.A. No. 7941. *Second*, the complaint is actually a belated opposition to LPGMA's petition for registration which has long been approved with finality on January 5, 2010. The ruling was reiterated in the COMELEC Resolution dated September 6, 2010<sup>[15]</sup> denying the petitioners' motions for reconsideration.<sup>[16]</sup>

Pivotal to the said resolutions are the ensuing ratiocinations of the COMELEC, *viz*:

LPGMA's registration was approved x x x as early as 05 January 2010. Instead of opposing said registration or intervening therein after having been constructively notified thereof by its publication, [petitioners]

waited almost four (4) entire months before filing the instant complaint. The purpose of publication in these kinds of cases is similar to that of land registration cases, which is "to apprise the whole world that such a petition has been filed and that whoever is minded to oppose it for good cause may do so." This belated filing x x x is an unfortunate attempt to circumvent the obviously final and executory nature of the Resolution dated 05 January 2010. Granting the present complaint will only reward [petitioners'] inaction x x x.<sup>[17]</sup> (Citations omitted)

The [petitioners] must be reminded that the matter has already been ruled upon. In the Resolution promulgated on January 5, 2010 x x x, this Commission (First Division) has resolved to grant the Petition for Registration of LPGMA as a sectoral organization under the party-list system of representation. After a thorough evaluation of the Petition, the Commission (First Division) has concluded that LPGMA truly represents a marginalized and underrepresented sector. With respect to the said conclusion, absent any circumstance subsequent to the promulgation of the mentioned Resolution which would call for the cancellation of registration of LPGMA, the same can no longer be disturbed by this Commission. To warrant a cancellation of LPGMA's registration, there should be a strong showing that there has been a change in the relevant factual matters surrounding the Petition x x x.<sup>[18]</sup>

Ascribing grave abuse of discretion to the COMELEC, the petitioners now implore the Court to determine the correctness of the COMELEC resolutions dated August 5, 2010 and September 6, 2010.

### **The Arguments of the Parties**

After directing the respondents to comment on the petitions,<sup>[19]</sup> the Court received on March 17, 2011 from the Office of the Solicitor General (OSG), a Manifestation and Motion to Remand (In Lieu of Comment).<sup>[20]</sup> According to the OSG, since the COMELEC failed to resolve the factual issue on the qualifications of LPGMA as a registered party-list organization, the case must be remanded to the electoral body for summary hearing and reception of evidence on the matter.

For its part, LPGMA retorted that another hearing would be a superfluity because the COMELEC has already heard and verified LPGMA's qualifications during the proceedings for its petition for registration. LPGMA asserts that the petitions should instead be dismissed as they involve factual questions that cannot be entertained in a petition for *certiorari* under Rule 65 of the Rules of Court.<sup>[21]</sup>

On December 26, 2012, LPGMA manifested<sup>[22]</sup> to the Court that pursuant to COMELEC Resolution dated December 13, 2012, LPGMA passed the recent automatic review conducted by the COMELEC on the qualifications of party-list groups. LPGMA was found compliant with the guidelines set by law and jurisprudence and its accreditation was retained for purposes of the 2013 party-list elections.

### **Ruling of the Court**

There was no valid justification for the dismissal of the complaint for cancellation. However, in light of COMELEC Resolution dated December 13, 2012, the present petitions ought to be dismissed.

**An opposition to a petition for registration is not a condition precedent to the filing of a complaint for cancellation.**

Section 6, R.A. No. 7941 lays down the grounds and procedure for the cancellation of party-list accreditation, *viz*:

*Sec. 6. Refusal and/or Cancellation of Registration.*

The COMELEC may, *motu proprio* or upon verified complaint of any interested party, refuse or cancel, after due notice and hearing, the registration of any national, regional or sectoral party, organization or coalition on any of the following grounds:

- (1) It is a religious sect or denomination, organization or association, organized for religious purposes;
- (2) It advocates violence or unlawful means to seek its goal;
- (3) It is a foreign party or organization;
- (4) It is receiving support from any foreign government, foreign political party, foundation, organization, whether directly or through any of its officers or members or indirectly through third parties for partisan election purposes;
- (5) It violates or fails to comply with laws, rules or regulations relating to elections;
- (6) It declares untruthful statements in its petition; (7) It has ceased to exist for at least one (1) year; or
- (8) It fails to participate in the last two (2) preceding elections or fails to obtain at least two *per centum* (2%) of the votes cast under the party-list system in the two (2) preceding elections for the constituency in which it has registered.

For the COMELEC to validly exercise its statutory power to cancel the registration of a party-list group, the law imposes only two (2) conditions: (1) due notice and hearing is afforded to the party-list group concerned; and (2) any of the enumerated grounds for disqualification in Section 6 exists.

Section 6 clearly does not require that an opposition to the petition for registration be previously interposed so that a complaint for cancellation can be entertained. Since the law does not impose such a condition, the COMELEC, notwithstanding its delegated administrative authority to promulgate rules for the implementation of election laws, cannot read into the law that which it does not provide. The poll body

is mandated to enforce and administer election-related laws. It has no power to contravene or amend them.<sup>[23]</sup>

Moreover, an opposition can be reasonably expected only during the petition for registration proceedings which involve the COMELEC's power to register a party-list group, as distinguished from the entirely separate power invoked by the complaint, which is the power to cancel.

The distinctiveness of the two powers is immediately apparent from their basic definitions. To refuse is to decline or to turn down,<sup>[24]</sup> while to cancel is to annul or remove.<sup>[25]</sup> Adopting such meanings within the context of Section 6, refusal of registration happens during the inceptive stage when an organization seeks admission into the roster of COMELEC-registered party-list organizations through a petition for registration. Cancellation on the other hand, takes place after the fact of registration when an inquiry is done by the COMELEC, *motu proprio* or upon a verified complaint, on whether a registered party-list organization still holds the qualifications imposed by law. Refusal is handed down to a petition for registration while cancellation is decreed on the registration itself after the petition has been approved.

A resort to the rules of statutory construction yields a similar conclusion.

The legal meaning of the term "and/or" between "refusal" and "cancellation" should be taken in its ordinary significance - "refusal and/or cancellation" means "refusal and cancellation" or "refusal or cancellation". It has been held that the intention of the legislature in using the term "and/or" is that the word "and" and the word "or" are to be used interchangeably.<sup>[26]</sup>

The term "and/or" means that effect shall be given to both the conjunctive "and" and the disjunctive "or" or that one word or the other may be taken accordingly as one or the other will best effectuate the purpose intended by the legislature as gathered from the whole statute. The term is used to avoid a construction which by the use of the disjunctive "or" alone will exclude the combination of several of the alternatives or by the use of the conjunctive "and" will exclude the efficacy of any one of the alternatives standing alone.<sup>[27]</sup>

Hence, effect shall be given to both "refusal and cancellation" and "refusal or cancellation" according to how Section 6 intended them to be employed. The word "and" is a conjunction used to denote a joinder or union; it is pertinently defined as meaning "together with", "joined with", "along or together with."<sup>[28]</sup> The use of "and" in Section 6 was necessitated by the fact that refusal and cancellation of party-list registration share similar grounds, manner of initiation and procedural due process requirements of notice and hearing. With respect to the said matters, "refusal" and "cancellation" must be taken together. The word "or", on the other hand, is a disjunctive term signifying disassociation and independence of one thing from the other things enumerated; it should, as a rule, be construed in the sense in which it ordinarily implies, as a disjunctive word.<sup>[29]</sup> As such, "refusal or cancellation", consistent with their disjunctive meanings, must be taken individually