

EN BANC

[G.R. No. 140560, May 04, 2000]

JOVITO O. CLAUDIO, PETITIONER, VS. COMMISSION ON ELECTIONS, DEPARTMENT OF BUDGET AND MANAGEMENT, COMMISSION ON AUDIT AND RICHARD ADVINCULA, RESPONDENTS.

[G.R. No. 140714.]

PREPARATORY RECALL ASSEMBLY OF PASAY CITY, HEREIN REPRESENTED BY ITS CHAIRMAN, RICHARD ADVINCULA, PETITIONER, VS. THE COMMISSION ON ELECTIONS, DEPARTMENT OF BUDGET AND MANAGEMENT, COMMISSION ON AUDIT AND HON. JOVITO O. CLAUDIO, RESPONDENTS.

D E C I S I O N

MENDOZA, J.:

These are petitions arising from the proceedings initiated by the Preparatory Recall Assembly of Pasay City (PRA) in the Commission on Elections in E.M. No. 99-005 entitled IN THE MATTER OF THE PREPARATORY RECALL ASSEMBLY RESOLUTION NO. 01, S-1999 ADOPTED ON 29 MAY 1999 FOR THE RECALL OF MAYOR JOVITO CLAUDIO OF PASAY CITY. G.R. No. 140560 is a petition for certiorari and prohibition, seeking the nullification of the resolution,^[1] dated October 18, 1999, of the COMELEC giving due course to the petition for the recall of petitioner Jovito O. Claudio as mayor of Pasay City. On the other hand, G.R. No. 140714 is a petition for mandamus filed by the PRA, represented by its Chair, Richard Advincula, to compel the COMELEC to set the date for the holding of recall elections in Pasay City pursuant to the aforecited resolution of the COMELEC.

The facts are as follows:

Jovito O. Claudio, petitioner in G.R. No. 140560, was the duly elected mayor of Pasay City in the May 11, 1998 elections. He assumed office on July 1, 1998.

Sometime during the second week of May 1999, the chairs of several barangays in Pasay City gathered to discuss the possibility of filing a petition for recall against Mayor Claudio for loss of confidence. On May 19, 1999, at the residence of barangay chair Benjamin Lim, Jr. in Barangay 11, Zone 4, Pasay City, several barangay chairs formed an ad hoc committee for the purpose of convening the PRA. Richard Advincula, private respondent in G.R. No. 140560 and petitioner in G.R. No. 140714, was designated chair.

On May 29, 1999, 1,073 members of the PRA composed of barangay chairs, kagawads, and sangguniang kabataan chairs of Pasay City, adopted Resolution No.

01, S-1999, entitled RESOLUTION TO INITIATE THE RECALL OF JOVITO O. CLAUDIO AS MAYOR OF PASAY CITY FOR LOSS OF CONFIDENCE. In a letter dated June 29, 1999, Advincula, as chair of the PRA, invited the Mayor, Vice-Mayor, Station Commander, and thirteen (13) Councilors of Pasay City to witness the formal submission to the Office of the Election Officer on July 2, 1999 of the petition for recall.

As scheduled, the petition for recall was filed on July 2, 1999, accompanied by an affidavit of service of the petition on the Office of the City Mayor. Pursuant to the rules of the COMELEC, copies of the petition were posted on the bulletin boards of the local COMELEC office, the City Hall, the Police Department, the public market at Libertad St. and Taft Avenue, and at the entrance of the Sta. Clara Church on P. Burgos St., all in Pasay City. Subsequently, a verification of the authenticity of the signatures on the resolution was conducted by Ligaya Salayon, the election officer for Pasay City designated by the COMELEC.

Oppositions to the petition were filed by petitioner Jovito O. Claudio, Rev. Ronald Langub, and Roberto L. Angeles, alleging procedural and substantive defects in the petition, to wit: (1) the signatures affixed to the resolution were actually meant to show attendance at the PRA meeting; (2) most of the signatories were only representatives of the parties concerned who were sent there merely to observe the proceedings; (3) the convening of the PRA took place within the one-year prohibited period; (4) the election case,^[2] filed by Wenceslao Trinidad in this Court, seeking the annulment of the proclamation of petitioner Claudio as mayor of Pasay City, should first be decided before recall proceedings against petitioner could be filed; and (5) the recall resolution failed to obtain the majority of all the members of the PRA, considering that 10 were actually double entries, 14 were not duly accredited members of the barangays, 40 sangguniang kabataan officials had withdrawn their support, and 60 barangay chairs executed affidavits of retraction.

