

## EN BANC

[ G.R. No. 125955, June 19, 1997 ]

### **WILMER GREGO, PETITIONER, VS. COMMISSION ON ELECTIONS AND HUMBERTO BASCO, RESPONDENTS.**

#### **D E C I S I O N**

##### **ROMERO, J.:**

The instant special civil action for certiorari and prohibition impugns the resolution of the Commission on Elections (COMELEC) en banc in SPA No. 95-212 dated July 31, 1996, dismissing petitioner's motion for reconsideration of an earlier resolution rendered by the COMELEC's First Division on October 6, 1995, which also dismissed the petition for disqualification<sup>[1]</sup> filed by petitioner Wilmer Grego against private respondent Humberto Basco.

The essential and undisputed factual antecedents of the case are as follows:

On October 31, 1981, Basco was removed from his position as Deputy Sheriff by no less than this Court upon a finding of serious misconduct in an administrative complaint lodged by a certain Nena Tordesillas. The Court held:

"WHEREFORE, FINDING THE RESPONDENT DEPUTY SHERIFF HUMBERTO BASCO OF THE CITY COURT OF MANILA GUILTY OF SERIOUS MISCONDUCT IN OFFICE FOR THE SECOND TIME, HE IS HEREBY DISMISSED FROM THE SERVICE WITH FORFEITURE OF ALL RETIREMENT BENEFITS AND WITH PREJUDICE TO REINSTATEMENT TO ANY POSITION IN THE NATIONAL OR LOCAL GOVERNMENT, INCLUDING ITS AGENCIES AND INSTRUMENTALITIES, OR GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS.<sup>[2]</sup>

Subsequently, Basco ran as a candidate for Councilor in the Second District of the City of Manila during the January 18, 1988, local elections. He won and, accordingly, assumed office.

After his term, Basco sought re-election in the May 11, 1992 synchronized national elections. Again, he succeeded in his bid and he was elected as one of the six (6) City Councilors. However, his victory this time did not remain unchallenged. In the midst of his successful re-election, he found himself besieged by lawsuits of his opponents in the polls who wanted to dislodge him from his position.

One such case was a petition for quo warranto<sup>[3]</sup> filed before the COMELEC by Cenon Ronquillo, another candidate for councilor in the same district, who alleged Basco's ineligibility to be elected councilor on the basis of the Tordesillas ruling. At about the same time, two more cases were also commenced by Honorio Lopez II in the Office of the Ombudsman and in the Department of Interior and Local

Government.<sup>[4]</sup> All these challenges were, however, dismissed, thus, paving the way for Basco's continued stay in office.

Despite the odds previously encountered, Basco remained undaunted and ran again for councilor in the May 8, 1995, local elections seeking a third and final term. Once again, he beat the odds by emerging sixth in a battle for six councilor seats. As in the past, however, his right to office was again contested. On May 13, 1995, petitioner Grego, claiming to be a registered voter of Precinct No. 966, District II, City of Manila, filed with the COMELEC a petition for disqualification, praying for Basco's disqualification, for the suspension of his proclamation, and for the declaration of Romualdo S. Maranan as the sixth duly elected Councilor of Manila's Second District.

On the same day, the Chairman of the Manila City Board of Canvassers (BOC) was duly furnished with a copy of the petition. The other members of the BOC learned about this petition only two days later.

The COMELEC conducted a hearing of the case on May 14, 1995, where it ordered the parties to submit simultaneously their respective memoranda.

Before the parties could comply with this directive, however, the Manila City BOC proclaimed Basco on May 17, 1995, as a duly elected councilor for the Second District of Manila, placing sixth among several candidates who vied for the seats.<sup>[5]</sup> Basco immediately took his oath of office before the Honorable Ma. Ruby Bithao-Camarista, Presiding Judge, Metropolitan Trial Court, Branch I, Manila.

