

EN BANC

[G.R. No. 172840, June 07, 2007]

**NELSON T. LLUZ AND CATALINO C. ALDEOSA, PETITIONERS, VS.
COMMISSION ON ELECTIONS AND CAESAR O. VICENCIO,
RESPONDENTS.**

D E C I S I O N

CARPIO, J.:

The Case

This petition for certiorari^[1] seeks to annul the Resolutions of the Commission on Elections (COMELEC) *En Banc* dated 1 February 2006 and 25 May 2006 in E.O. Case No. 04-5. The 1 February 2006 resolution ruled that no probable cause exists to charge private respondent Caesar O. Vicencio with violation of Section 262 in relation to Section 74 of Batas Pambansa Blg. 881 (B.P. 881), otherwise known as the Omnibus Election Code. The 25 May 2006 resolution denied petitioners Nelson T. Lluz and Catalino C. Aldeosa's motion for reconsideration of the 1 February 2006 resolution.

The Facts

Private respondent was a candidate for the post of punong barangay of Barangay 2, Poblacion, Catubig, Samar in the 15 July 2002 Synchronized Barangay and Sangguniang Kabataan Elections. In his certificate of candidacy, private respondent stated his profession or occupation as a certified public accountant (CPA). Private respondent won in the elections.

Sometime after private respondent's proclamation, petitioners charged him before the Law Department of the COMELEC (Law Department) with violation of Section 262 in relation to Section 74 of B.P. 881. Petitioners claimed they had proof that private respondent misrepresented himself as a CPA. Attached to petitioners' complaint was a Certification signed by Jose Ariola, Director II, Regulations Office of the Professional Regulation Commission (PRC), stating that private respondent's name does not appear in the book of the Board of Accountancy. The book contains the names of those duly authorized to practice accountancy in the Philippines.

In his Answer, private respondent maintained that he was a CPA and alleged that he passed the CPA Board Examinations in 1993 with a rating of 76%. Private respondent argued that he could not be held liable for an election offense because his alleged misrepresentation of profession was not material to his eligibility as a candidate.

On 21 September 2004, the Law Department through its Director Alioden D. Dalaig issued a subpoena requiring the Chief of the PRC's Records Section to appear before

it and settle the controversy on whether private respondent was indeed a CPA. On 6 October 2004, PRC Records Section Officer-in-Charge Emma T. Francisco appeared before the Law Department and produced a Certification showing that private respondent had taken the 3 October 1993 CPA Board Examinations and obtained a failing mark of 40.71%.

Nevertheless, the Law Department recommended the dismissal of petitioners' complaint. Citing the rulings of this Court in *Romualdez-Marcos v. COMELEC*^[2] and *Salcedo II v. COMELEC*,^[3] the Law Department held that the misrepresentation in private respondent's certificate of candidacy was not material to his eligibility as a candidate and could not be a ground for his prosecution.

However, upon motion of petitioners, the COMELEC *En Banc* by Resolution dated 5 October 2005 ordered the Law Department to file an information against private respondent for violation of Section 262 in relation to Section 74 of B.P. 881. In reversing the resolution of the Law Department, the COMELEC *En Banc* ruled that *Romualdez-Marcos* and *Salcedo* were disqualification cases not applicable to the case of private respondent who is sought to be prosecuted for an election offense. As such, the misrepresentation made by private respondent need not be material to his eligibility as a candidate in order to hold him liable under Section 262. The COMELEC *En Banc* further ruled that election offenses are *mala prohibita*, in which case no proof of criminal intent is required and good faith, ignorance, or lack of malice are not valid defenses.

On 18 October 2005, private respondent moved for reconsideration.

The Ruling of the COMELEC

On 1 February 2006, the COMELEC *En Banc* reconsidered its earlier Resolution, explaining thus:

After a careful evaluation x x x [w]e rule to grant the motion for reconsideration.

Criminal intent is not absolutely disregarded in election offense cases. A good example is the provision of Section 261(y)(17) of [B.P. 881], which requires malicious intent in order that a person may be charged for omitting, tampering, or transferring to another list the name of a registered voter from the official list of voters posted outside the polling place.

In relation thereto, the fact that an offense is *malum prohibitum* does not exempt the same from the coverage of the general principles of criminal law. In this case, the provisions of Section 261 of [B.P. 881] must not be taken independent of the concepts and theories of criminal law.

The offense allegedly committed by the respondent is for failure to disclose his true occupation as required under Section 74 of [B.P. 881]. Apparently, respondent misrepresented himself as a CPA when in fact he is not. **The misrepresentation having been established, the next issue posited by the parties is whether or not the misrepresentation should be material before it can be considered**

as an election offense.

We answer in the affirmative. Violation of Section 74 is a species of perjury, which is the act of knowingly making untruthful statements under oath. Settled is the rule that for perjury to be committed, it must be made with regard to a material matter.

Clearly, the principle of materiality remains to be a crucial test in determining whether a person can be charged with violating Section 74 of [B.P. 881] in relation to Section 262 thereof.

The case of [Salcedo] sheds light as to what matters are deemed material with respect to the certificate of candidacy, to wit: citizenship, residency and other qualifications that may be imposed. The nature of a candidate's occupation is definitely not a material matter. To be sure, we do not elect a candidate on the basis of his occupation.^[4]

Petitioners filed a motion for reconsideration, which the COMELEC *En Banc* denied in the assailed Resolution dated 25 May 2006. The COMELEC declared that while it "condemn[ed] in the strongest possible terms" private respondent's "morally appalling, devious, calculating, [and] deceitful" act, it could not prosecute private respondent for an election offense, but possibly only for an administrative or criminal offense.

Hence, this petition.

The Issues

Petitioners argue that:

1. The assailed resolutions failed to consider that a violation of Section 262 in relation to Section 74 of B.P. 881 is *malum prohibitum*;
2. The ruling in *Salcedo* is not applicable to petitioners' complaint, that is, a fact misrepresented in a certificate of candidacy need not be material in order to constitute a violation of Section 262 in relation to Section 74 of B.P. 881; and
3. Assuming *arguendo* that materiality of a misrepresentation is required to constitute a violation of Section 262 in relation to Section 74 of B.P. 881, the assailed resolutions should have held material private respondent's misrepresentation because it increased his chances of winning in the elections.

The Ruling of the Court

Petitioners come to us on a single question of law: is an alleged misrepresentation of profession or occupation on a certificate of candidacy punishable as an election offense under Section 262 in relation to Section 74 of B.P. 881?

We rule in the negative.

In urging the Court to order the COMELEC to file the necessary information against private respondent, petitioners invoke Sections 262 and 74 of B.P. 881, which we reproduce below:

Section 262. *Other election offenses.*—**Violation of the provisions, or pertinent portions, of the following sections of this Code shall constitute election offenses: Sections 9, 18, 74, 75, 76, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 122, 123, 127, 128, 129, 132, 134, 135, 145, 148, 150, 152, 172, 173, 174, 178, 180, 182, 184, 185, 186, 189, 190, 191, 192, 194, 195, 196, 197, 198, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 223, 229, 230, 231, 233, 234, 235, 236, 239 and 240.** (Emphasis supplied)

Section 74. *Contents of certificate of candidacy.*—The certificate of candidacy shall state that the person filing it is announcing his candidacy for the office stated therein and that he is eligible for said office; if for Member of the Batasang Pambansa, the province, including its component cities, highly urbanized city or district or sector which he seeks to represent; the political party to which he belongs; civil status; his date of birth; residence; his post office address for all election purposes; **his profession or occupation**; that he will support and defend the Constitution of the Philippines and will maintain true faith and allegiance thereto; that he will obey the laws, legal orders, and decrees promulgated by the duly constituted authorities; that he is not a permanent resident or immigrant to a foreign country; that the obligation imposed by his oath is assumed voluntarily, without mental reservation or purpose of evasion; and that the facts stated in the certificate of candidacy are true to the best of his knowledge.

