

## EN BANC

[ G.R. Nos. 179431-32, June 22, 2010 ]

**LUIS K. LOKIN, JR., AS THE SECOND NOMINEE OF CITIZENS BATTLE AGAINST CORRUPTION (CIBAC), PETITIONER, VS. COMMISSION ON ELECTIONS AND THE HOUSE OF REPRESENTATIVES, RESPONDENTS.**

[G.R. NO. 180443]

**LUIS K. LOKIN, JR., PETITIONER, VS. COMMISSION ON ELECTIONS (COMELEC), EMMANUEL JOEL J. VILLANUEVA, CINCHONA C. GONZALES AND ARMI JANE R. BORJE, RESPONDENTS.**

### D E C I S I O N

#### **BERSAMIN, J.:**

The principal question posed in these consolidated special civil actions for *certiorari* and *mandamus* is whether the Commission on Elections (COMELEC) can issue implementing rules and regulations (IRRs) that provide a ground for the substitution of a party-list nominee not written in Republic Act (R.A.) No. 7941,<sup>[1]</sup> otherwise known as the *Party-List System Act*, the law that the COMELEC thereby implements.

#### **Common Antecedents**

The Citizens' Battle Against Corruption (CIBAC) was one of the organized groups duly registered under the party-list system of representation that manifested their intent to participate in the May 14, 2007 synchronized national and local elections. Together with its manifestation of intent to participate,<sup>[2]</sup> CIBAC, through its president, Emmanuel Joel J. Villanueva, submitted a list of five nominees from which its representatives would be chosen should CIBAC obtain the required number of qualifying votes. The nominees, in the order that their names appeared in the certificate of nomination dated March 29, 2007,<sup>[3]</sup> were: (1) Emmanuel Joel J. Villanueva; (2) herein petitioner Luis K. Lokin, Jr.; (3) Cinchona C. Cruz-Gonzales; (4) Sherwin Tugna; and (5) Emil L. Galang. The nominees' certificates of acceptance were attached to the certificate of nomination filed by CIBAC. The list of nominees was later published in two newspapers of general circulation, *The Philippine Star News*<sup>[4]</sup> (sic) and *The Philippine Daily Inquirer*.<sup>[5]</sup>

Prior to the elections, however, CIBAC, still through Villanueva, filed a certificate of nomination, substitution and amendment of the list of nominees dated May 7, 2007,<sup>[6]</sup> whereby it withdrew the nominations of Lokin, Tugna and Galang and substituted Armi Jane R. Borje as one of the nominees. The amended list of nominees of CIBAC thus included: (1) Villanueva, (2) Cruz-Gonzales, and (3) Borje.

Following the close of the polls, or on June 20, 2007, Villanueva sent a letter to COMELEC Chairperson Benjamin Abalos,<sup>[7]</sup> transmitting therewith the signed petitions of more than 81% of the CIBAC members, in order to confirm the withdrawal of the nomination of Lokin, Tugna and Galang and the substitution of Borje. In their petitions, the members of CIBAC averred that Lokin and Tugna were not among the nominees presented and proclaimed by CIBAC in its proclamation rally held in May 2007; and that Galang had signified his desire to focus on his family life.

On June 26, 2007, CIBAC, supposedly through its counsel, filed with the COMELEC *en banc* sitting as the National Board of Canvassers a motion seeking the proclamation of Lokin as its second nominee.<sup>[8]</sup> The right of CIBAC to a second seat as well as the right of Lokin to be thus proclaimed were purportedly based on Party-List Canvass Report No. 26, which showed CIBAC to have garnered a grand total of 744,674 votes. Using all relevant formulas, the motion asserted that CIBAC was clearly entitled to a second seat and Lokin to a proclamation.

The motion was opposed by Villanueva and Cruz-Gonzales.

Notwithstanding Villanueva's filing of the certificate of nomination, substitution and amendment of the list of nominees and the petitions of more than 81% of CIBAC members, the COMELEC failed to act on the matter, prompting Villanueva to file a petition to confirm the certificate of nomination, substitution and amendment of the list of nominees of CIBAC on June 28, 2007.<sup>[9]</sup>

On July 6, 2007, the COMELEC issued Resolution No. 8219,<sup>[10]</sup> whereby it resolved to set the matter pertaining to the validity of the withdrawal of the nominations of Lokin, Tugna and Galang and the substitution of Borje for proper disposition and hearing. The case was docketed as E.M. No. 07-054.