In its resolution of October 18, 1999, the COMELEC granted the petition for recall and dismissed the oppositions against it. On the issue of whether the PRA was constituted by a majority of its members, the COMELEC held that the 1,073 members who attended the May 29, 1999 meeting were more than necessary to constitute the PRA, considering that its records showed the total membership of the PRA was 1,790, while the statistics of the Department of Interior and Local Government (DILG) showed that the total membership of the PRA was 1,876. In either case, since only a majority is required to constitute the PRA, clearly, a majority had been obtained in support of the recall resolution. Based on the verification made by election officer Ligaya Salayon, the COMELEC found the signatures of 958 members of the PRA sufficient. On whether the pendency of the case questioning the proclamation of petitioner was a prejudicial question which must first be decided before any recall election could be held, the COMELEC ruled that it was not and that petitioner was merely using the pendency of the case to delay the recall proceedings. Finally, on whether the petition for recall violated the bar on recall within one year from the elective official's assumption of office, the COMELEC ruled in the negative, holding that recall is a process which starts with the filing of the petition for recall. Since the petition was filed on July 2, 1999, exactly one year and a day after petitioner Claudio's assumption of office, it was held that the petition was filed on time.

Hence, these petitions. Oral arguments were held in these cases in Baguio City on

April 4, 2000, after which the Court, by the vote of 8 to 6 of its members,^[3] resolved to dismiss the petition in G.R. No. 140560 for lack of showing that the COMELEC committed a grave abuse of discretion. On the other hand, the Court unanimously dismissed the petition in G.R. No. 140714 on the ground that the issue raised therein had become moot and academic.

We now proceed to explain the grounds for our resolution.

In its Resolution No. 3121, dated March 9, 2000, the COMELEC set the date of the recall elections in Pasay City on April 15, 2000. Consequently, the petition for mandamus in G.R. No. 140714 to compel the COMELEC to fix a date for the recall elections in Pasay City is no longer tenable. We are thus left with only petitioner Claudio's action for certiorari and prohibition.

The bone of contention in this case is §74 of the Local Government Code (LCG)^[4] which provides:

Limitations on Recall. - (a) Any elective local official may be the subject of a recall election only once during his term of office for loss of confidence.

(b) No recall shall take place within one (1) year from the date of the official's assumption to office or one (1) year immediately preceding a regular local election.

As defined at the hearing of these cases on April 4, 2000, the issues are:

WHETHER, under Section 74 of the Local Government Code of 1991 (R.A. No. 7160) ...

A. The word "recall" in paragraph (b) covers a process which includes the convening of the Preparatory Recall Assembly and its approval of the recall resolution.

B. The term "regular local election" in the last clause of paragraph (b) includes the election period for that regular election or simply the date of such election.

(1)

On Whether the Word "Recall" in Paragraph (b) of §74 of the Local Government Code Includes the Convening of the Preparatory Recall Assembly and the Filing by it of a Recall Resolution

Petitioner contends that the term "recall" in §74(b) refers to a process, in contrast to the term "recall election" found in §74(a), which obviously refers to an election. He claims that "when several barangay chairmen met and convened on May 19, 1999 and unanimously resolved to initiate the recall, followed by the taking of votes by the PRA on May 29, 1999 for the purpose of adopting a resolution 'to initiate the recall of Jovito Claudio as Mayor of Pasay City for loss of confidence,' the process of recall began" and, since May 29, 1999 was less than a year after he had assumed office, the PRA was illegally convened and all proceedings held thereafter, including the filing of the recall petition on July 2, 1999, were null and void.

The COMELEC, on the other hand, maintains that the process of recall starts with the filing of the petition for recall and ends with the conduct of the recall election, and that, since the petition for recall in this case was filed on July 2, 1999, exactly one year and a day after petitioner's assumption of office, the recall was validly initiated outside the one-year prohibited period.

Both petitioner Claudio and the COMELEC thus agree that the term "recall" as used in §74 refers to a process. They disagree only as to when the process starts for purposes of the one-year limitation in paragraph (b) of §74.

We can agree that recall is a process which begins with the convening of the preparatory, recall assembly or the gathering of the signatures at least 25% of the registered voters of a local government unit, and then proceeds to the filing of a recall resolution or petition with the COMELEC, the verification of such resolution or petition, the fixing of the date of the recall election, and the holding of the election on the scheduled date.^[5] However, as used in paragraph (b) of § 74, "recall" refers to the election itself by means of which voters decide whether they should retain their local official or elect his replacement. Several reasons can be cited in support of this conclusion.