In view of such proclamation, petitioner lost no time in filing an Urgent Motion seeking to annul what he considered to be an illegal and hasty proclamation made on May 17, 1995, by the Manila City BOC. He reiterated Basco's disqualification and prayed anew that candidate Romualdo S. Maranan be declared the winner. As expected, Basco countered said motion by filing his Urgent Opposition to: Urgent Motion (with Reservation to Submit Answer and/or Motion to Dismiss Against Instant Petition for Disqualification with Temporary Restraining Order).

On June 5, 1995, Basco filed his Motion to Dismiss Serving As Answer pursuant to the reservation he made earlier, summarizing his contentions and praying as follows:

"Respondent thus now submits that the petitioner is not entitled to relief for the following reasons:

1. The respondent cannot be disqualified on the ground of Section 40 paragraph b of the Local Government Code because the Tordesillas decision is barred by laches, prescription, res judicata, lis pendens, bar by prior judgment, law of the case and stare decisis;

2. Section 4<sup>[0]</sup> par. B of the Local Government Code may not be validly applied to persons who were dismissed prior to its effectivity. To do so would make it ex post facto, bill of attainder, and retroactive legislation which impairs vested rights. It is also a class legislation and unconstitutional on the account.

3. Respondent had already been proclaimed. And the petition being a preproclamation contest under the Marquez v. Comelec Ruling, supra, it should be dismissed by virtue of said pronouncement.

4. Respondent's three-time election as candidate for councilor constitutes implied pardon by the people of previous misconduct (Aguinaldo v. Comelec G.R. 105128; Rice v. State 161 SCRA 401; Montgomery v. Newell 40 SW 2d 4181; People v. Bashaw 130 P. 2nd 237, etc.).

5. As petition to nullify certificate of candidacy, the instant case has prescribed; it was premature as an election protest and it was not brought by a proper party in interest as such protest.:

#### PRAYER

WHEREFORE it is respectfully prayed that the instant case be dismissed on instant motion to dismiss the prayer for restraining order denied (sic). If this Honorable Office is not minded to dismiss, it is respectfully prayed that instant motion be considered as respondent's answer. All other reliefs and remedies just and proper in the premises are likewise hereby prayed for."

After the parties' respective memoranda had been filed, the COMELEC's First Division resolved to dismiss the petition for disqualification on October 6, 1995, ruling that "the administrative penalty imposed by the Supreme Court on respondent Basco on October 31, 1981 was wiped away and condoned by the electorate which elected him" and that on account of Basco's proclamation on May 17, 1965, as the sixth duly elected councilor of the Second District of Manila, "the petition would no longer be viable."<sup>[6]</sup>

Petitioner's motion for reconsideration of said resolution was later denied by the COMELEC en banc in its assailed resolution promulgated on July 31, 1996.<sup>[7]</sup> Hence, this petition.

Petitioner argues that Basco should be disqualified from running for any elective position since he had been "removed from office as a result of an administrative case" pursuant to Section 40 (b) of Republic Act No. 7160, otherwise known as the Local Government Code (the Code), which took effect on January 1, 1992.<sup>[8]</sup>

Petitioner wants the Court to likewise resolve the following issues, namely:

1. Whether or not Section 40 (b) of Republic Act No. 7160 applies retroactively to those removed from office before it took effect on January 1, 1992;
2. Whether or not private respondent's election in 1988, 1992 and in 1995 as City Councilor of Manila wiped away and condoned the administrative penalty against him;
3. Whether or not private respondent's proclamation as sixth winning candidate on

May 17, 1995, while the disqualification case was still pending consideration by COMELEC, is void ab initio; and

4. Whether or not Romualdo S. Maranan, who placed seventh among the candidates for City Councilor of Manila, may be declared a winner pursuant to Section 6 of Republic Act No. 6646.

While we do not necessarily agree with the conclusions and reasons of the COMELEC in the assailed resolution, nonetheless, we find no grave abuse of discretion on its part in dismissing the petition for disqualification. The instant petition must, therefore, fail.

We shall discuss the issues raised by petitioner in seriatim.

