

EN BANC

[G. R. No. 181613, September 11, 2009]

ROSALINDA A. PENERA, PETITIONER, VS. COMMISSION ON ELECTIONS AND EDGAR T. ANDANAR, RESPONDENTS.

D E C I S I O N

CHICO-NAZARIO, J.:

This Petition for *Certiorari* with Prayer for the Issuance of a Writ of Preliminary Injunction and/or Temporary Restraining Order ^[1] under Rule 65, in relation to Rule 64 of the Rules of Court, seeks the nullification of the Resolution^[2] dated 30 January 2008 of the Commission on Elections (COMELEC) *en banc*. Said Resolution denied the Motion for Reconsideration of the earlier Resolution^[3] dated 24 July 2007 of the COMELEC Second Division in SPA No. 07-224, ordering the disqualification of herein petitioner Rosalinda A. Penera (Penera) as a candidate for the position of mayor of the Municipality of Sta. Monica, Surigao del Norte (Sta. Monica) in the 2007 Synchronized National and Local Elections.

The antecedents of the case, both factual and procedural, are set forth hereunder:

Penera and private respondent Edgar T. Andanar (Andanar) were mayoralty candidates in Sta. Monica during the 14 May 2007 elections.

On 2 April 2007, Andanar filed before the Office of the Regional Election Director (ORED), Caraga Region (Region XIII), a Petition for Disqualification^[4] against Penera, as well as the candidates for Vice-Mayor and *Sangguniang Bayan* who belonged to her political party,^[5] for unlawfully engaging in election campaigning and partisan political activity prior to the commencement of the campaign period. The petition was docketed as SPA No. 07-224.

Andanar claimed that on 29 March 2007 - a day before the start of the authorized campaign period on 30 March 2007 - Penera and her partymates went around the different *barangays* in Sta. Monica, announcing their candidacies and requesting the people to vote for them on the day of the elections. Attached to the Petition were the Affidavits of individuals^[6] who witnessed the said incident.

Penera alone filed an Answer^[7] to the Petition on 19 April 2007, averring that the charge of premature campaigning was not true. Although Penera admitted that a motorcade did take place, she explained that it was simply in accordance with the usual practice in nearby cities and provinces, where the filing of certificates of candidacy (COCs) was preceded by a motorcade, which dispersed soon after the completion of such filing. In fact, Penera claimed, in the motorcade held by her political party, no person made any speech, not even any of the candidates. Instead, there was only marching music in the background and "a grand standing for the

purpose of raising the hands of the candidates in the motorcade." Finally, Penera cited *Barroso v. Ampig*^[8] in her defense, wherein the Court supposedly ruled that a motorcade held by candidates during the filing of their COCs was not a form of political campaigning.

Also on 19 April 2007, Andanar and Penera appeared with their counsels before the ORED-Region XIII, where they agreed to submit their position papers and other evidence in support of their allegations.^[9]

After the parties filed their respective Position Papers, the records of the case were transmitted to the COMELEC main office in Manila for adjudication. It was subsequently raffled to the COMELEC Second Division.

While SPA No. 07-224 was pending before the COMELEC Second Division, the 14 May 2007 elections took place and, as a result thereof, Penera was proclaimed the duly elected Mayor of Sta. Monica. Penera soon assumed office on 2 July 2002.

On 24 July 2007, the COMELEC Second Division issued its Resolution in SPA No. 07-224, penned by Commissioner Nicodemo T. Ferrer (Ferrer), which disqualified Penera from continuing as a mayoralty candidate in Sta. Monica, for engaging in premature campaigning, in violation of Sections 80 and 68 of the Omnibus Election Code.

The COMELEC Second Division found that:

On the afternoon of 29 March 2007, the 1st [sic] day to file the certificates of candidacy for local elective positions and a day before the start of the campaign period for the May 14, 2007 elections - [some of the members of the political party Partido Padajon Surigao], headed by their mayoralty candidate "Datty" Penera, filed their respective Certificates of Candidacy before the Municipal Election Officer of Sta. Monica, Surigao del Norte.

