

## EN BANC

[ G.R. No. 230744, September 26, 2017 ]

### MARIO O. SALVADOR, PETITIONER, VS. COMMISSION ON ELECTIONS AND ALEXANDER S. BELENA, RESPONDENTS.

#### DECISION

##### TIJAM, J.:

In this Petition for *Certiorari*<sup>[1]</sup> under Rule 64, petitioner Mario O. Salvador (Salvador) challenges the Resolutions dated November 2, 2015<sup>[2]</sup> and March 8, 2017<sup>[3]</sup> of the Commission on Elections (COMELEC) *En Banc*, in E.O. Case No. 14-483, which found probable cause against him for violation of Section 100<sup>[4]</sup> in relation to Section 262<sup>[5]</sup> of Batasang Pambansa Blg. 881 or the Omnibus Election Code of the Philippines, as amended by Section 13<sup>[6]</sup> of Republic Act (R.A.) No. 7166 or An Act Providing for Synchronized National and Local Elections and for Electoral Reforms, Authorizing Appropriations Therefor, and for Other Purposes.

#### The Facts

Salvador, a member of the political party *Bagong Lakas ng Nueva Ecija*, was a mayoralty candidate in San Jose City, Nueva Ecija in 2010.<sup>[7]</sup> Marivic Violago-Belena, private respondent Alexander Belena's (Belena) wife, won over the petitioner in said mayoralty election.<sup>[8]</sup>

On December 4, 2014, Belena filed a Complaint-Affidavit for overspending or violation of Section 100 in relation to Section 262 of the Omnibus Election Code (OEC), as amended by Section 13 of R.A. No. 7166 against Salvador.<sup>[9]</sup>

According to Belena, Salvador exceeded the expenditure limit allowed by law for a mayoralty candidate. Citing Salvador's Statement of Election Contribution and Expenditure (SOCE), Belena averred that Salvador spent a total of P449,000.00 in the 2010 election, when the maximum expenditure allowed by law is P275,667.00.<sup>[10]</sup>

Belena averred that according to Section 13 of R.A. No. 7166, a candidate, other than for presidency and vice presidency, is allowed to spend an amount of P3.00 for every voter currently registered in the constituency where he filed his certificate of candidacy. However, if a candidate without any political party and without any support from any political party, he may be allowed to spend P5.00 for every such voter.<sup>[11]</sup>

Considering that the total number of registered voters in San Jose City, Nueva Ecija is 91,889 and that Salvador is a member of a political party, Belena contended that

he was only allowed to spend P275,667.00 only.<sup>[12]</sup>

For his part, Salvador maintained that while he is a member of a political party, he argued that he did not receive any support from any political party. Hence, the exception under Section 13 of R.A. No. 7166 was applicable to him.<sup>[13]</sup>

In a Resolution<sup>[14]</sup> dated November 2, 2015, the COMELEC *En Banc* directed its Law Department to file the appropriate information against Salvador for overspending. The COMELEC *En Banc* disregarded the interpretation of Salvador and held that the P5.00 cap applies to a candidate who is not a member of a political party *and* who did not receive any support from any political party, using the principle *verba legis non est recedendum*. The *fallo* thereof reads:

**WHEREFORE**, premises considered, the Commission (*En Banc*) **RESOLVED**, as it hereby **RESOLVES**, to **DIRECT** the Law Department to **FILE AN INFORMATION** against [Salvador] for violation of Section 100, in relation to Section 262 of the [OEC], as amended by Section 13 of [R.A.] No. 7166.

**SO ORDERED.**<sup>[15]</sup>

Undeterred, Salvador filed a Motion for Reconsideration,<sup>[16]</sup> which was denied in a Resolution<sup>[17]</sup> dated March 8, 2017. The COMELEC *En Banc* reiterated its earlier ruling that the provisions of law under consideration require no interpretation as the law is clear and free from ambiguity. The dispositive portion of the COMELEC *En Banc* resolution reads:

**WHEREFORE**, premises considered, the Commission *En Banc* **RESOLVED**, as it hereby **RESOLVES**, to deny the Motion for Reconsideration for lack of merit.

**SO ORDERED.**<sup>[18]</sup>

Hence, this petition.

### **The Issue**

Did the COMELEC *En Banc* commit grave abuse of discretion amounting to lack or in excess of jurisdiction when it recommended the filing of an appropriate information against Salvador?

### **Ruling of the Court**

We rule in the negative.

Section 13 of R.A. No. 7166, a provision which provides for the allowable expenses of a candidate and political parties, is an amendment to Section 100 of the OEC. The pertinent provisions state:

**Sec. 100. Limitations upon expenses of candidates.** - No candidate shall spend for his election campaign an aggregate amount exceeding one peso and fifty centavos for every voter currently registered in the

constituency where he filed his candidacy; Provided, That the expenses herein referred to shall include those incurred or caused to be incurred by the candidate, whether in cash or in kind, including the use, rental or hire of land, water, or aircraft, equipment, facilities, apparatus and paraphernalia used in the campaign; Provided, further, That where the land, water, aircraft, equipment, facilities, apparatus and paraphernalia used is owned by the candidate, his contributor or supporter, the Commission is hereby empowered to assess the amount commensurate with the expenses for the use thereof, based on the prevailing rates in the locality and shall be included in the total expenses incurred by the candidate.

While Section 13 of R.A. No. 7166 provides:

**Sec. 13. Authorized Expenses of Candidates and Political Parties.**

- The aggregate amount that a candidate or registered political party may spend for election campaign shall be as follows:

1. For Candidates. - Ten pesos (P10.00) for President and Vice President; and for other candidates Three Pesos (P3.00) for every voter currently registered in the constituency where he filed his certificate of candidacy; Provided, That a candidate without any political party and without support from any political party may be allowed to spend Five Pesos (P5.00) for every such voter; and

2. For political parties. - Five pesos (P5.00) for every voter currently registered in the constituency or constituencies where it has official candidates.

Any provision of law to the contrary notwithstanding any contribution in cash or in kind to any candidate or political party or coalition of parties for campaign purposes, duly reported to the Commission shall not be subject to the payment of gift tax.

It could be found that Section 100 of the OEC is substantially lifted from Section 51 of Presidential Decree (P.D.) No. 1296 or the 1978 Election Code, which provides:

**Sec. 51. *Limitations upon expenses of candidates.*** No candidate shall spend for his election campaign an amount more than the salary or the equivalent of the total emoluments for one year attached to the office for which he is a candidate: Provided, That the expenses herein referred to shall include those incurred by the candidate, his contributors and supporters, whether in cash or in kind, including the use, rental or hire of land, water or air craft, equipment, facilities, apparatus and paraphernalia used in the campaign: Provided, further, That, where the land, water or air craft, equipment, facilities, apparatus and paraphernalia used is owned by the candidate, his contributor or supporter, the Commission is hereby empowered to assess the amount commensurate with the expenses for the use thereof, based on the prevailing rates in the locality and shall be included in the total expenses incurred by the candidate.