I. Does Section 40 (b) of Republic Act No. 7160 apply retroactively to those removed from office before it took effect on January 1, 1992?

Section 40 (b) of the Local Government Code under which petitioner anchors Basco's alleged disqualification to run as City Councilor states:

"SEC. 40. Disqualifications. - The following persons are disqualified from running for any elective local position:

x x x x x  
x x x x

(b) Those removed from office as a result of an administrative case;

x x x x x  
x x x x"

In this regard, petitioner submits that although the Code took effect only on January 1, 1992, Section 40 (b) must nonetheless be given retroactive effect and applied to Basco's dismissal from office which took place in 1981. It is stressed that the provision of the law as worded does not mention or even qualify the date of removal from office of the candidate in order for disqualification thereunder to attach. Hence, petitioner impresses upon the Court that as long as a candidate was once removed from office due to an administrative case, regardless of whether it took place during or prior to the effectivity of the Code, the disqualification applies.<sup>[9]</sup> To him, this interpretation is made more evident by the manner in which the provisions of Section 40 are couched. Since the past tense is used in enumerating the grounds for disqualification, petitioner strongly contends that the provision must have also referred to removal from office occurring prior to the effectivity of the Code.<sup>[10]</sup>

We do not, however, subscribe to petitioner's view. Our refusal to give retroactive application to the provision of Section 40 (b) is already a settled issue and there exist no compelling reasons for us to depart therefrom. Thus, in *Aguinaldo vs. COMELEC*,<sup>[11]</sup> reiterated in the more recent cases of *Reyes vs. COMELEC*<sup>[12]</sup> and *Salalima vs. Guingona, Jr.*,<sup>[13]</sup> we ruled, thus:

"The COMELEC applied Section 40 (b) of the Local Government Code (Republic Act

7160) which provides:

'Sec. 40. The following persons are disqualified from running for any elective local positions:

x x x x x  
x x x x

(b) Those removed from office as a result of an administrative case.

Republic Act 7160 took effect only on January 1, 1992.

The rule is:

x x x x x  
x x x x

'x x x Well-settled is the principle that while the Legislature has the power to pass retroactive laws which do not impair the obligation of contracts, or affect injuriously vested rights, it is equally true that statutes are not to be construed as intended to have a retroactive effect so as to affect pending proceedings, unless such intent is expressly declared or clearly and necessarily implied from the language of the enactment. x x x' (Jones vs. Summers, 105 Cal. App. 51, 286 Pac. 1093; U.S. vs. Whyel 28 (2d) 30; Espiritu v. Cipriano, 55 SCRA 533 [1974], cited in Nilo vs. Court of Appeals, 128 SCRA 519 [1974]. See also Puzon v. Abellera, 169 SCRA 789 [1989]; Al-Amanah Islamic Investment Bank of the Philippines v. Civil Service Commission, et al., G.R. No. 100599, April 8, 1992).

There is no provision in the statute which would clearly indicate that the same operates retroactively.

It, therefore, follows that [Section] 40 (b) of the Local Government Code is not applicable to the present case." (Underscoring supplied).

That the provision of the Code in question does not qualify the date of a candidate's removal from office and that it is couched in the past tense should not deter us from the applying the law prospectively. The basic tenet in legal hermeneutics that laws operate only prospectively and not retroactively provides the qualification sought by petitioner. A statute, despite the generality in its language, must not be so construed as to overreach acts, events or matters which transpired before its passage. Lex prospicit, non respicit. The law looks forward, not backward.[14]

II. Did private respondent's election to office as City Councilor of Manila in the 1988, 1992 and 1995 elections wipe away and condone the administrative penalty against him, thus restoring his eligibility for public office?

Petitioner maintains the negative. He quotes the earlier ruling of the Court in Frivaldo v. COMELEC[15] to the effect that a candidate's disqualification cannot be erased by the electorate alone through the instrumentality of the ballot. Thus:

"x x x (T)he qualifications prescribed for elective office cannot be erased by the