

## EN BANC

[ G.R. No. 149164-73, December 10, 2003 ]

**COMMISSION ON ELECTIONS, PETITIONER, VS. HON. DOLORES L. ESPAÑOL, PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 90, IMUS, CAVITE, RESPONDENTS.**

### DECISION

**CALLEJO, SR., J.:**

This is a petition for certiorari and mandamus under Rule 65 of the Rules of Court, as amended, filed by the Commission on Elections (COMELEC) for the nullification of the Order of the respondent judge dated February 20, 2001, denying the "Omnibus Motion to Dismiss" filed by the petitioner in Criminal Case Nos. 7960-00 to 7969-00, and the Order dated May 16, 2001, denying the petitioner's motion for reconsideration.

### The Antecedents

During the elections on May 11, 1998, Florentino A. Bautista was the official candidate of the *Lakas* for the position of Municipal Mayor of Kawit, Cavite. He executed an Affidavit-Complaint charging the incumbent Municipal Mayor Atty. Federico "Hit" Poblete, Vice-Mayor Reynaldo Aguinaldo, Bienvenido Pobre, Arturo Ganibe, Leonardo Llave, Diosdado del Rosario, Manuel Ubod, Angelito Peregrino, Mario Espiritu, Salvador Olaes and Pedro Paterno, Jr. of violation of paragraphs (a) and (b) of Section 261 of the Omnibus Election Code (vote buying) and filed the same with the Law Department of the COMELEC. The complaint was entitled *Florentino A. Bautista vs. Federico A. Poblete, et al.*, and docketed as EO Case No. 98-219. Of the 77 persons offered by the complainant to prove the charges, 44 executed their respective affidavits and swore and subscribed to the truth thereof, on the vote-buying of the respondents. The Law Department of the petitioner conducted the requisite preliminary investigation, after which it submitted its comments and recommendations to the COMELEC *En Banc*. On February 25, 1999, the COMELEC *En Banc* issued Resolution No. 99-0346, the dispositive portion of which reads:

RESOLVED: (a) to file the necessary information against respondents Federico A. Poblete, Bienvenido C. Pobre, Reynaldo B. Aguinaldo, Leonardo Llave, Diosdado del Rosario, Angelito Peregrino, Mario Espiritu, Salvador Olaes, Pedro Paterno, Jr., Arturo Ganibe and Manuel Ubod, before the proper Regional Trial Court of Cavite for violation of Section 261 (a) and (b) of the Omnibus Election Code; and to authorize the Director IV of the Law Department to designate a COMELEC prosecutor to handle the prosecution of the case until termination thereof, with the duty to submit periodic report after every hearing of the case; and (b) to file a Motion before the Court for the preventive suspension for a period of ninety (90) days of respondents Mayor Bienvenido Pobre, Vice-Mayor

Reynaldo Aguinaldo and Sangguniang Bayan members Leonardo Llave, Diosdado del Rosario, Angelito Peregrino, Mario Espiritu, Salvador Olaes and Pedro Paterno, Jr., while the case is pending pursuant to Section 60 Chapter IV of Republic Act No. 7160, otherwise known as the Local Government Code of 1991 specifically on the ground of commission of an offense involving moral turpitude.<sup>[1]</sup>

The petitioner, through its Law Department, filed an Information against the respondents with the Regional Trial Court of Cavite, docketed as Criminal Case No. 7034-99, raffled to Branch 90, presided by the respondent judge. On May 10, 1999, the court issued an order directing the Law Department of the petitioner to conduct a reinvestigation of the case, citing the ruling of this Court in *Lozano vs. Yorac*<sup>[2]</sup> and *Nolasco vs. Commission on Elections*.<sup>[3]</sup>

In the meantime, Gerardo Macapagal and Inocencio Rodelas filed a criminal complaint for violation of Section 261(a) of the Omnibus Election Code (vote selling) against the witnesses of Florentino A. Bautista in Criminal Case No. 7034-99. The complaint was docketed as I.S. No. 1-99-1080. The Office of the Cavite Provincial Prosecutor conducted a preliminary investigation of the complaint, in his capacity as a deputy of the petitioner. On April 10, 2000, the Office of the Cavite Provincial Prosecutor issued a resolution in I.S. No. 1-99-1080 finding probable cause against the respondents for violations of Section 261(a) and (b) of the Omnibus Election Code, and filed separate Informations against them with the RTC of Cavite. The dispositive portion of the Resolution reads:

WHEREFORE, in the light of the preceding premises, let separate Informations for "vote-selling" penalized under Section 261 (a) (b) of the Omnibus Election Code be immediately filed against all respondents, thirteen of whom were deemed to have waived their right to present evidence in their behalf during the preliminary investigation.<sup>[4]</sup>

The cases were raffled and assigned to the RTC branches as follows:

| <u>Criminal Case No.</u>       | <u>Branch Number</u> |
|--------------------------------|----------------------|
| 7940-00 to 7949-00 and 7981-00 | Branch 22            |
| 7973-00 to 7979-00 and 7970-00 | Branch 21            |
| 7950-00 to 7959-00 and 7980-00 | Branch 20            |
| 7960-00 to 7969-00             | Branch 90            |

On June 15, 2000, the respondents in I.S. No. 1-99-1080 received copies of the Resolution of the Provincial Prosecutor, and on June 23, 2000 appealed the same to the petitioner, contending that:

Violation of Section 261 (a)(2) of the Omnibus Election Code is an election offense under Article XXII of the same code. Under Section 265 of the Code, it is this Honorable Commission which has the exclusive

power to conduct (the) preliminary investigation thereof, and to prosecute the same. As such, it is also this Honorable Commission which has the "exclusive power" to review, *motu proprio* or through an appeal, the "recommendation or resolution of investigating officers" in the preliminary investigation.

This appeal is, therefore, made pursuant to this Honorable Commission's "exclusive power to conduct preliminary investigation of all election offenses xxx and to prosecute the same" and to review the recommendation or resolution of investigating officers, "like the" chief state prosecutor and/or provincial/city prosecutors" in preliminary investigations thereof under Section 265 of the Omnibus Election Code and Section 10, Rule 34 of the COMELEC Rules of Procedure.<sup>[5]</sup>

On July 6, 2000, the petitioner came out with Minute Resolution No. 00-1378 denying the appeal of the respondents-appellants therein for lack of jurisdiction. But on the same day, the respondents-appellants filed an "Urgent Motion to Withdraw or Revoke the Delegated Authority of the Law Department to Direct the Said Office to Suspend or Move for the Suspension of the Prosecution of Criminal Cases Nos. 7940-00 to 7981-00." The respondents-appellants also filed a Manifestation with Urgent Motion to Set for Hearing Re: Appeal from the Resolution of the Provincial Prosecutor of Resolution No. I.S. No. 1-99-1080. On September 7, 2000, the COMELEC approved Resolution No. 00-1826, thus:

The Commission, after due deliberation, RESOLVED as it hereby RESOLVES to defer action on the aforesaid matter. Meanwhile, to refer the same to the Law Department for comment and recommendation.

Let the Law Department implement this resolution.<sup>[6]</sup>

On October 24, 2000, the Law Department of the petitioner filed a motion before Branches 20, 21, 22 and 90, praying for the suspension of the proceedings against all the accused until the petitioner shall have resolved the incidents before it. The public prosecutor did not object to the motion. On October 25, 2000, RTC, Branch 22, issued an Order granting the motion in the criminal cases before it.

Meanwhile, acting on the appeal of the respondents-appellants in I.S. No. 1-99-1080, Atty. Michael L. Valdez submitted his recommendation in behalf of the COMELEC's Law Department, Investigation and Prosecution Division on November 13, 2000. It was recommended that the petitioner nullify the Resolution of the Office of the Cavite Provincial Prosecutor in I.S. No. 1-99-1080, for the reason that the respondents-appellants are exempt, under Section 28(4) of Republic Act No. 6646, from prosecution for violation of Section 261(a)(b) of the Omnibus Election Code:

WHEREFORE, premises considered, the Law Department RECOMMENDS to declare as null and void the Resolution of the Office of the Provincial Fiscal (Prosecutor) of Cavite in I.S. No. 1-99-1080, entitled "Gerardo Macapagal, et al. vs. Celerino Villarosa, et al., finding the existence of a probable cause against the respondents for being a violation of Section 28 (4) of Rep. Act No. 6646, and to exempt them from criminal prosecution, accused: Celerino Villarosa, Felisa Villarosa, Leonardo Collano, Azucena Collano, Jonathan Francisco, Berna Francisco, David Zablan, Teresita Zablan, Rowel Del Rosario, Reynaldo Morales, Lolita

Morales, Sherlita Borejon, Leonardo Mabiliran, Virgilio Duco, Marina Duco, Bencio Planzar, Rudy Solomon, Nenita Viajador, Antonio De la Cruz, Guinata Agarao, Luis Cantiza, Ramilo Pinote, Miriam Pinote, Wilfredo/Fredo Rodriguez, Marlene/Marlyn Rodriguez, Rodelio Pinote, Saludia Pinote, Ronel Escalante, Alejandrino Duco, Dominga Duco, Joel De la Rosa, Shirley De la Rosa, Ernesto Del Rosario, Nilda Del Rosario, Rodger Pinote, Ma. Theresa Pinote, Wilfredo Del Rosario, Roberto Pinote, Jocelyn Pinote, Norma De la Rosa, Lita Montad and Nacy Daiz, whose cases are pending before Branches Nos. 20, 21, 22, and 90, Regional Trial Court, Imus, Cavite, and who are witnesses of the prosecution in Crim. Case No. 7034-99, Regional Trial Court, Branch 90, Imus, Cavite, and to direct the Law Department to file the necessary motion before the court to dismiss their cases, by citing Section 28 (4) of Rep. Act No. 6646.<sup>[7]</sup>

During the regular meeting of the COMELEC *En Banc* on November 23, 2000, the Chairman and two other commissioners were on official leave. The remaining four commissioners met and issued Resolution No. 00-2453 approving the foregoing recommendation, to wit:

The Commission RESOLVED, as it hereby RESOLVES, to approve the recommendation of the Law Department as follows:

1. to declare the Resolution of the Office of the Provincial Prosecutor of Cavite in I.S. No. 1-99-1080 (Gerardo Macapagal, et al. vs. Celerino Villarosa, et al.) as null and void, and to exempt the aforementioned accused from criminal prosecution pursuant to Section 28 (4) of R.A. No. 6646; and
2. to direct the Law Department to file the necessary motion to dismiss before the proper court the cases against the herein-named accused.