Accompanied by a bevy of supporters, [Penera and her partymates] came to the municipal COMELEC office on board a convoy of two (2) trucks and an undetermined number of motorcycles, laden with balloons and [sic] posters/banners containing names and pictures and the municipal positions for which they were seeking election. Installed with [sic] one of the trucks was a public speaker sound subsystem which broadcast [sic] the intent the [sic] run in the coming elections. The truck had the posters of Penera attached to it proclaiming his [sic] candidacy for mayor. The streamer of [Mar Longos, a candidate for the position of Board Member,] was proudly seen at the vehicle's side. The group proceeded to motorcade until the barangays of Bailan, Libertad and as afar [sic] as Mabini almost nine (9) kilometers from Sta. Monica. [Penera and her partymates] were seen aboard the vehicles and throwing candies to the residents and onlookers.

Various affidavits and pictures were submitted elucidating the above-mentioned facts. The above facts were also admitted in the Answer, the Position Paper and during the hearings conducted for this case, the only

defense propounded by [Penera] is that such acts allegedly do not constitute campaigning and is therefore not proscribed by the pertinent election laws.

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What we however find disturbing is [Penera's] reference to the *Ampig Case* as the justification for the acts committed by [her]. There is really no reference to the acts or similar acts committed by [Penera] as having been considered as not constituting political campaign or partisan political activity. The issue in that case is whether or not the defect of the lack of a certification against non-forum [sic] shopping should result to the immediate dismissal of the election cases filed in that case. There is nothing in said case justifying a motorcade during the filing of certificates of candidacy. [Penera's] reliance thereon is therefore misplaced and of no potency at all.

x x x x

However, the photos submitted by [Andanar] only identified [Penera] and did not have any notation identifying or indicating any of the other [candidates from Penera's party]. It cannot be conclusively proven that the other [candidates from Penera's party] were indeed with Penera during the Motorcade. More importantly, the Answer and the Position Paper contain admissions referring only to [Penera]. There is therefore no justification for a whole sale [sic] disqualification of all the [candidates from Penera's party], as even the petition failed to mention particularly the participation of the other individual [party members].^[10]

The afore-quoted findings of fact led the COMELEC Second Division to decree:

PREMISES CONSIDERED, this Commission resolves to disqualify [Penera] but absolves the other [candidates from Penera's party] from violation of section 80 and 68 of the Omnibus Elections [sic] Code.^[11]

Commissioner Florentino A. Tuason, Jr. (Tuason) wrote a Separate Opinion^[12] on the 24 July 2007 Resolution. Although Commissioner Tuason concurred with the *ponente*, he stressed that, indeed, Penera should be made accountable for her actions after the filing of her COC on 29 March 2007. Prior thereto, there was no candidate yet whose candidacy would have been enhanced by the premature campaigning.

It was the third member of the COMELEC Second Division, Commissioner Rene V. Sarmiento (Sarmiento) who put forth a Dissenting Opinion^[13] on the 24 July 2007 Resolution. Commissioner Sarmiento believed that the pieces of evidence submitted by Andanar did not sufficiently establish probable cause that Penera engaged in premature campaigning, in violation of Sections 80 and 68 of the Omnibus Election Code. The two photocopied pictures, purporting to be those of Penera, did not clearly reveal what was actually happening in the truck or who were the passengers

thereof. Likewise, the Affidavits seemed to have been prepared and executed by one and the same person because they had similar sentence construction and form, and they were sworn to before the same attesting officer.

Penera filed before the COMELEC *en banc* a Motion for Reconsideration^[14] of the 24 July 2007 Resolution of the COMELEC Second Division, maintaining that she did not make any admission on the factual matters stated in the appealed resolution. Penera also contended that the pictures and Affidavits submitted by Andanar should not have been given any credence. The pictures were mere photocopies of the originals and lacked the proper authentication, while the Affidavits were taken *ex parte*, which would almost always make them incomplete and inaccurate. Subsequently, Penera filed a Supplemental Motion for Reconsideration,^[15] explaining that supporters spontaneously accompanied Penera and her fellow candidates in filing their COCs, and the motorcade that took place after the filing was actually part of the dispersal of said supporters and their transportation back to their respective *barangays*.