First, § 74 deals with restrictions on the power of recall. It is in fact entitled "Limitations on Recall." On the other hand, §69 provides that "the power of recall ...shall be exercised by the registered voters of a local government unit to which the local elective official belongs." Since the power vested on the electorate is not the power to initiate recall proceedings^[6] but the power to elect an official into office, the limitations in §74 cannot be deemed to apply to the entire recall proceedings. In other words, the term "recall" in paragraph (b) refers only to the recall election, excluding the convening of the PRA and the filing of a petition for recall with the COMELEC, or the gathering of the signatures of at least 25 % of the voters for a petition for recall.

Thus, there may be several PRAs held (as in the case of Bataan Province in 1993) or petitions for recall filed with the COMELEC - there is no legal limit on the number of times such processes may be resorted to. These are merely preliminary steps for the purpose of initiating a recall. The limitations in §74 apply only to the exercise of the power of recall which is vested in the registered voters. It is this - and not merely, the preliminary steps required to be taken to initiate a recall - which paragraph (b) of §74 seeks to limit by providing that no recall shall take place within one year from the date of assumption of office of an elective local official.

Indeed, this is the thrust of the ruling in *Garcia v. COMELEC*^[7] where two objections were raised against the legality of PRAs: (1) that even the power to initiate recall proceedings is the sole prerogative of the electorate which cannot be delegated to PRAs, and (2) that by vesting this power in a PRA, the law in effect unconstitutionally authorizes it to shorten the term of office of incumbent elective local officials. Both objections were dismissed on the ground that the holding of a PRA is not the recall itself. With respect to the first objection, it was held that it is the power to recall and not the power to initiate recall that the Constitution gave to the people. With respect to the second objection, it was held that a recall resolution "merely sets the stage for the official concerned before the tribunal of the people so

he can justify why he should be allowed to continue in office. [But until] the people render their sovereign judgment, the official concerned remains in office"

If these preliminary proceedings do not produce a decision by the electorate on whether the local official concerned continues to enjoy the confidence of the people, then, the prohibition in paragraph (b) against the holding of a recall, except one year after the official's assumption of office, cannot apply to such proceedings.

The second reason why the term "recall" in paragraph (b) refers to recall election is to be found in the purpose of the limitation itself. There are two limitations in paragraph (b) on the holding of recalls: (1) that no recall shall take place within one year from the date of assumption of office of the official concerned, and (2) that no recall shall take place within one year immediately preceding a regular local election.

The purpose of the first limitation is to provide a reasonable basis for judging the performance of an elective local official. In the *Bower* case^[8] cited by this Court in *Angobung v. COMELEC*,^[9] it was held that "The only logical reason which we can ascribe for requiring the electors to wait one year before petitioning for a recall election is to prevent premature action on their part in voting to remove a newly elected official before having had sufficient time to evaluate the soundness of his policies and decisions." The one-year limitation was reckoned as of the filing of a petition for recall because the Municipal Code involved in that case expressly provided that "no removal petition shall be filed against any officer or until he has actually held office for at least twelve months." But however the period of prohibition is determined, the principle announced is that the purpose of the limitation is to provide a reasonable basis for evaluating the performance of an elective local official. Hence, in this case, as long as the election is held outside the one-year period, the preliminary proceedings to initiate a recall can be held even before the end of the first year in office of a local official.

It cannot be argued that to allow recall proceedings to be initiated before the official concerned has been in office for one-year would be to allow him to be judged without sufficient basis. As already stated, it is not the holding of PRA nor the adoption of recall resolutions that produces a judgment on the performance of the official concerned; it is the vote of the electorate in the Election that does. Therefore, as long as the recall election is not held before the official concerned has completed one year in office, he will not be judged on his performance prematurely.

Third, to construe the term "recall" in paragraph (b) as including the convening of the PRA for the purpose of discussing the performance in office of elective local officials would be to unduly restrict the constitutional right of speech and of assembly of its members. The people cannot just be asked on the day of the election to decide on the performance of their officials. The crystallization and formation of an informed public opinion takes time. To hold, therefore, that the first limitation in paragraph (b) includes the holding of assemblies for the exchange of ideas and opinions among citizens is to unduly curtail one of the most cherished rights in a free society. Indeed, it is wrong to assume that such assemblies will always eventuate in a recall election. To the contrary, they may result in the expression of confidence in the incumbent.