

EN BANC

[G.R. No. 170256, January 25, 2010]

ALVIN B. GARCIA, PETITIONER, VS. COMMISSION ON ELECTIONS AND TOMAS R. OSMEÑA, RESPONDENTS.

DECISION

PERALTA, J.:

This is a petition for *certiorari*^[1] alleging that the Commission on Elections (COMELEC) *en banc* committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the Resolutions dated April 28, 2005 and October 5, 2005 in Election Offense Case No. 04-120. In the Resolution dated April 28, 2005, the COMELEC *en banc* found probable cause that petitioner Alvin B. Garcia committed an election offense and directed the Law Department of COMELEC to file the appropriate Information against him for violation of Section 6 of Republic Act (R.A.) No. 9006, otherwise known as the "Fair Elections Act,"^[2] and Section 13 of COMELEC Resolution No. 6520, the Implementing Rules and Regulations (IRR) of R.A. No. 9006. The Resolution dated October 5, 2005 denied petitioner's motion for reconsideration.

The facts are as follows:

On May 6, 2004, private respondent Tomas R. Osmeña, then mayoral candidate in the 2004 national and local elections in Cebu City, filed an election offense case against his rival, petitioner Alvin B. Garcia, for the publication of political advertisements that allegedly violated the thrice-a-week publication requirement and failed to indicate the name and address of the party or candidate for whose benefit the advertisements were published. He averred that the publication of the political advertisements was in violation of Sections 4 and 6 of R.A. No. 9006^[3] and Sections 11 and 13 of COMELEC Resolution No. 6520.^[4]

In his Complaint^[5] dated May 6, 2004, private respondent alleged, thus:

For the period April 26, 2004 up to May 2, 2004, or for a period of one week, respondent through his family-owned publishing company put up political advertisements, which we can group into four basic categories, namely, "MAYOR SA KATAWHAN," "IT'S A NO-CONTEST," "NO TO TOM TAX OSMENA," and "Mayor Alvin Garcia" advertisements.^[6]

Private respondent averred that "MAYOR SA KATAWHAN" was published four times, that is, on April 27 and 29, 2004 and May 1 and 2, 2004, all one-half page in size, in the *Sun Star* tabloid. Moreover, the "IT'S A NO-CONTEST" political advertisement was printed daily, or seven times in *Sun Star*, all one-half page in size, from April 26

to May 2, 2004. The "NO TO TOM TAX OSMEÑA" advertisement appeared thrice, or on April 28 and 29, 2004 and May 1, 2004, also one-half page in size, in the same tabloid. The "Mayor Alvin Garcia" advertisement was published once. Private respondent alleged that all the political advertisements did not indicate the true and correct name and address of the party or candidate for whose benefit the advertisements were published.

In his Answer,^[7] petitioner denied private respondent's allegations. He contended that the political advertisements had been made not for a single candidate, but for the entire slate of his party, Kusug-KNP Party, consisting of 20 local candidates, plus presidential and vice-presidential candidates Fernando Poe, Jr. and Loren Legarda, respectively. Petitioner asserted that "22 candidates x 3 a week results to 66 times a week publication for all the candidates" of the Kusug-KNP Party. Thus, the publication of the political advertisements, may it be seven or 15 times, was way below the allowable limit of 66 times for the 22 political candidates of the Kusug-KNP Party. Consequently, the political advertisements in question had not exceeded the legal limit provided by R.A. No. 9006, as implemented by COMELEC Resolution No. 6520.

Further, petitioner stated that the political advertisements in question reflected that they were really campaigns for the benefit of the candidates of the Kusug-KNP Party, as in fact, they contained the pictures and names of the party's political candidates. Hence, he contended that the political advertisements substantially complied with the requirement provided by the Fair Elections Act that the advertisement shall contain the true and correct name and address of the party or candidate for whose benefit the election propaganda was printed.

In a Resolution dated November 8, 2004, the Office of the Regional Investigation and Prosecution Committee (Office of the Regional Director, Region VII, Cebu City) recommended the dismissal of the Complaint based on this finding:

The respondent did not violate the thrice-a-week rule laid down by Sec. 6 of RA 9006 as implemented by Sec. 13 of Comelec Resolution 6520. As correctly pointed out by respondent, the said political advertisement is not for the benefit or published for the respondent alone, but for the whole Kusug-KNP Party as can be gleaned from said advertisements, thus, the whole party with twenty local candidates and the Kusog Party and its alliance with Koalisyong Nagkakaisang Pilipino (KNP) is entitled to as much as 66 times a week for each publication. The very purpose of the law is to provide candidates wide latitude in informing the electorate regarding their platforms and qualifications during the campaign period.

The same can be said on the alleged violation of Sec. 4 of RA 9006 as implemented by Sec. 11 of Comelec Resolution 6520. Although respondent's political advertisement did not literally contain the requirement of indicating the true and correct name and address for whose benefit the election propaganda was published, this requirement is substantially met by the respondent because it can be glean[ed] [from the] said ads for whose benefit the same was made as shown by the pictures and names of the candidates and who paid for it. A literal implementation of the law should not be required if the same can be met

substantially and the purpose of the law is achieve[d] and that is equal access to media is given to candidates to make known their qualifications and stand on public issues.^[8]

In a Resolution dated April 28, 2005, the COMELEC *en banc* disagreed with the recommendation of the investigating officer, thus:

We disagree. RA 9006 provides to wit:

Sec. 6. *Equal Access to Media Time and Space.* - All registered parties and bona fide candidates shall have equal access to media time and space. The following guidelines may be amplified on by the COMELEC:

6.1 Print advertisements shall not exceed one-fourth (1/4) page in broadsheet and one-half (1/2) page in tabloids thrice a week per newspaper, magazine or other publications, during the campaign period.

