

EN BANC

[G.R. No. 182380, August 28, 2009]

**ROBERT P. GUZMAN, PETITIONER, VS. COMMISSION ON
ELECTIONS, MAYOR RANDOLPH S. TING AND SALVACION
GARCIA, RESPONDENTS.**

DECISION

BERSAMIN, J.:

Through *certiorari* under Rule 64, in relation to Rule 65, Rules of Court, the petitioner assails the February 18, 2008 resolution of the Commission on Elections *en banc* (COMELEC),^[1] dismissing his criminal complaint against respondents City Mayor Randolph Ting and City Treasurer Salvacion Garcia, both of Tuguegarao City, charging them with alleged violations of the prohibition against disbursing public funds and undertaking public works, as embodied in Section 261, paragraphs (v) and (w), of the *Omnibus Election Code*, during the 45-day period of the election ban by purchasing property to be converted into a public cemetery and by issuing the treasury warrant in payment. He asserts that the COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction in thereby exonerating City Mayor Ting and City Treasurer Garcia based on its finding that the acquisition of the land for use as a public cemetery did not constitute public works covered by the ban.

Antecedents

On March 31, 2004, the *Sangguniang Panlungsod* of Tuguegarao City passed Resolution No. 048-2004 to authorize City Mayor Ting to acquire two parcels of land for use as a public cemetery of the City. Pursuant to the resolution, City Mayor Ting purchased the two parcels of land, identified as Lot Nos. 5860 and 5861 and located at Atulayan Sur, Tuguegarao City, with an aggregate area of 24,816 square meters (covered by Transfer Certificates of Title [TCT] No. T-36942 and TCT No. T-36943 of the Register of Deeds in Tuguegarao City), from Anselmo Almazan, Angelo Almazan and Anselmo Almazan III. As payment, City Treasurer Garcia issued and released Treasury Warrant No. 0001534514 dated April 20, 2004 in the sum of P8,486,027.00. On May 5, 2004, the City Government of Tuguegarao caused the registration of the sale and the issuance of new certificates in its name (*i.e.*, TCT No. T-144428 and TCT No. T-144429).

Based on the transaction, the petitioner filed a complaint in the Office of the Provincial Election Supervisor of Cagayan Province against City Mayor Ting and City Treasurer Garcia, charging them with a violation of Section 261, paragraphs (v) and (w), of the *Omnibus Election Code*, for having undertaken to construct a public cemetery and for having released, disbursed and expended public funds within 45 days prior to the May 9, 2004 election, in disregard of the prohibitions under said provisions due to the election ban period having commenced on March 26, 2004 and

ended on May 9, 2004.

City Mayor Ting denied the accusations in his counter-affidavit but City Treasurer Garcia opted not to answer.

After investigation, the Acting Provincial Election Supervisor of Cagayan recommended the dismissal of the complaint by a resolution dated December 13, 2006, to wit:

WHEREFORE, premises considered, the undersigned investigator finds that respondents did not violate Section 261 subparagraphs (v) and (w) of the Omnibus Election Code and Sections 1 and 2 of Comelec Resolution No. 6634 and hereby recommends the DISMISSAL of the above-entitled case for lack of merit.^[2]

The COMELEC *en banc* adopted the foregoing recommendation in its own resolution dated February 18, 2008 issued in E.O. Case No. 06-14^[3] and dismissed the complaint for lack of merit, holding that the acquisition of the two parcels of land for a public cemetery was not considered as within the term *public works*; and that, consequently, the issuance of Treasury Warrant No. 0001534514 was not for public works and was thus in violation of Section 261 (w) of the *Omnibus Election Code*.

Not satisfied but without first filing a motion for reconsideration, the petitioner has commenced this special civil action under Rule 64, in relation to Rule 65, *Rules of Court*, claiming that the COMELEC committed grave abuse of discretion in thereby dismissing his criminal complaint.

Parties' Positions

The petitioner contended that the COMELEC's point of view was unduly restrictive and would defeat the very purpose of the law; that it could be deduced from the exceptions stated in Section 261 (v) of the *Omnibus Election Code* that the disbursement of public funds within the prohibited period should be limited only to the ordinary prosecution of public administration and for emergency purposes; and that any expenditure other than such was proscribed by law.

For his part, City Mayor Ting claimed that the mere acquisition of land to be used as a public cemetery could not be classified as *public works*; that there would be public works only where and when there was an actual physical activity being undertaken and after an order to commence work had been issued by the owner to the contractor.

The COMELEC stated that the petition was premature because the petitioner did not first present a motion for reconsideration, as required by Section 1(d), Rule 13 of the 1993 COMELEC Rules of Procedure,^[4] and that as the primary body empowered by the Constitution to investigate and prosecute cases of violations of election laws, including acts or omissions constituting election frauds, offenses and malpractices,^[5] it assumed full discretion and control over determining whether or not probable cause existed to warrant the prosecution in court of an alleged election offense committed by any person.

The Office of the Solicitor General (OSG) concurred with the COMELEC to the effect that the acquisition of the land within the election period for use as a public cemetery was not covered by the 45-day public works ban under Section 261(v) of the *Omnibus Election Code*; but differed from the COMELEC as to the issuance of Treasury Warrant No. 0001534514, opining that there was probable cause to hold City Mayor Ting and City Treasurer Garcia liable for a violation of Section 261(w), subparagraph (b), of the *Omnibus Election Code*.

Issues

The issues to be resolved are:

- (1) Whether or not the petition was premature;
- (2) Whether or not the acquisition of Lots 5860 and 5881 during the period of the election ban was covered by the term *public works* as to be in violation of Section 261 (v) of the *Omnibus Election Code*; and
- (3) Whether or not the issuance of Treasury Warrant No. 0001534514 during the period of the election ban was in violation of Section 261 (w) of the *Omnibus Election Code*.

Ruling of the Court

The petition is meritorious.

I

The Petition Was Not Premature

The indispensable elements of a petition for *certiorari* are: (a) that it is directed against a tribunal, board or officer exercising judicial or *quasi*-judicial functions; (b) that such tribunal, board or officer has acted without or in excess of jurisdiction or with grave abuse of discretion; and (c) that there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law.^[6]

The COMELEC asserts that the "plain, speedy and adequate" remedy available to the petitioner was to file a motion for reconsideration *vis-à-vis* the assailed resolution, as required in the 1993 COMELEC Rules of Procedure; and that his omission to do so and his immediately invoking the *certiorari* jurisdiction of the Supreme Court instead rendered his petition premature.

We do not sustain the COMELEC.

As a rule, it is necessary to file a motion for reconsideration in the court of origin before invoking the *certiorari* jurisdiction of a superior court. Hence, a petition for *certiorari* will not be entertained unless the public respondent has been given first the opportunity through a motion for reconsideration to correct the error being imputed to him.^[7]

The rule is not a rigid one, however, for a prior motion for reconsideration is not

necessary in some situations, including the following:

- a. Where the order is a patent nullity, as where the court *a quo* has no jurisdiction;
- b. Where the questions raised in the *certiorari* proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court;
- c. Where there is an urgent necessity for the resolution of the question, and any further delay would prejudice the interests of the Government or of the petitioner, or the subject matter of the action is perishable;
- d. Where, under the circumstances, a motion for reconsideration would be useless;
- e. Where the petitioner was deprived of due process and there is extreme urgency for relief;
- f. Where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable;
- g. Where the proceedings in the lower court are a nullity for lack of due process;
- h. Where the proceedings were *ex parte* or in which the petitioner had no opportunity to object; and
- i. Where the issue raised is one purely of law or where public interest is involved.^[8]

That the situation of the petitioner falls under the last exception is clear enough. The petitioner challenges only the COMELEC's interpretation of Section 261(v) and (w) of the *Omnibus Election Code*. Presented here is an issue purely of law, considering that all the facts to which the interpretation is to be applied have already been established and become undisputed. Accordingly, he did not need to first seek the reconsideration of the assailed resolution.

The distinctions between a question of law and a question of fact are well known. There is a question of law when the doubt or difference arises as to what the law is on a certain state of facts. Such a question does not involve an examination of the probative value of the evidence presented by the litigants or any of them. But there is a question of fact when the doubt arises as to the truth or falsehood of the alleged facts or when the query necessarily invites calibration of the whole evidence, considering mainly the credibility of witnesses, existence and relevancy of specific surrounding circumstances, their relation to one another and to the whole, and the probabilities of the situation.^[9]

II

Acquisition of Lots 5860 And 5881 During the Period of the Election Ban, Not Considered as "Public Works" in Violation of Sec. 261 (v), *Omnibus Election Code*

The COMELEC held in its resolution dated February 18, 2008 that:

To be liable for violation of Section 261 (v), *supra*, four (4) essential elements must concur and they are:

1. A public official or employee releases, disburses, or expends any public funds;
2. The release, disbursement or expenditure of such funds must be within forty-five days before regular election;
3. The release, disbursement or expenditure of said public funds is for any and all kinds of public works; and
4. The release, disbursement or expenditure of the public funds should not cover any exceptions of Section 261 (v). (Underscoring supplied).

Applying the foregoing as guideline, it is clear that what is prohibited by law is the release, disbursement or expenditure of public funds for any and all kinds of public works. Public works is defined as fixed works (as schools, highways, docks) constructed for public use or enjoyment esp. when financed and owned by the government. From this definition, the purchase of the lots purportedly to be utilized as cemetery by the City Government of Tuguegarao cannot by any stretch of imagination be considered as public works, hence it could not fall within the proscription as mandated under the aforementioned section of the Omnibus Election Code. And since the purchase of the lots is not within the contemplation of the word public works, the third of the elements stated in the foregoing guideline is not present in this case. Hence since not all the elements concurred, the respondents are not liable for violation of Section 261 (v) of the Omnibus Election Code.

The foregoing ratiocination of the COMELEC is correct.

Section 261(v) of the *Omnibus Election Code* provides as follows:

Section 261. *Prohibited acts.*- The following shall be guilty of an election offense: