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[G.R. No. 108399, July 31, 1997]

RAFAEL M. ALUNAN III, IN HIS CAPACITY AS SECRETARY OF THE DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT (DILG), THE BOARD OF ELECTION SUPERVISORS COMPOSED OF ATTY. RUBEN M. RAMIREZ, ATTY. RAFAELITO GARAYBLAS, AND ATTY. ENRIQUE C. ROA, GUILLERMINA RUSTIA, IN HER CAPACITY AS DIRECTOR OF THE BARANGAY BUREAU, CITY TREASURER ATTY. ANTONIO ACEBEDO, BUDGET OFFICER EUFEMIA DOMINGUEZ, ALL OF THE CITY GOVERNMENT OF MANILA, PETITIONERS, VS. ROBERT MIRASOL, NORMAN T. SANGUYA, ROBERT DE JOYA, ARNEL R. LORENZO, MARY GRACE ARIAS, RAQUEL L. DOMINGUEZ, LOURDES ASENCIO, FERDINAND ROXAS, MA. ALBERTINA RICAFORT,AND BALAIS M. LOURICH, AND THE HONORABLE WILFREDO D. REYES,PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, BRANCH 36, METRO MANILA, RESPONDENTS.

D E C I S I O N

MENDOZA, J.:

This is a petition for review on *certiorari* of the decision dated January 19, 1993 of the Regional Trial Court of Manila (Branch 36),[1] nullifying an order of the Department of Interior and Local Government (DILG), which in effect cancelled the general elections for the Sangguniang Kabataan (SK) slated on December 4, 1992 in the City of Manila, on the ground that the elections previously held on May 26, 1990 served the purpose of the first elections for the SK under the Local Government Code of 1991 (R.A. No. 7160).

Section 423 of the Code provides for a SK in every barangay, to be composed of a chairman, seven (7) members, a secretary, and a treasurer. Section 532(a) provides that the first elections for the SK shall be held thirty (30) days after the next local elections. The Code took effect on January 1, 1992.

The first local elections under the Code were held on May 11, 1992. Accordingly, on August 27, 1992, the Commission on Elections issued Resolution No. 2499, providing guidelines for the holding of the general elections for the SK on September 30, 1992. The guidelines placed the SK elections under the direct control and supervision of the DILG, with the technical assistance of the COMELEC.[2] After two postponements, the elections were finally scheduled on December 4, 1992.

Accordingly, registration in the six districts of Manila was conducted. A total of 152,363 youngsters, aged 15 to 21 years old, registered, 15,749 of them filing certificates of candidacies. The City Council passed the necessary appropriations for the elections.

On September 18, 1992, however, the DILG, through then Secretary Rafael M. Alunan III, issued a letter-resolution "exempting" the City of Manila from holding elections for the SK on the ground that the elections previously held on May 26, 1990 were to be considered the first under the newly-enacted Local Government Code. The DILG acted on a letter of Joshue R. Santiago, acting president of the KB City Federation of Manila and a member of City Council of Manila, which called attention to the fact that in the City of Manila elections for the Kabataang Barangay (the precursor of the Sangguniang Kabataan) had previously been held on May 26, 1990. In its resolution, the DILG stated:

> [A] close examination of . . . RA 7160 would readily reveal the intention of the legislature to exempt from the forthcoming Sangguniang Kabataan elections those kabataang barangay chapters which may have conducted their elections within the period of January 1, 1988 and January 1, 1992 under BP 337. Manifestly the term of office of those elected KB officials have been correspondingly extended to coincide with the term of office of those who may be elected under RA 7160.

On November 27, 1992 private respondents, claiming to represent the 24,000 members of the Katipunan ng Kabataan, filed a petition for certiorari and mandamus in the RTC of Manila to set aside the resolution of the DILG. They argued that petitioner Secretary of Interior and Local Government had no power to amend the resolutions of the COMELEC calling for general elections for SKs and that the DILG resolution in question denied them the equal protection of the laws.

On November 27, 1992, the trial court, through Executive Judge, now COMELEC Chairman, Bernardo P. Pardo, issued an injunction, ordering petitioners "to desist from implementing the order of the respondent Secretary dated September 18, 1992, . . . until further orders of the Court." On the same day, he ordered petitioners "to perform the specified pre-election activities in order to implement Resolution No. 2499 dated August 27, 1992 of the Commission on Elections providing for the holding of a general election of the Sangguniang Kabataan on December 4, 1992 simultaneously in every barangay throughout the country."

The case was subsequently reraffled to Branch 36 of the same court. On January 19, 1993, the new judge, Hon. Wilfredo D. Reyes, rendered a decision, holding that (1) the DILG had no power to "exempt" the City of Manila from holding SK elections on December 4, 1992 because under Art. IX, C, §2(1) of the Constitution the power to enforce and administer "all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall" is vested solely in the COMELEC; (2) the COMELEC had already in effect determined that there had been no previous elections for KB by calling for general elections for SK officers in every barangay without exception; and (3) the "exemption" of the City of Manila was violative of the equal protection clause of the Constitution because, according to the DILG's records, in 5,000 barangays KB elections were held between January 1, 1988 and January 1, 1992 but only in the City of Manila, where there were 897 barangays, was there no elections held on December 4, 1992.