In the meantime, the COMELEC *en banc*, sitting as the National Board of Canvassers, issued National Board of Canvassers (NBC) Resolution No. 07-60 dated July 9, 2007<sup>[11]</sup> to partially proclaim the following parties, organizations and coalitions participating under the Party-List System as having won in the May 14, 2007 elections, namely: Buhay Hayaan Yumabong, Bayan Muna, CIBAC, Gabriela Women's Party, Association of Philippine Electric Cooperatives, Advocacy for Teacher Empowerment Through Action, Cooperation and Harmony Towards Educational Reforms, Inc., Akbayan! Citizen's Action Party, Alagad, Luzon Farmers Party, Cooperative-Natco Network Party, Anak Pawis, Alliance of Rural Concerns and Abono; and to defer the proclamation of the nominees of the parties, organizations and coalitions with pending disputes until final resolution of their respective cases.

The COMELEC *en banc* issued another resolution, NBC Resolution No. 07-72 dated July 18, 2007,<sup>[12]</sup> proclaiming Buhay Hayaan Yumabong as entitled to 2 additional seats and Bayan Muna, CIBAC, Gabriela Women's Party, and Association of Philippine Electric Cooperatives to an additional seat each; and holding in abeyance the proclamation of the nominees of said parties, organizations and coalitions with pending disputes until the final resolution of their respective cases.

With the formal declaration that CIBAC was entitled to an additional seat, Ricardo de

los Santos, purportedly as secretary general of CIBAC, informed Roberto P. Nazareno, Secretary General of the House of Representatives, of the promulgation of NBC Resolution No. 07-72 and requested that Lokin be formally sworn in by Speaker Jose de Venecia, Jr. to enable him to assume office. Nazareno replied, however, that the request of Delos Santos could not be granted because COMELEC Law Director Alioden D. Dalaig had notified him of the pendency of E.M. 07-054.

On September 14, 2007, the COMELEC *en banc* resolved E.M. No. 07-054<sup>[13]</sup> thuswise:

WHEREFORE, considering the above discussion, the Commission hereby approves the withdrawal of the nomination of Atty. Luis K. Lokin, Sherwin N. Tugna and Emil Galang as second, third and fourth nominees respectively and the substitution thereby with Atty. Cinchona C. Cruz-Gonzales as second nominee and Atty. Armi Jane R. Borje as third nominee for the party list CIBAC. The new order of CIBAC's nominees therefore shall be:

1. Emmanuel Joel J. Villanueva
2. Cinchona C. Cruz-Gonzales
3. Armi Jane R. Borje

SO ORDERED.

The COMELEC *en banc* explained that the actions of Villanueva in his capacity as the president of CIBAC were presumed to be within the scope of his authority as such; that the president was charged by Section 1 of Article IV of the CIBAC By-Laws to oversee and direct the corporate activities, which included the act of submitting the party's manifestation of intent to participate in the May 14, 2007 elections as well as its certificate of nominees; that from all indications, Villanueva as the president of CIBAC had always been provided the leeway to act as the party's representative and that his actions had always been considered as valid; that the act of withdrawal, although done without any written Board approval, was accomplished with the Board's acquiescence or at least understanding; and that the intent of the party should be given paramount consideration in the selection of the nominees.

As a result, the COMELEC *en banc* proclaimed Cruz-Gonzales as the official second nominee of CIBAC.<sup>[14]</sup> Cruz-Gonzales took her oath of office as a Party-List Representative of CIBAC on September 17, 2007.<sup>[15]</sup>

### **Precis of the Consolidated Cases**

In G.R. No. 179431 and G.R. No. 179432, Lokin seeks through *mandamus* to compel respondent COMELEC to proclaim him as the official second nominee of CIBAC.

In G.R. No. 180443, Lokin assails Section 13 of Resolution No. 7804 promulgated on January 12, 2007;<sup>[16]</sup> and the resolution dated September 14, 2007 issued in E.M. No. 07-054 (approving CIBAC's withdrawal of the nominations of Lokin, Tugna and Galang as CIBAC's second, third and fourth nominees, respectively, and the

substitution by Cruz-Gonzales and Borje in their stead, based on the right of CIBAC to change its nominees under Section 13 of Resolution No. 7804).<sup>[17]</sup> He alleges that Section 13 of Resolution No. 7804 expanded Section 8 of R.A. No. 7941.<sup>[18]</sup> the law that the COMELEC seeks to thereby implement.

In its comment, the COMELEC asserts that a petition for *certiorari* is an inappropriate recourse in law due to the proclamation of Cruz-Gonzales as Representative and her assumption of that office; that Lokin's proper recourse was an electoral protest filed in the House of Representatives Electoral Tribunal (HRET); and that, therefore, the Court has no jurisdiction over the matter being raised by Lokin.

For its part, CIBAC posits that Lokin is guilty of forum shopping for filing a petition for *mandamus* and a petition for *certiorari*, considering that both petitions ultimately seek to have him proclaimed as the second nominee of CIBAC.

### **Issues**

The issues are the following:

- (a) Whether or not the Court has jurisdiction over the controversy;
- (b) Whether or not Lokin is guilty of forum shopping;
- (c) Whether or not Section 13 of Resolution No. 7804 is unconstitutional and violates the *Party-List System Act*; and
- (d) Whether or not the COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction in approving the withdrawal of the nominees of CIBAC and allowing the amendment of the list of nominees of CIBAC without any basis in fact or law and after the close of the polls, and in ruling on matters that were intra-corporate in nature.

### **Ruling**

The petitions are granted.

#### **A**

#### **The Court has jurisdiction over the case**

The COMELEC posits that once the proclamation of the winning party-list organization has been done and its nominee has assumed office, any question relating to the election, returns and qualifications of the candidates to the House of Representatives falls under the jurisdiction of the HRET pursuant to Section 17, Article VI of the 1987 Constitution. Thus, Lokin should raise the question he poses herein either in an election protest or in a special civil action for *quo warranto* in the HRET, not in a special civil action for *certiorari* in this Court.

We do not agree.

An *election protest* proposes to oust the winning candidate from office. It is strictly a

contest between the defeated and the winning candidates, based on the grounds of electoral frauds and irregularities, to determine who between them has actually obtained the majority of the legal votes cast and is entitled to hold the office. It can only be filed by a candidate who has duly filed a certificate of candidacy and has been voted for in the preceding elections.

A special civil action for *quo warranto* refers to questions of disloyalty to the State, or of ineligibility of the winning candidate. The objective of the action is to unseat the ineligible person from the office, but not to install the petitioner in his place. Any voter may initiate the action, which is, strictly speaking, not a contest where the parties strive for supremacy because the petitioner will not be seated even if the respondent may be unseated.

The controversy involving Lokin is neither an election protest nor an action for *quo warranto*, for it concerns a very peculiar situation in which Lokin is seeking to be seated as the second nominee of CIBAC. Although an election protest may properly be available to one party-list organization seeking to unseat another party-list organization to determine which between the defeated and the winning party-list organizations actually obtained the majority of the legal votes, Lokin's case is not one in which a nominee of a particular party-list organization thereby wants to unseat another nominee of the same party-list organization. Neither does an action for *quo warranto* lie, considering that the case does not involve the ineligibility and disloyalty of Cruz-Gonzales to the Republic of the Philippines, or some other cause of disqualification for her.

Lokin has correctly brought this special civil action for *certiorari* against the COMELEC to seek the review of the September 14, 2007 resolution of the COMELEC in accordance with Section 7 of Article IX-A of the 1987 Constitution, notwithstanding the oath and assumption of office by Cruz-Gonzales. The constitutional mandate is now implemented by Rule 64 of the 1997 *Rules of Civil Procedure*, which provides for the review of the judgments, final orders or resolutions of the COMELEC and the Commission on Audit. As Rule 64 states, the mode of review is by a petition for *certiorari* in accordance with Rule 65 to be filed in the Supreme Court within a limited period of 30 days. Undoubtedly, the Court has original and exclusive jurisdiction over Lokin's petitions for *certiorari* and for *mandamus* against the COMELEC.

## **B**

### **Petitioner is not guilty of forum shopping**

Forum shopping consists of the filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining a favorable judgment. Thus, forum shopping may arise: (a) whenever as a result of an adverse decision in one forum, a party seeks a favorable decision (other than by appeal or *certiorari*) in another; or (b) if, after having filed a petition in the Supreme Court, a party files another petition in the Court of Appeals, because he thereby deliberately splits appeals "in the hope that even as one case in which a particular remedy is sought is dismissed, another case (offering a similar remedy) would still be open"; or (c) where a party attempts to obtain a writ of preliminary injunction from a court after failing to obtain the writ from another court.<sup>[19]</sup>

What is truly important to consider in determining whether forum shopping exists or