

## EN BANC

[ G.R. No. 206020, April 14, 2015 ]

### **1-UNITED TRANSPORT KOALISYON (1-UTAK), PETITIONER, VS. COMMISSION ON ELECTIONS, RESPONDENT.**

### **D E C I S I O N**

#### **REYES, J.:**

The right to participate in electoral processes is a basic and fundamental right in any democracy. It includes not only the right to vote, but also the right to urge others to vote for a particular candidate. The right to express one's preference for a candidate is likewise part of the fundamental right to free speech. Thus, any governmental restriction on the right to convince others to vote for a candidate carries with it a heavy presumption of invalidity.

This is a petition for *certiorari*<sup>[1]</sup> under Rule 64 and Rule 65 of the Rules of Court filed by 1-United Transport Koalisyon (petitioner), a party-list organization, assailing Section 7(g) items (5) and (6), in relation to Section 7(f), of Resolution No. 9615<sup>[2]</sup> of the Commission on Elections (COMELEC).

#### **The Facts**

On February 12, 2001, Republic Act (R.A.) No. 9006, otherwise known as the "Fair Elections Act", was passed. Section 9 thereof provides:

*Sec. 9. Posting of Campaign Materials.* - The COMELEC may authorize political parties and party-list groups to erect common poster areas for their candidates in not more than ten (10) public places such as plazas, markets, barangay centers and the like, wherein candidates can post, display or exhibit election propaganda: Provided that the size of the poster areas shall not exceed twelve (12) by sixteen (16) feet or its equivalent.

Independent candidates with no political parties may likewise be authorized to erect common poster areas in not more than ten (10) public places, the size of which shall not exceed four (4) by six (6) feet or its equivalent.

Candidates may post any lawful propaganda material in private places with the consent of the owner thereof, and in public places or property which shall be allocated equitably and impartially among the candidates.

On January 15, 2013, the COMELEC promulgated Resolution No. 9615, which

provided for the rules implementing R.A. No. 9006 in connection with the May 13, 2013 national and local elections and subsequent elections. Section 7 thereof, which enumerates the prohibited forms of election propaganda, pertinently provides:

**SEC. 7. Prohibited Forms of Election Propaganda.** - During the campaign period, it is unlawful:

x x x x

(f) To post, display or exhibit any election campaign or propaganda material outside of authorized common poster areas, in public places, or in private properties without the consent of the owner thereof.

(g) Public places referred to in the previous subsection (f) include any of the following:

x x x x

5. Public utility vehicles such as buses, jeepneys, trains, taxi cabs, ferries, pedicabs and tricycles, whether motorized or not;

6. Within the premises of public transport terminals, such as bus terminals, airports, seaports, docks, piers, train stations, and the like.

The violation of items [5 and 6] under subsection (g) shall be a cause for the revocation of the public utility franchise and will make the owner and/or operator of the transportation service and/or terminal liable for an election offense under Section 9 of Republic Act No. 9006 as implemented by Section 18 (n) of these Rules.<sup>[3]</sup>

In its letter<sup>[4]</sup> dated January 30, 2013, the petitioner, through its president, Melencio F. Vargas, sought clarification from the COMELEC as regards the application of Resolution No. 9615, particularly Section 7(g) items (5) and (6), in relation to Section 7(f), *vis-a-vis* privately owned public utility vehicles (PUVs) and transport terminals. The petitioner explained that the prohibition stated in the aforementioned provisions impedes the right to free speech of the private owners of PUVs and transport terminals. The petitioner then requested the COMELEC to reconsider the implementation of the assailed provisions and allow private owners of PUVs and transport terminals to post election campaign materials on their vehicles and transport terminals.

On February 5, 2013, the COMELEC *en banc* issued Minute Resolution No. 13-0214, <sup>[5]</sup> which denied the petitioner's request to reconsider the implementation of Section 7(g) items (5) and (6), in relation to Section 7(f), of Resolution No. 9615. The COMELEC *en banc*, adopting the recommendation of Commissioner Christian Robert S. Lim, opined that:

From the foregoing, x x x the primary fact in consideration here is actually whether 1 -UTAK or any other [PUV] owners in the same position **do in fact possess a franchise and/or certificate of public convenience and operate as a public utility.** If it does not, then the ruling in *Adiong* applies squarely. If it does, then its operations, pursuant to Section 4, Article IX-C of the Constitution, will be placed directly under the supervision and regulation of the Commission for the duration of the election period so as to ensure equality of opportunity, time, and space for all candidates in the placement of political advertisements. Having placed their property for use by the general public and having secured a license or permit to do so, 1-UTAK and other PUV owners, as well as transport terminal owners, cannot now complain that their property is subject to regulation by the State. Securing a franchise or a certificate of public convenience in their favor does not exempt them from the burdens imposed by the Constitution, Republic Act No. 9006 x x x, and other related statutes. It must be stressed that the Constitution itself, under Section 6, Article XII, commands that **the use of property bears a social function and all economic agents shall contribute to the common good**; and there is no higher Common good than that as espoused in R.A. No. 9006 - the equalization of opportunities for all candidates for political office during elections - a policy which Res. No. 9615 merely implements.

As required in ***Adiong***, and in compliance with the ***O'Brien*** standards, the prohibition furthers two important and substantial governmental interests - equalizing opportunity, time, and space for all candidates, and putting to a stop excessive campaign spending. The regulation bears a clear and reasonable nexus with these Constitutionally- and statutorily-sanctioned objectives, and the infringement of freedom is merely incidental and limited as to time. The Commission has not taken away all avenues of expression available to PUV and transport terminal owners. They may express their political preferences elsewhere.

The exact purpose for placing political advertisements on a PUV or in transport terminals is exactly because **it is public and can be seen by all**; and although it is true that private vehicles ply the same route as public vehicles, the exposure of a [PUV] servicing the general, riding public is much more compared to private vehicles. **Categorizing PUVs and transport terminals as 'public places' under Section 7 (f) of Reso. No. 9615 is therefore logical.** The same reasoning for limiting political advertisements in print media, in radio, and in television therefore holds true for political advertisements in PUVs and transport terminals.<sup>[6]</sup>

Hence, the instant petition.

### **Arguments of the Petitioner**

The petitioner maintains that Section 7(g) items (5) and (6), in relation to Section 7(f), of Resolution No. 9615 violate the right to free speech of the owners of PUVs and transport terminals; that the prohibition curtails their ideas of who should be

voted by the public. The petitioner also claims that there is no substantial public interest threatened by the posting of political advertisements on PUVs and transport terminals to warrant the prohibition imposed by the COMELEC. Further, the petitioner posits that the ownership of the PUVs *per se*, as well as the transport terminals, remains private and, hence, the owners thereof could not be prohibited by the COMELEC from expressing their political opinion lest their property rights be unduly intruded upon.

Further, assuming that substantial public interest exists in the said prohibition imposed under Resolution No. 9615, the petitioner claims that the curtailment of the right to free speech of the owners of PUVs and transport terminals is much greater than is necessary to achieve the desired governmental purpose, *i.e.*, ensuring equality of opportunity to all candidates in elective office.

### **Arguments of COMELEC**

On the other hand, the COMELEC posits that privately-owned PUVs and transport terminals are public spaces that are subject to its regulation. It explains that under the Constitution, the COMELEC has the power to enforce and administer all laws and regulations relative to the conduct of an election, including the power to regulate the enjoyment or utilization of all franchises and permits for the operation of transportation utilities.

The COMELEC points out that PUVs and private transport terminals hold a captive audience - the commuters, who have no choice but be subjected to the blare of political propaganda. Thus, the COMELEC avers, it is within its constitutional authority to prevent privately-owned PUVs and transport terminals from concurrently serving campaign materials to the captive audience that they transport.

The COMELEC further claims that Resolution No. 9615 is a valid content-neutral regulation and, thus, does not impinge on the constitutional right to freedom of speech. It avers that the assailed regulation is within the constitutional power of the COMELEC pursuant to Section 4, Article IX-C of the Constitution. The COMELEC alleges that the regulation simply aims to ensure equal campaign opportunity, time, and space for all candidates - an important and substantial governmental interest, which is totally unrelated to the suppression of free expression; that any restriction on free speech is merely incidental and is no greater than is essential to the furtherance of the said governmental interest.

### **The Issue**

The petitioner presents the following issues for the Court's resolution:

I. [WHETHER] RESOLUTION NO. 9615 VIOLATES THE RIGHT TO FREE SPEECH OF THE OWNERS OF [PUVs] AND TRANSPORT TERMINALS.

II. [WHETHER] RESOLUTION NO. 9615 IS VOID AS A RESTRAINT TO FREE SPEECH AND EXPRESSION FOR FAILURE TO SATISFY THE O'BRIEN TEST.

III. [WHETHER] THE CONSTITUTIONAL OBJECTIVE TO GIVE AN EQUAL

OPPORTUNITY TO INFORM THE ELECTORATE IS NOT IMPAIRED BY POSTING POLITICAL ADVERTISEMENTS ON PUVs AND TRANSPORT TERMINALS.

IV. [WHETHER] THE OWNERSHIP OF FACILITIES IS DIFFERENT AND INDEPENDENT FROM THE FRANCHISE OR OPERATION OF THE PUBLIC UTILITY, THE FORMER BEING BEYOND THE POWER OF REGULATION BY THE COMELEC.<sup>[7]</sup>

In sum, the issue presented for the Court's resolution is whether Section 7(g) items (5) and (6), in relation to Section 7(f), of Resolution No. 9615, which prohibits the posting of any election campaign or propaganda material, *inter alia*, in PUVs and public transport terminals are valid regulations.

### **Ruling of the Court**

The petition is meritorious.

Resolution No. 9615, which was promulgated pursuant to Section 4, Article IX-C of the Constitution and the provisions of R.A. No. 9006, lays down the administrative rules relative to the COMELEC's exercise of its supervisory and regulatory powers over all franchises and permits for the operation of transportation and other public utilities, media of communication or information, and all grants, special privileges, or concessions granted by the Government.

Like any other administrative regulations, Resolution No. 9615, or any part thereof, must not run counter to the Constitution. It is basic that if a law or an administrative rule violates any norm of the Constitution, that issuance is null and void and has no effect. The Constitution is the basic law to which all laws must conform; no act shall be valid if it conflicts with the Constitution.<sup>[8]</sup> In this regard, an administrative regulation, even if it purports to advance a legitimate governmental interest, may not be permitted to run roughshod over the cherished rights of the people enshrined in the Constitution.

**Section 7(g) items (5) and (6), in relation to Section 7(f), of Resolution No. 9615 are prior restraints on speech.**

Free speech may be identified with the liberty to discuss publicly and truthfully any matter of public concern without prior restraint or censorship and subsequent punishment.<sup>[9]</sup> Prior restraint refers to official governmental restrictions on the press or other forms of expression in advance of actual publication or dissemination. Freedom from prior restraint is largely freedom from government censorship of publications, whatever the form of censorship, and regardless of whether it is wielded by the executive, legislative or judicial branch of the government.<sup>[10]</sup> Any system of prior restraints of expression comes to this Court bearing a heavy presumption against its validity.<sup>[11]</sup>

Section 7(g) items (5) and (6), in relation to Section 7(f), of Resolution No. 9615 unduly infringe on the fundamental right of the people to freedom of speech. Central