

EN BANC

[G.R. No. 134047, December 08, 1999]

**AMADO S. BAGATSING, ERNESTO M. MACEDA, AND JAIME LOPEZ,
PETITIONERS, VS. COMMISSION ON ELECTIONS AND JOSE L.
ATIENZA, RESPONDENTS.**

D E C I S I O N

KAPUNAN, J.:

In this petition for *certiorari* petitioners seek to annul and set aside the Resolution dated June 4, 1998 of the Commission on Elections (COMELEC) First Division directing the proclamation of private respondent as Mayor of the City of Manila for having been issued with grave abuse of discretion amounting to lack, or excess, of jurisdiction.

The backdrop of the instant case reveals the following antecedent facts:

Petitioners Amado S. Bagatsing, Ernesto M. Maceda and Jaime Lopez and herein private respondent Jose L. Atienza were candidates for the position of Mayor of Manila in the May 11, 1998 elections.

On May 18, 1998, seven (7) days after the elections, petitioners filed with the COMELEC a complaint for disqualification against private respondent, docketed as SPA No. 98-319, on the ground that the latter allegedly caused the disbursement of public funds in the amount of Three Million Three Hundred Seventy-Five Thousand (P3,375,000.00) Pesos, more or less, within the prohibited forty-five-day period before the elections in violation of Article 22, Section 261 (g) (2).^[1] of Batas Pambansa Blg. 881, otherwise known as the Omnibus Election Code of the Philippines. The alleged disbursement was intended to be distributed in the form of financial assistance to the public school teachers of the City of Manila who manned the precinct polls in that city during the elections.

On May 20, 1998, the COMELEC (First Division)* issued an order which dispositively reads as follows:

PREMISES CONSIDERED, it appearing that the evidence presented consisting of disbursement voucher and the general payroll evidencing payment to the teachers in the form of financial assistance dated May 5, 1998, in violation of Section 68 of the Omnibus Election Code, which provides:

SEC. 68. Disqualifications. – Any candidate who in an action or protest in which he is a party is declared by final decision of a competent court guilty of, or found by the Commission of having (a) given money or other material consideration to

influence, induce or corrupt the voters or public officials performing electoral functions; (b) committed acts of terrorism to enhance his candidacy, (c) spent in his election campaign an amount in excess of that allowed by this Code; (d) solicited, received or made any contribution prohibited under Section 89, 95, 96, 97 and 104; or (e) violated any Section 80, 83, 85, 86 and 261, paragraphs d, e, k, v and cc, sub-paragraph 6, shall be disqualified from continuing as a candidate, or if he has been elected, from holding the office. Any person who is a permanent resident of or an immigrant to a foreign country shall not be qualified to run for any elective office under this Code, unless said person has waived his (sic) status (sic) as permanent resident or immigrant of a foreign country in accordance with the residence requirement provided for in the election laws (Sec. 25, 1971 EC) (underscoring ours).

show a probable cause of commission of election offenses which are grounds for disqualification, and the evidence in support of disqualification is strong, the City Board of Canvassers of Manila is hereby directed to complete the canvassing of election returns of the City of Manila, but to suspend proclamation of respondent Jose L. Atienza, Jr. should he obtain the winning number of votes for the position of City Mayor of Manila, until such time when the petition for disqualification against him shall have been resolved.

The Executive Director of this Commission is directed to cause the immediate implementation of this Order.

SO ORDERED.^[2]

On May 21, 1998, private respondent filed a Motion for Reconsideration and sought to set aside the afore-quoted order directing his proclamation as mayor.

On June 4, 1998, the COMELEC (First Division)* rendered a resolution ratiocinating thusly:

The Commission En Banc finds correct respondent's reliance on COMELEC Resolution No. 2050 for his cause. The Resolution, promulgated by the Commission in order to formulate the rules governing the disposition of cases of disqualification filed by virtue of Section 68 of the Omnibus Election Code in relation to Section 6 of Republic Act 6646 otherwise known as the Electoral Reform Law of 1987, pertinently provides:

2. Any complaint for disqualification based on Section 68 of the Omnibus Election Code, filed after the elections against a candidate who has already been proclaimed as winner shall be dismissed as a disqualification case. However, the complaint shall be referred for preliminary investigation to the Law Department of the Commission.

Where a similar complaint is filed after the elections but before proclamation of the respondent candidate, the

complaint shall nevertheless, be dismissed as a disqualification case. However, the complaint shall be referred for preliminary investigation to the Law Department. If, before proclamation, the Law Department makes a prima facie finding of guilt and the corresponding information has been filed with the appropriate trial court, the complainant may file a petition for suspension of the proclamation of the respondent with the Court before which the criminal case is pending and the said Court may order the suspension of the proclamation, if the evidence of guilt is strong.