Let the Law Department implement this resolution.

SO ORDERED.<sup>[8]</sup>

In compliance with the Resolution of the COMELEC *En Banc*, its Law Department, through Attys. Jose P. Balbuena and Michael Valdez, filed with the RTC, Branch 90, an Omnibus Motion (1) Motion for Reconsideration Re: Order of this Court dated November 22, 2000; (2) Motion for Leave to Reiterate Urgent Motion to Suspend Proceedings; and (3) Motion to Dismiss filed on January 8, 2001. The Public Prosecutor opposed the petitioner's motion to dismiss on the following grounds: (a) the exemption under the last paragraph of Section 28 of Republic Act No. 6646 applies only to the offense of vote-buying, as the accused in Criminal Case No. 7034-99 in which the respondents-appellants gave their sworn statements was for vote-buying; this exemption will not apply to the charge for vote-selling which was the crime charged in I.S. No. 1-99-1080; (b) the July 6, 2000 Resolution No. 00-1378 of the petitioner had become final and executory; hence, it is no longer subject to review by the petitioner; and (c) the review of the Provincial Prosecutor's resolution made by the petitioner was a re-investigation of the case, and was done without prior authority of the Court.

On February 20, 2001, the trial court issued an Order denying the Omnibus Motion of the petitioner. The petitioner filed a Motion for Reconsideration of the said order on March 31, 2000. The Provincial Prosecutor opposed the motion. On May 16, 2001, the trial court issued an Order denying the said motion holding that the petitioner had no absolute power to grant exemptions under Section 28 of Republic Act No. 6648. The trial court also held that the issue of whether or not the accused are exempt from prosecution and consequent conviction for vote-buying is a matter addressed to the Court and not to the petitioner.

In its petition at bar, the petitioner raises the following issues for resolution, *viz*:

(1) WHETHER THE ACCUSED ARE EXEMPT FROM CRIMINAL PROSECUTION PURSUANT TO SECTION 28 (4) OF R.A. No. 6646.

(2) WHETHER THERE IS NO NEED FOR AN EN BANC RESOLUTION REVOKING THE AUTHORITY OF THE PROVINCIAL PROSECUTOR FROM HANDLING THE CASES FILED IN COURT SINCE THE COMELEC EN BANC ALREADY DIRECTED THE LAW DEPARTMENT TO FILE A MOTION TO DISMISS THESE CASES; <sup>[9]</sup>

On the first issue, the petitioner contends that the complainants-appellees in I.S. No. 1-99-1080 failed to file any motion for the reconsideration of the petitioner's Resolution No. 00-2453 reversing Resolution No. 00-1378 which, in turn, dismissed the respondents-appellants' appeal. Neither did the said complainants-appellees file a petition for certiorari under Rule 65 of the Rules of Court from its Resolution No. 00-2453. Consequently, Resolution No. 00-2453 has become final and executory; hence, is binding and conclusive on the complainants-appellees, the Office of the Provincial Prosecutor and the herein respondent judge. The petitioner further asserts that the respondents-appellants' motion for reconsideration in I.S. No. 1-99-1080 of COMELEC Resolution No. 00-1378 is not a prohibited pleading under Rule 13, Section 1, paragraph (d) of the COMELEC Rules of Procedure.

According to the petitioner, the prosecution of election offenses is under its sole control. Any delegation of its authority to the Provincial or City Prosecutor to prosecute election cases may be revoked or withdrawn by it, expressly or impliedly, at any stage of the proceedings in the RTC. The petitioner, through Atty. Michael Valdez of its Law Department, had already entered his appearance for the petitioner as public prosecutor before the respondent judge. The Provincial Prosecutor was, thus, *ipso facto* divested of his authority, as deputized prosecutor, to represent the petitioner on the motion to dismiss and to prosecute the cases before the respondent judge.

The respondent judge, for her part, avers that COMELEC Resolution No. 00-2453 was approved only by four of the seven members of the petitioner sitting *en banc*, and as such, could not have validly revoked Resolution No. 00-1378 which was, in turn, approved by unanimous vote of the Commission Members sitting *en banc*. It behooved the petitioner to conduct a joint reinvestigation in I.S. No. 1-99-1080 and EO No. 98-219 to ascertain whether the respondents-appellants in I.S. No. 1-99-1080 were exempt from prosecution for vote-selling.

Finally, according to the respondent judge, Section 2, Rule 34 of the COMELEC Rules of Procedure is contrary to Section 265 of the Omnibus Election Code, which does