Unless a candidate has officially changed his name through a court approved proceeding, a candidate shall use in a certificate of candidacy the name by which he has been baptized, or he has not been baptized in any church or religion, the name registered in the office of the local civil registrar or any other name allowed under the provisions of existing law or, in the case [of] a Muslim, his Hadji name after performing the prescribed religious pilgrimage: Provided, That when there are two or more candidates for an office with the same name and surname, each candidate, upon being made aware of such fact, shall state his paternal and maternal surname, except the incumbent who may continue to use the name and surname stated in his certificate of candidacy when he was elected. He may also include one nickname or stage name by which he is generally or popularly known in the locality.

The person filing a certificate of candidacy shall also affix his latest photograph, passport size; a statement in duplicate containing his bio-data and program of government not exceeding one hundred words, if he so desires. (Emphasis supplied)

The penal coverage of Section 262 is limited.

From a cursory reading of Sections 262 and 74 of B.P. 881, one may possibly conclude that an act or omission in violation of any of the provisions of Section 74 *ipso facto* constitutes an election offense. Indeed, petitioners point out that private respondent's misrepresentation of profession having been proved before the COMELEC, the latter is compelled to prosecute him for violation of Section 262. Petitioners argue that such a violation being an election offense, it is *malum prohibitum* and immediately gives rise to criminal liability upon proof of commission.

Petitioners' stance assumes that Section 262 penalizes without qualification the violation of the sections it enumerates. This assumption is uncalled for in view of the wording of Section 262.

The listing of sections in Section 262 is introduced by the clause: "Violation of the provisions, **or pertinent portions**, of the following sections shall constitute election offenses: x x x." The phraseology of this introductory clause alerts us that Section 262 itself possibly limits its coverage to only pertinent portions of Section 74. That such a possibility exists must not be taken lightly for two reasons. First, were the phrase not necessary, the law's framers would have instead directly declared that violation of "the provisions" or "any provision" of the enumerated sections – without any qualification – would constitute an election offense. It is a settled principle in statutory construction that whenever possible, a legal provision, phrase, or word must not be so construed as to be meaningless and a useless surplusage in the sense of adding nothing to the law or having no effect on it.^[5] Second, equally well-settled is the rule that a statute imposing criminal liability should be construed narrowly in its coverage such that only those offenses clearly included, beyond reasonable doubt, will be considered within the operation of the statute.^[6] A return to Section 74 is thus imperative.

Section 74 enumerates all information which a person running for public office must supply the COMELEC in a sworn certificate of candidacy. Section 74 specifies that a certificate of candidacy shall contain, among others, a statement that the person is announcing his or her candidacy for the office and is eligible for such office, the unit of government which the person seeks to represent, his or her political party, civil status, date of birth, residence, and profession or occupation. Section 74 further requires that the person make several declarations: "that he will support and defend the Constitution of the Philippines and will maintain true faith and allegiance" to it, "that he will obey the laws, legal orders, and decrees promulgated by the duly constituted authorities," "that he is not a permanent resident or immigrant to a foreign country," "that the obligation imposed by his oath is assumed voluntarily," and "that the facts stated in the certificate of candidacy are true to the best of his knowledge."

Section 74 does not expressly mention which portion in its provisions is pertinent to Section 262, or which among its provisions when violated is punishable as an election offense. Nothing in Section 74 partakes unmistakably of a penal clause or a positive prohibition comparable to those found in other sections^[7] also mentioned in Section 262 that use the words "shall not." The Court is then left to interpret the meaning of Section 74 to determine which of its provisions are penalized under Section 262, and particularly if disclosure of profession or occupation is among such provisions.