

EN BANC

[G.R. Nos. 140850-51, May 04, 2000]

EUGENIO "JING-JING" FAELNAR, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, HON. RAMON CODILLA, IN HIS CAPACITY AS PRESIDING JUDGE OF THE RTC, BRANCH 19, CEBU CITY, AND COMMISSION ON ELECTIONS, RESPONDENTS.

DECISION

MENDOZA, J.:

This is a petition for certiorari to set aside the order, dated July 29, 1999, of the Regional Trial Court, Branch 19, Cebu City, denying petitioner's motion to quash in Criminal Cases Nos. CBU-49941^[1] and 49942,^[2] and the order, dated October 4, 1999, denying petitioner's motion for reconsideration.

The facts are as follows:

On April 8, 1997, petitioner Eugenio Faelnar filed a certificate of candidacy for the position of Barangay Chairman of Barangay Guadalupe, Cebu City in the May 12, 1997 barangay elections. The following day, on April 9, 1997, a basketball tournament, dubbed the "2nd JING-JING FAELNAR'S CUP," opened at the Guadalupe Sports Complex and lasted up to April 30, 1997. This gave rise to a complaint for electioneering filed against petitioner and Cecilio Gillamac by Antonio Luy. The complaint alleged that the basketball tournament was actually a campaign gimmick staged outside the campaign period which officially started on May 1, 1997, in violation of the Omnibus Election Code. Luy alleged that: (1) during the tournament, a streamer bearing petitioner's name was placed on the facade of the Guadalupe Sports Complex; (2) petitioner's name was repeatedly mentioned over the microphone during the games; (3) the tournament was widely published in the local newspaper; and (4) a raffle sponsored by Cecilio Gillamac was held with home appliances given away as prizes.

Petitioner denied participation in the tournament and claimed that its major sponsor was Gillamac Marketing, Inc. He contended that the same was purely a sporting event for the benefit of the youth.

The complaint was investigated by Atty. Edwin Cadungog, election officer of Cebu City, who later recommended the dismissal of the charges against petitioner and Gillamac. On the other hand, the Law Department of the COMELEC recommended the filing of a case against petitioner and Gillamac for violation of §80,^[3] in relation to §262,^[4] of the Omnibus Election Code, and §50 of COMELEC Resolution No. 2888, in relation to §12 of Republic Act No. 6679.^[5]

In its Resolution No. 97-3040, dated September 16, 1997, the COMELEC en banc resolved to dismiss the case. However, on motion of Antonio Luy, the COMELEC

reconsidered its action and ordered the filing of the necessary Informations against petitioner and Gillamac.

Accordingly, petitioner and Gillamac were formally charged in the Regional Trial Court, Cebu City under two Informations in Criminal Cases Nos. CBU-49941 and CBU-49942.

Petitioner moved to quash the information or, in the alternative, for reinvestigation of the case, contending that Resolution No. 97-3040, which dismissed the complaint against him, was immediately executory and could no longer be reconsidered.

Petitioner's motion was denied by the trial court in an order dated July 29, 1999. He moved for reconsideration, but his motion was likewise denied by the court in its order, dated October 4, 1999. Hence this petition.

Petitioner reiterates his argument in the trial court that COMELEC Resolution No. 97-3040, which dismissed the complaint against him, can no longer be reconsidered by the COMELEC. He contends that under the Rules of Procedure of the COMELEC, the dismissal of the complaint was immediately final and executory. Additionally, he avers that Antonio Luy's Motion for Reconsideration of Resolution No. 97-3040 is a prohibited pleading under the Commission's Rules of Procedure. He avers that since the resolution in question was immediately final and executory, it was no longer within the power of the COMELEC to reconsider. Consequently, Resolution No. 98-2914, in directing the filing of charges in court, was "ultra-vires," and the Informations filed against him should have been quashed.^[6]

The petition is without merit.

First. While the instant petition challenges the trial court's orders denying petitioner's motion to quash the complaints in Criminal Cases Nos. CBU-49941 and 49942, the grounds relied upon by petitioner are directed at the validity of Resolution No. 98-2914 of the COMELEC. Thus, petitioner prays that said resolution be declared null and void.^[7]

This petition is nothing but an attempt to circumvent a final resolution of the COMELEC.

Resolution No. 98-2914 was promulgated by the COMELEC en banc on October 29, 1998. Petitioner's remedy was to seek its annulment by way of a special civil action of certiorari under Rule 65 of the Rules of Court. Rule 64, §2 provides:

SEC. 2. Mode of Review. -- A judgment or final order or resolution of the Commission on Elections and the Commission on Audit may be brought by the aggrieved party to the Supreme Court on certiorari under Rule 65, except as hereinafter provided.

Sec. 3 of said Rule provides that such petition shall be filed within 30 days from notice of the resolution sought to be reviewed. No such petition was ever filed. The present petition to set aside the orders of the trial court denying its motion to quash and motion for reconsideration was filed only on November 12, 1999, more than a year after Resolution No. 98-2914 was promulgated on October 29, 1998. Consequently, the resolution is now final and binding upon the parties.

Even if said resolution is erroneous for being contrary to the provisions of the Rules of Procedure of the COMELEC, the same is not void. Since it has become final and executory, it is already binding and effective.^[8]

Second. The above discussion should be enough to dispose of this petition. However, we think there is an important question of law that must not be left undecided, i.e., is the resolution of the COMELEC dismissing the criminal complaint for violation of the election laws immediately final and executory, as petitioner contends?

The contention is untenable. In support of his claims, petitioner cites Rule 13, §1(d) of the Rules of Procedure of the COMELEC which provides:

SECTION 1. What pleadings are not allowed. - The following pleadings are not allowed:

. . . .

(d) motion for reconsideration of an en banc ruling, resolution, order or decision;

The above quoted provision, however, is taken from the 1988 COMELEC Rules of Procedure which has already been amended. The 1993 Rules of Procedure, now provides:

Rule 13. - *Prohibited Pleadings.*

SECTION 1. *What pleadings are not allowed.* -- The following pleadings are not allowed:

. . . .

(d) motion for reconsideration of an en banc ruling, resolution, order or decision except in election offense cases;...(Emphasis added).

Under the present rule, therefore, a motion for reconsideration of a ruling, resolution or decision of the COMELEC en banc is allowed in cases involving election offenses.

Here, there is no question that what is involved is a resolution of the COMELEC en banc in an election offense. Hence, a motion for reconsideration of such resolution is allowed under the Rules of Procedure of the COMELEC.

Petitioner likewise invokes Rule 34, §10 of the COMELEC Rules of Procedure which provides that --

SEC. 10. *Appeals from the Action of the State Prosecutor, Provincial or City Fiscal.* -- Appeals from the resolution of the State Prosecutor, or Provincial or City Fiscal on the recommendation or resolution of investigating officers may be made only to the Commission within ten (10) days from receipt of the resolution of said officials, *provided*, however that this shall not divest the Commission of its power to *motu*