In the Resolution dated 30 January 2008, the COMELEC *en banc* denied Penera's Motion for Reconsideration, disposing thus:

WHEREFORE, this Commission **RESOLVES** to **DENY** the instant Motion for Reconsideration filed by [Penera] for **UTTER LACK OF MERIT**.^[16]

The COMELEC *en banc* ruled that Penera could no longer advance the arguments set forth in her Motion for Reconsideration and Supplemental Motion for Reconsideration, given that she failed to first express and elucidate on the same in her Answer and Position Paper. Penera did not specifically deny the material averments that the motorcade "went as far as Barangay Mabini, announcing their candidacy and requesting the people to vote for them on Election Day," despite the fact that the same were clearly propounded by Andanar in his Petition for Disqualification and Position Paper. Therefore, these material averments should be considered admitted. Although the COMELEC *en banc* agreed that no undue importance should be given to sworn statements or affidavits submitted as evidence, this did not mean that such affidavits should not be given any evidentiary weight at all. Since Penera neither refuted the material averments in Andanar's Petition and the Affidavits attached thereto nor submitted countervailing evidence, then said Affidavits, even if taken *ex parte*, deserve some degree of importance. The COMELEC *en banc* likewise conceded that the pictures submitted by Andanar as evidence would have been unreliable, but only if they were presented by their lonesome. However, said pictures, together with Penera's admissions and the Affidavits of Andanar's witnesses, constituted sufficient evidence to establish Penera's violation of the rule against premature campaigning. Lastly, the COMELEC *en banc* accused Penera of deliberately trying to mislead the Commission by citing *Barroso*, given that the said case was not even remotely applicable to the case at bar.

Consistent with his previous stand, Commissioner Sarmiento again dissented^[17] from the 30 January 2008 Resolution of the COMELEC *en banc*. He still believed that Andanar was not able to adduce substantial evidence that would support the claim of violation of election laws. Particularly, Commissioner Sarmiento accepted Penera's

explanation that the motorcade conducted after the filing by Penera and the other candidates of their COCs was merely part of the dispersal of the spontaneous gathering of their supporters. The incident was only in accord with normal human social experience.

Still undeterred, Penera filed the instant Petition before us, praying that the Resolutions dated 24 July 2007 and 30 January 2008 of the COMELEC Second Division and *en banc*, respectively, be declared null and void for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction.

In a Resolution^[18] dated 4 March 2008, we issued a Temporary Restraining Order (TRO), enjoining the COMELEC from implementing the assailed Resolutions, on the condition that Penera post a bond in the amount of P5,000.00. We also directed COMELEC and Andanar to comment on the instant Petition.

After the COMELEC, through the Office of the Solicitor General (OSG), and Andanar filed their respective Comments^[19] on the Petition at bar, we required Penera, in a Resolution^[20] dated 17 June 2008, to file a Reply. However, as no Reply was filed in due time, we dismissed Penera's Petition in a Resolution^[21] dated 14 October 2008, in accordance with Rule 56, Section 5(e) of the Rules of Court.^[22] Penera subsequently filed an *Ex Parte* Motion to Admit Reply,^[23] which we treated as a Motion for Reconsideration of the Resolution dated 14 October 2008. On 11 November 2008, we issued another Resolution reinstating Penera's Petition.^[24]

Penera presents the following issues for our consideration:

I.

Whether or not [Penera] has engaged in an election campaign or partisan political activity outside the campaign period.

II.

Whether the contents of the complaint are deemed admitted for failure of [Penera] to specifically deny the same.

III.

Whether or not [Andanar] has presented competent and substantial evidence to justify a conclusion that [Penera] violated Section 80 and 68 of the Omnibus Election Code.

IV.

Whether or not [the COMELEC] committed grave abuse of discretion amounting to lack of or in excess of jurisdiction in finding that the act of [Penera] in conducting a motorcade before the filing of her certificate of candidacy constitutes premature campaigning.

V.