This is amplified by Comelec Resolution 6520, thus:

SECTION 13. *Requirements and/or Limitations on the Use of Election Propaganda through Mass Media.* - All registered political parties, party-list groups, organizations, and/or coalitions thereof, and *bona fide* candidates shall have equal access to media time and space for their election propaganda during the campaign period subject to the following requirements and/or limitations:

x x x x

2. Printed or Published Election Propaganda

The maximum size of print advertisements for each candidate, whether for a national or local elective position, or registered political party, party-list group, organization, and/or coalition thereof, shall be, as follows:

- a. One fourth (1/4) page - in broadsheets; and
- b. One half (1/2) page - in tabloids

Said print advertisements, whether procured by purchase, or given free of charge, shall be published thrice a week per newspaper, magazine or other publications during the campaign period. (emphasis supplied)

Insofar as the political propaganda, "it's a no-contest," is concerned, respondent does not deny that the same was published in *Sun Star* for seven (7) consecutive times - from 26 April 2004 to 02 May 2004 - or for

a period of one week, straight. An inspection of the said advertisement reveals that it refers only to respondent; there is no mention of his political party or party-mates, making it clear that it was his advertisement alone. The computation thus made by respondent and so adopted by the investigating officer, assuming this to be true and valid, would not and cannot apply in this instance. The provisions of law violated need no further interpretation as they are very plain and unambiguous.

That other candidates are claimed to have committed the same violation does not excuse herein respondent nor does it remove from this Commission the authority and power to prosecute the same. In fact, it compels Us to be even more vigorous and relentless in pursuing Our duties. In this regard, there shall be no sacred cows.^[9]

The dispositive portion of the Resolution reads:

CONSIDERING that there exists PROBABLE CAUSE, the Law Department is hereby DIRECTED to file the appropriate information against respondent Alvin B. Garcia for violation of Section 6 of RA 9006, and Section 13 of COMELEC Resolution No. 6520, in relation to Section 264 of the Omnibus Election Code, as amended.^[10]

Petitioner filed a Motion for Reconsideration^[11] and, thereafter, a Supplemental Motion for Reconsideration^[12] of the Resolution, contending that there was lack of probable cause to hold him liable for an election offense in violation of R.A. No. 9006 and its IRR, because he was neither the author of the questioned advertisement nor the one who caused its publication. He stated that Orlando P. Carvajal, the General Manager of Sun Star Publishing, Inc., attested in an Affidavit dated May 23, 2005 that an organization named Friends of Alvin Garcia caused the publication of the said advertisement.

Petitioner contended that since he did not cause the publication of the advertisement in question, and absent any competent proof against him, there was no probable cause warranting the filing of an Information against him for violation of R.A. No. 9006, as implemented by COMELEC Resolution No. 6520.

In a Resolution^[13] dated October 5, 2005, the COMELEC *en banc* denied the motion for reconsideration for lack of merit.

On October 13, 2006, the COMELEC Law Department directed Atty. Manuel T. Advincula, Acting Regional Election Director of Region VII, to file the Information entitled *People of the Philippines v. Alvin B. Garcia* with the proper Regional Trial Court (RTC) of Cebu.

Petitioner filed an Urgent Motion to Withhold Issuance of Warrant of Arrest and for Judicial Determination of Probable Cause with the RTC of Cebu City, Branch 12, on the following grounds:

1. The filing of the information by the COMELEC is premature considering that there is a pending petition for *certiorari* before the Supreme Court questioning the resolution of the COMELEC over the subject matter; and
2. There is lack of probable cause to subject the accused to a criminal prosecution.^[14]

On December 21, 2006, the RTC OF Cebu City, Branch 12, issued an Order the dispositive portion of which reads:

IN VIEW OF ALL THE FOREGOING, the determination of probable cause is hereby deferred until after resolution of the petition for *certiorari* pending with the Supreme Court. Accordingly, the issuance of a warrant of arrest is held in abeyance.^[15]

Meantime, on November 18, 2005, petitioner filed this petition, raising the following issues:

I

THE RESPONDENT COMELEC COMMITTED ERROR AMOUNTING TO GRAVE ABUSE OF DISCRETION IN RULING THAT THERE EXISTS A PROBABLE CAUSE TO SUBJECT THE PETITIONER TO A CRIMINAL PROSECUTION AS THE POLITICAL ADVERTISEMENT IN QUESTION DID NOT EXCEED THE ALLOWED FREQUENCY OF PUBLICATION.

II

THE RESPONDENT COMELEC COMMITTED ERROR AMOUNTING TO GRAVE ABUSE OF DISCRETION IN RULING THAT THERE EXISTS A PROBABLE CAUSE TO SUBJECT THE PETITIONER TO A CRIMINAL PROSECUTION DESPITE THE PRESENCE OF EVIDENCE THAT THE PETITIONER DID NOT CAUSE THE PUBLICATION OF THE POLITICAL ADVERTISEMENT IN QUESTION.^[16]

Before this Court, petitioner reiterates that the "IT'S NO CONTEST" political advertisement was attributable not only to him but to the complete line-up of candidates of Kusug-KNP Party for local elective positions, numbering 20 candidates. The party's alliance with the KNP, a national party that carried the late Fernando Poe, Jr. for President and former Senator Loren Legarda for Vice-president, brought the total number of candidates advertised in the political advertisement to 22, excluding the senatorial line-up.

Petitioner contends that 22 candidates multiplied by three publications per week equals an allowable publication of 66 times a week for all candidates of the Kusug-KNP Party. Petitioner asserts that the Special Regional Investigation and Prosecution Committee, therefore, did not err in recommending the dismissal of the Complaint,