The applicability of COMELEC Resolution No. 2050 on cases of such nature as the one at bench, had been upheld by the Supreme Court in *Lozano vs. Commission on Elections*, G.R. 94628, October 28, 1991, when it declared:

Resolution No. 2050 specifically mandates a definite policy and procedure for disqualification cases. The COMELEC Rules of Procedure speak of special actions, which include disqualification cases, in general. Hence, as between a specific and a general rule, the former shall necessarily prevail.

It is thus, a good law which could govern this case.

Considering therefore, that the petition for disqualification was filed after the election but before respondent's proclamation, the Commission *En Banc*, conformably with Resolution No. 2050, hereby dismisses the same as a disqualification case but refers Petitioners' charges of election offense against respondent to the Law Department for appropriate action.

[3]

The decretal portion of the resolution reads:

WHEREFORE, in view of the foregoing, the Commission FIRST DIVISION hereby GRANTS the Motion to lift the order of suspension of respondent's proclamation. The Order of the First Division suspending respondent's proclamation as City Mayor of Manila is SET ASIDE. The City Board of Canvassers of Manila is hereby DIRECTED to CONVENE, COMPLETE the CANVASS and PROCLAIM the candidate obtaining the highest number of votes for said position. Petitioners' complaints against respondent for violation of the Omnibus Election Code is hereby referred to the Law Department for preliminary investigation.

SO ORDERED.[4]

That same day at around eleven in the morning, petitioners filed a Motion to Suspend Immediate Intended Proclamation of Respondent. In the afternoon of the same day, petitioners likewise filed a Motion for Reconsideration and a Second Motion to Suspend Immediate Intended Proclamation of Respondent before COMELEC *en banc*.

Meanwhile, the City Board of Canvassers of Manila reconvened at three o'clock in

the afternoon of the same day, June 4, 1998, and proclaimed private respondent as the duly elected Mayor of the City of Manila.^[5]

On June 25, 1999, without waiting for the resolution of their motion for reconsideration pending before the COMELEC *en banc*, petitioners filed the instant petition to set aside the June 4, 1998 Resolution of the COMELEC's First Division.

Records reveal, however, that said motion for reconsideration was denied for reconsideration pending before the COMELEC *en banc* was denied in its Order of July 2, 1998 at the instance of herein petitioners themselves for the reason that they had already filed a petition before this Court docketed as G.R. No. 134047.^[6]

The ground for the petition at bar, as therein promulgated, is as follows:

6.1 Respondent acted whimsically, capriciously and arbitrarily when it dismissed outright the *Petition for Disqualification* docketed SPA No. 98-319 against respondent Atienza on the basis of *Comelec Resolution 2050* which had already been modified by this Honorable Court in the case of *Sunga vs. Comelec (supra)*. Therefore the dismissal by the Comelec must be struck down as having been issued in excess of jurisdiction or with grave abuse of discretion amounting to lack of jurisdiction.^[7]

The only issue for our consideration is whether or not the COMELEC First Division committed grave abuse of discretion in issuing the Resolution dated June 4, 1998 dismissing the disqualification case against private respondent and referring the same to its Law Department for preliminary investigation.

COMELEC Resolution No. 2050, adopted on November 3, 1988, reads:

WHEREAS, there remain pending before the Commission, a number of cases of disqualification filed by virtue of the provisions of Section 68 of the Omnibus Election Code in relation to Section 6 of R.A. 6646, otherwise known as the Electoral Reforms Law of 1987;

WHEREAS, opinions of the members of the Commission on matters of procedure in dealing with cases of this nature and the manner of disposing of the same have not been uniform;

WHEREAS, in order to avoid conflicts of opinion in the disposition or disqualification cases contemplated under Section 68 of the Omnibus Election Code in relation to Section 6 of Rep. Act 6646, there is a strongly felt need to lay down a definite policy in the disposition of this specific class of disqualification cases;

NOW, THEREFORE, on motion duly seconded, the Commission *en banc*:

RESOLVED, as it hereby resolves, to formulate the following rules governing the disposition of cases of disqualification filed by virtue of Section 68 of the Omnibus Election Code in relation to Section 6 of R.A. No. 6646, otherwise known as the Electoral Reforms Law of 1987:

1. Any complaint for the disqualification of a duly registered candidate