

EN BANC

[G.R. No. 205728, January 21, 2015]

THE DIOCESE OF BACOLOD, REPRESENTED BY THE MOST REV. BISHOP VICENTE M. NAVARRA AND THE BISHOP HIMSELF IN HIS PERSONAL CAPACITY, PETITIONERS, VS. COMMISSION ON ELECTIONS AND THE ELECTION OFFICER OF BACOLOD CITY, ATTY. MAVIL V. MAJARUCON, RESPONDENTS.

D E C I S I O N

LEONEN, J.:

“The Philippines is a democratic and republican State. Sovereignty resides in the people and all government authority emanates from them.” – Article II, Section 1, Constitution

All governmental authority emanates from our people. No unreasonable restrictions of the fundamental and preferred right to expression of the electorate during political contests no matter how seemingly benign will be tolerated.

This case defines the extent that our people may shape the debates during elections. It is significant and of first impression. We are asked to decide whether the Commission on Elections (COMELEC) has the competence to limit expressions made by the citizens — who are not candidates — during elections.

Before us is a special civil action for certiorari and prohibition with application for preliminary injunction and temporary restraining order^[1] under Rule 65 of the Rules of Court seeking to nullify COMELEC’s Notice to Remove Campaign Materials^[2] dated February 22, 2013 and letter^[3] issued on February 27, 2013.

The facts are not disputed.

On February 21, 2013, petitioners posted two (2) tarpaulins within a private compound housing the San Sebastian Cathedral of Bacolod. Each tarpaulin was approximately six feet (6') by ten feet (10') in size. They were posted on the front walls of the cathedral within public view. The first tarpaulin contains the message “IBASURA RH Law” referring to the Reproductive Health Law of 2012 or Republic Act No. 10354. The second tarpaulin is the subject of the present case.^[4]

This tarpaulin contains the heading “Conscience Vote” and lists candidates as either “(Anti-RH) Team Buhay” with a check mark, or “(Pro-RH) Team Patay” with an “X” mark.^[5] The electoral candidates were classified according to their vote on the adoption of Republic Act No. 10354, otherwise known as the RH Law.^[6] Those who

voted for the passing of the law were classified by petitioners as comprising "Team Patay," while those who voted against it form "Team Buhay":^[7]

TEAM BUHAY	TEAM PATAY
Estrada, JV	Angara, Juan Edgardo
Honasan, Gregorio	Casiño, Teddy
Magsaysay, Mitos	Cayetano, Alan Peter
Pimentel, Koko	Enrile, Jackie
Trillanes, Antonio	Escudero, Francis
Villar, Cynthia	Hontiveros, Risa
Party List Buhay	Legarda, Loren
Party List Ang Pamilya	Party List Gabriela
	Party List Akbayan
	Party List Bayan Muna
	Party List Anak Pawis

During oral arguments, respondents conceded that the tarpaulin was neither sponsored nor paid for by any candidate. Petitioners also conceded that the tarpaulin contains names of candidates for the 2013 elections, but not of politicians who helped in the passage of the RH Law but were not candidates for that election.

On February 22, 2013, respondent Atty. Mavil V. Majarucon, in her capacity as Election Officer of Bacolod City, issued a Notice to Remove Campaign Materials^[8] addressed to petitioner Most Rev. Bishop Vicente M. Navarra. The election officer ordered the tarpaulin's removal within three (3) days from receipt for being oversized. COMELEC Resolution No. 9615 provides for the size requirement of two feet (2') by three feet (3').^[9]

On February 25, 2013, petitioners replied^[10] requesting, among others, that (1) petitioner Bishop be given a definite ruling by COMELEC Law Department regarding the tarpaulin; and (2) pending this opinion and the availment of legal remedies, the tarpaulin be allowed to remain.^[11]

On February 27, 2013, COMELEC Law Department issued a letter^[12] ordering the immediate removal of the tarpaulin; otherwise, it will be constrained to file an election offense against petitioners. The letter of COMELEC Law Department was silent on the remedies available to petitioners. The letter provides as follows:

Dear Bishop Navarra:

It has reached this Office that our Election Officer for this City, Atty. Mavil Majarucon, had already given you notice on February 22, 2013 as regards the election propaganda material posted on the church vicinity promoting for or against the candidates and party-list groups with the following names and messages, particularly described as follows:

Material size	: six feet (6') by ten feet (10')
Description	: FULL COLOR TARPAULIN
Image of	: SEE ATTACHED PICTURES
Message	: CONSCIENCE VOTE (ANTI RH) TEAM

BUHAY : (PRO RH) TEAM PATAY
Location : POSTED ON THE CHURCH VICINITY
OF THE DIOCESE OF BACOLOD CITY

The three (3) – day notice expired on February 25, 2013.

Considering that the above-mentioned material is found to be in violation of Comelec Resolution No. 9615 promulgated on January 15, 2013 particularly on the size (even with the subsequent division of the said tarpaulin into two), as the lawful size for election propaganda material is only two feet (2') by three feet (3'), please order/cause the immediate removal of said election propaganda material, otherwise, we shall be constrained to file an election offense case against you.

We pray that the Catholic Church will be the first institution to help the Commission on Elections in ensuring the conduct of peaceful, orderly, honest and credible elections.

Thank you and God Bless!

[signed]
ATTY. ESMERALDA AMORA-LADRA
Director IV^[13]

Concerned about the imminent threat of prosecution for their exercise of free speech, petitioners initiated this case through this petition for certiorari and prohibition with application for preliminary injunction and temporary restraining order.^[14] They question respondents' notice dated February 22, 2013 and letter issued on February 27, 2013. They pray that: (1) the petition be given due course; (2) a temporary restraining order (TRO) and/or a writ of preliminary injunction be issued restraining respondents from further proceeding in enforcing their orders for the removal of the Team Patay tarpaulin; and (3) after notice and hearing, a decision be rendered declaring the questioned orders of respondents as unconstitutional and void, and permanently restraining respondents from enforcing them or any other similar order.^[15]

After due deliberation, this court, on March 5, 2013, issued a temporary restraining order enjoining respondents from enforcing the assailed notice and letter, and set oral arguments on March 19, 2013.^[16]

On March 13, 2013, respondents filed their comment^[17] arguing that (1) a petition for certiorari and prohibition under Rule 65 of the Rules of Court filed before this court is not the proper remedy to question the notice and letter of respondents; and (2) the tarpaulin is an election propaganda subject to regulation by COMELEC pursuant to its mandate under Article IX-C, Section 4 of the Constitution. Hence, respondents claim that the issuances ordering its removal for being oversized are valid and constitutional.^[18]

During the hearing held on March 19, 2013, the parties were directed to file their respective memoranda within 10 days or by April 1, 2013, taking into consideration

the intervening holidays.^[19]

The issues, which also served as guide for the oral arguments, are:^[20]

I.

WHETHER THE 22 FEBRUARY 2013 NOTICE/ORDER BY ELECTION OFFICER MAJARUCON AND THE 27 FEBRUARY 2013 ORDER BY THE COMELEC LAW DEPARTMENT ARE CONSIDERED JUDGMENTS/FINAL ORDERS/RESOLUTIONS OF THE COMELEC WHICH WOULD WARRANT A REVIEW OF THIS COURT VIA RULE 65 PETITION[;]

A. WHETHER PETITIONERS VIOLATED THE HIERARCHY OF COURTS DOCTRINE AND JURISPRUDENTIAL RULES GOVERNING APPEALS FROM COMELEC DECISIONS;

B. ASSUMING ARGUENDO THAT THE AFOREMENTIONED ORDERS ARE NOT CONSIDERED JUDGMENTS/FINAL ORDERS/RESOLUTIONS OF THE COMELEC, WHETHER THERE ARE EXCEPTIONAL CIRCUMSTANCES WHICH WOULD ALLOW THIS COURT TO TAKE COGNIZANCE OF THE CASE[;]

II.

WHETHER IT IS RELEVANT TO DETERMINE WHETHER THE TARPAULINS ARE "POLITICAL ADVERTISEMENT" OR "ELECTION PROPAGANDA" CONSIDERING THAT PETITIONER IS NOT A POLITICAL CANDIDATE[;]

III.

WHETHER THE TARPAULINS ARE A FORM OR EXPRESSION (PROTECTED SPEECH), OR ELECTION PROPAGANDA/POLITICAL ADVERTISEMENT[;]

A. ASSUMING ARGUENDO THAT THE TARPAULINS ARE A FORM OF EXPRESSION, WHETHER THE COMELEC POSSESSES THE AUTHORITY TO REGULATE THE SAME[;]

B. WHETHER THIS FORM OF EXPRESSION MAY BE REGULATED[;]

IV.

WHETHER THE 22 FEBRUARY 2013 NOTICE/ ORDER BY ELECTION OFFICER MAJARUCON AND THE 27 FEBRUARY 2013 ORDER BY THE COMELEC LAW DEPARTMENT VIOLATES THE PRINCIPLE OF SEPARATION OF CHURCH AND STATE[;] [AND]

V.

WHETHER THE ACTION OF THE PETITIONERS IN POSTING ITS
TARPAULIN VIOLATES THE CONSTITUTIONAL PRINCIPLE OF SEPARATION
OF CHURCH AND STATE.

I
PROCEDURAL ISSUES

I.A

This court's jurisdiction over COMELEC cases

Respondents ask that this petition be dismissed on the ground that the notice and letter are not final orders, decisions, rulings, or judgments of the COMELEC En Banc issued in the exercise of its adjudicatory powers, reviewable via Rule 64 of the Rules of Court.^[21]

Rule 64 is not the exclusive remedy for all acts of the COMELEC. Rule 65 is applicable especially to raise objections relating to a grave abuse of discretion resulting in the ouster of jurisdiction.^[22] As a special civil action, there must also be a showing that there be no plain, speedy, and adequate remedy in the ordinary course of the law.

Respondents contend that the assailed notice and letter are not subject to review by this court, whose power to review is "limited only to final decisions, rulings and orders of the COMELEC *En Banc* rendered in the exercise of its adjudicatory or quasi-judicial power."^[23] Instead, respondents claim that the assailed notice and letter are reviewable only by COMELEC itself pursuant to Article IX-C, Section 2(3) of the Constitution^[24] on COMELEC's power to decide all questions affecting elections.^[25] Respondents invoke the cases of *Ambil, Jr. v. COMELEC*,^[26] *Repol v. COMELEC*,^[27] *Soriano, Jr. v. COMELEC*,^[28] *Blanco v. COMELEC*,^[29] and *Cayetano v. COMELEC*,^[30] to illustrate how judicial intervention is limited to final decisions, orders, rulings and judgments of the COMELEC En Banc.^[31]

These cases are not applicable.

In *Ambil, Jr. v. COMELEC*, the losing party in the gubernatorial race of Eastern Samar filed the election protest.^[32] At issue was the validity of the promulgation of a COMELEC Division resolution.^[33] No motion for reconsideration was filed to raise this issue before the COMELEC En Banc. This court declared that it did not have jurisdiction and clarified:

We have interpreted [Section 7, Article IX-A of the Constitution]^[34] to mean *final orders, rulings and decisions* of the COMELEC rendered in the exercise of its adjudicatory or quasi-judicial powers." This decision must be a *final decision or resolution* of the *Comelec en banc*, *not of a division*, certainly not an interlocutory order *of a division*. The Supreme Court has no power to review via certiorari, an interlocutory order or even a final