Petitioners sought this review on certiorari. They insist that the City of Manila, having already conducted elections for the KB on May 26, 1990, was exempted from

holding elections on December 4, 1992. In support of their contention, they cite §532(d) of the Local Government Code of 1991, which provides that:

> All seats reserved for the pederasyon ng mga sangguniang kabataan in the different sanggunians shall be deemed vacant until such time that the sangguniang kabataan chairmen shall have been elected and the respective pederasyon presidents have been selected: Provided, That, elections for the kabataang barangay conducted under Batas Pambansa Blg. 337 at any time between January 1, 1988 and January 1, 1992 shall be considered as the first elections provided for in this Code. The term of office of the kabataang barangay officials elected within the said period shall be extended correspondingly to coincide with the term of office of those elected under this Code. (emphasis added)

They maintain that the Secretary of the DILG had authority to determine whether the City of Manila came within the exception clause of §532(d) so as to be exempt from holding the elections on December 4, 1992.

The preliminary question is whether the holding of the second elections on May 13, 1996[3] rendered this case moot and academic. There are two questions raised in this case. The first is whether the Secretary of Interior and Local Government can "exempt" a local government unit from holding elections for SK officers on December 4, 1992 and the second is whether the COMELEC can provide that "the Department of Interior and Local Government shall have direct control and supervision over the election of sangguniang kabataan with the technical assistance by the Commission on Elections."

We hold that this case is not moot and that it is in fact necessary to decide the issues raised by the parties. For one thing, doubt may be cast on the validity of the acts of those elected in the May 26, 1990 KB elections in Manila because this Court enjoined the enforcement of the decision of the trial court and these officers continued in office until May 13, 1996. For another, this case comes within the rule that courts will decide a question otherwise moot and academic if it is "capable of repetition, yet evading review."[4] For the question whether the COMELEC can validly vest in the DILG the control and supervision of SK elections is likely to arise in connection with every SK election and yet the question may not be decided before the date of such elections.

In the Southern Pacific Terminal case, where the rule was first articulated, appellants were ordered by the Interstate Commerce Commission to cease and desist from granting a shipper what the ICC perceived to be preferences and advantages with respect to wharfage charges. The cease and desist order was for a period of about two years, from September 1, 1908 (subsequently extended to November 15), but the U.S. Supreme Court had not been able to hand down its decision by the time the cease and desist order expired. The case was decided only on February 20, 1911, more than two years after the order had expired. Hence, it was contended that the case had thereby become moot and the appeal should be dismissed. In rejecting this contention, the Court held:

> The question involved in the orders of the Interstate Commerce Commission are usually continuing (as are manifestly those in the case at bar), and these considerations ought not to be, as they might be,

> defeated, by short-term orders, capable of repetition, yet evading review, and at one time the government, and at another time the carriers, have their rights determined by the Commission without a chance of redress. [5]

In Roe v. Wade,[6] petitioner, a pregnant woman, brought suit in 1970 challenging anti-abortion statutes of Texas and Georgia on the ground that she had a constitutional right to terminate her pregnancy at least within the first trimester. The case was not decided until 1973 when she was no longer pregnant. But the U.S. Supreme Court refused to dismiss the case as moot. It was explained: "[W]hen, as here, pregnancy is a significant fact in the litigation, the normal 266-day human gestation period is so short that the pregnancy will come to term before the usual appellate process is complete. If that termination makes a case moot, pregnancy litigation seldom will survive. Our laws should not be that rigid. Pregnancy provides a classic justification for a conclusion of nonmootness. It truly could be 'capable of repetition, yet evading review.'"[7]

We thus reach the merits of the questions raised in this case. The first question is whether then DILG Secretary Rafael M. Alunan III had authority to determine whether under §532(d) of the Local Government Code, the City of Manila was required to hold its first elections for SK. As already stated, petitioners sustain the affirmative side of the proposition. On the other hand, respondents argue that this is a power which Art.IX,C, §2(1) of the Constitution vests in the COMELEC. Respondents further argue that, by mandating that elections for the SK be held on December 4, 1992 "in every barangay," the COMELEC in effect determined that there had been no elections for the KB previously held in the City of Manila.

We find the petition to be meritorious.

First. As already stated, by §4 of Resolution No. 2499, the COMELEC placed the SK elections under the direct control and supervision of the DILG. Contrary to respondents' contention, this did not contravene Art. IX, C, §2(1) of the Constitution which provides that the COMELEC shall have the power to "enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall." Elections for SK officers are not subject to the supervision of the COMELEC in the same way that, as we have recently held, contests involving elections of SK officials do not fall within the jurisdiction of the COMELEC. In Mercado v. Board of Election Supervisors,[8] it was contended that

> COMELEC Resolution No. 2499 is null and void because: (a) it prescribes a separate set of rules for the election of the SK Chairman different from and inconsistent with that set forth in the Omnibus Election Code, thereby contravening Section 2, Article 1 of the said Code which explicitly provides that "it shall govern all elections of public officers"; and, (b) it constitutes a total, absolute, and complete abdication by the COMELEC of its constitutionally and statutorily mandated duty to enforce and administer all election laws as provided for in Section 2(1), Article IX-C of the Constitution; Section 52, Article VIII of the Omnibus Election Code; and Section 2, Chapter 1, Subtitle C, Title 1, Book V of the 1987 Administrative Code.[9]

Rejecting this contention, this Court, through Justice Davide, held: