

EN BANC

[G.R. No. 212398, November 25, 2014]

EMILIO RAMON "E.R." P. EJERCITO, PETITIONER, VS. HON. COMMISSION ON ELECTIONS AND EDGAR "EGAY" S. SAN LUIS, RESPONDENTS.

DECISION

PERALTA, J.:

Contested in this petition for *certiorari* under Rule 64, in relation to Rule 65 of the Rules of Court (*Rules*), is the May 21, 2014 Resolution^[1] of the Commission on Elections (COMELEC) *En Banc* in SPA No. 13-306 (DC), which affirmed the September 26, 2013 Resolution^[2] of the COMELEC First Division granting the petition for disqualification filed by private respondent Edgar "Egay" S. San Luis (*San Luis*) against petitioner Emilio Ramon "E.R." P. Ejercito (*Ejercito*).

Three days prior to the May 13, 2013 National and Local Elections, a petition for disqualification was filed by San Luis before the Office of the COMELEC Clerk in Manila against Ejercito, who was a fellow gubernatorial candidate and, at the time, the incumbent Governor of the Province of Laguna.^[3] Alleged in his *Petition* are as follows:

FIRST CAUSE OF ACTION

5. [Ejercito], during the campaign period for 2013 local election, distributed to the electorates of the province of Laguna the so-called "Orange Card" with an intent to influence, induce or corrupt the voters in voting for his favor. Copy thereof is hereto attached and marked as Annex "C" and made as an integral part hereof;

6. In furtherance of his candidacy for the position of Provincial Governor of Laguna, [Ejercito] and his cohorts claimed that the said "Orange Card" could be used in any public hospital within the Province of Laguna for their medical needs as declared by the statements of witnesses which are hereto attached and marked as Annex "D" as integral part hereof;

7. The so-called "Orange Card" is considered a material consideration in convincing the voters to cast their votes for [Ejercito's] favor in clear violation of the provision of the Omnibus Election Code which provides and I quote:

"Sec. 68. Disqualifications. – Any candidate who, in an action or protest in which he is a party is declared by final decision by 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 Sections 89, 95, 96, 97 and 104; or (e) violated any of Sections 80, 83, 85, 86, and 261, paragraphs d, e, k, v, and cc, subparagraph 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 status as permanent resident or immigrant of a foreign country in accordance with the residence requirement provided for in the election laws." (*emphasis ours*)

8. Thus, pursuant to the mandate of the aforesaid law, [Ejercito] should be disqualified;

SECOND CAUSE OF ACTION

9. Based on the records of the Provincial COMELEC, the Province of Laguna has a total of 1,525,522 registered electorate. A certification issued by the Provincial Election Supervisor is hereto attached and marked as Annex "E" as an integral part hereof;

10. In this regard, par. (a), Section 5 of COMELEC Resolution No. 9615, otherwise known as the Rules and Regulations Implementing FAIR ELECTION ACT provides and I quote:

"Authorized Expenses of Candidates and Parties. – The aggregate amount that a candidate or party may spent for election campaign shall be as follows:

- a. For candidates – Three pesos (P3.00) for every voter currently registered in the constituency where the candidate filed his certificate of candidacy.
- b. For other candidates without any political party and without any support from any political party – Five pesos (P5.00) for every voter currently registered in the constituency where the candidate filed his certificate of candidacy.
- c. For Political Parties and party-list groups – Five pesos (P5.00) for every voter currently registered in the constituency or constituencies where it has official candidates. (*underscoring mine for emphasis*)

11. Accordingly, a candidate for the position of Provincial Governor of Laguna is only authorized to incur an election expense amounting to FOUR MILLION FIVE HUNDRED SEVENTY-SIX THOUSAND FIVE HUNDRED SIXTY-SIX (P4,576,566.00) PESOS.

12. However, in total disregard and violation of the afore-quoted provision of law, [Ejercito] exceeded his expenditures in relation to his campaign for the 2013 election. For television campaign commercials alone, [Ejercito] already spent the sum of PhP23,730.784 based on our party's official monitoring on the following dates[:] April 28, May 4 & May 5, 2013.

Network	Date	Program	Time	Duration	Amount*
ABS-CBN	April 28, 2013	TV Patrol	5:58 p.m.	4 minutes (approximately)	P3,297,496
ABS-CBN	April 28, 2013	Sundays Best (local specials)	10:40 p.m.	4 minutes (approximately)	P3,297,496
GMA	April 28, 2013	Sunday Night Box Office	10:46 p.m.	3 minutes (approximately)	P2,635,200
GMA	April 28, 2013	Sunday Night Box Office	11:06 p.m.	4 minutes (approximately)	P2,635,200
GMA	April 28, 2013	Sunday Night Box Office	11:18 p.m.	4 minutes (approximately)	P2,635,200
GMA	April 28, 2013	Sunday Night Box Office	11:47 p.m.	4 minutes (approximately)	P2,635,200
ABS-CBN	May 4, 2013	TODA MAX	11:26 p.m.	4 minutes (approximately)	P3,297,496
ABS-CBN	May 5, 2013	Rated K	8:06 p.m.	4 minutes (approximately)	P3,297,496
				Total	P23,730.784

* Total cost based on published rate card;

13. Even assuming that [Ejercito] was given 30% discount as prescribed under the Fair Election Act, he still exceeded in the total allowable expenditures for which he paid the sum of P16,611,549;

14. In view of the foregoing disquisitions, it is evident that [Ejercito] committed an election offense as provided for under Section 35 of COMELEC Resolution No. 9615, which provides and I quote:

"Election Offense. – Any violation of R.A. No. 9006 and these Rules shall constitute an election offense punishable under the first and second paragraph of Section 264 of the Omnibus

Election Code in addition to administrative liability, whenever applicable. x x x”

15. Moreover, it is crystal clear that [Ejercito] violated Sec. 68 of the Omnibus Election Code which provides and I quote:

“Sec. 68. Disqualifications. – Any candidate who, in an action or protest in which he is a party is declared by final decision by 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 Sections 89, 95, 96, 97 and 104; or (e) violated any of Sections 80, 83, 85, 86, and 261, paragraphs d, e, k, v, and cc, subparagraph 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 status as permanent resident or immigrant of a foreign country in accordance with the residence requirement provided for in the election laws.” (*emphasis ours*)

16. On the other hand, the effect of disqualification is provided under Sec. 6 of Republic Act No. 6646, which states and I quote:

“Effect of Disqualification Case. – Any candidate who has been declared by final judgment to be disqualified shall not be voted for, and the votes cast for him shall not be counted. If for any reason a candidate is not declared by final judgment before an election to be disqualified and he is voted for and receives the winning number of votes in such election, the Court or Commission shall continue with the trial and hearing of the action, inquiry or protest and, upon motion of the complainant or any intervenor, may during the pendency thereof order the suspension of the proclamation of such candidate whenever the evidence of [his] guilt is strong.” (*emphasis mine*)

PRAYER

WHEREFORE, premises considered, it is respectfully prayed that:

1. Upon filing of this petition, a declaration by the Honorable Commission of the existence of probable cause be made against [Ejercito] for violating the afore-quoted provisions of laws;
2. In the event that [Ejercito] will be able to get a majority vote of the electorate of the Province of Laguna on May 13, 2013, his proclamation be suspended until further order of the Honorable Commission pursuant

to Sec. 6 of Republic Act No. 6646;

3. Lastly, a criminal case for VIOLATION OF ELECTION LAWS be filed against [Ejercito] before the proper court[;] [and]

4. Other relief, just and equitable under the premises, are also prayed for.^[4]

Subsequently, on May 16, 2013, San Luis filed a *Very Urgent Ex-Parte Motion to Issue Suspension of Possible Proclamation of Respondent and Supplemental to the Very Urgent Ex-Parte Motion to Issue Suspension of Possible Proclamation of Respondent*.^[5] However, these were not acted upon by the COMELEC. The next day, Ejercito and Ramil L. Hernandez were proclaimed by the Provincial Board of Canvassers as the duly-elected Governor and Vice-Governor, respectively, of Laguna.^[6] Based on the Provincial/District Certificate of Canvass, Ejercito obtained 549,310 votes compared with San Luis' 471,209 votes.^[7]

The COMELEC First Division issued a *Summons with Notice of Conference* on June 4, 2013.^[8] Ejercito then filed his *Verified Answer* on June 13, 2013 that prayed for the dismissal of the petition due to procedural and substantive irregularities and taking into account his proclamation as Provincial Governor.^[9] He countered that the petition was improperly filed because, based on the averments and relief prayed for, it is in reality a complaint for election offenses; thus, the case should have been filed before the COMELEC Law Department, or the election registrar, provincial election supervisor or regional election director, or the state, provincial or city prosecutor in accordance with *Laurel v. Presiding Judge, RTC, Manila, Br. 10*.^[10] Assuming that the petition could be given due course, Ejercito argued that San Luis failed to show, conformably with *Codilla, Sr. v. Hon. De Venecia*,^[11] that he (Ejercito) was previously convicted or declared by final judgment of a competent court for being guilty of, or found by the COMELEC of having committed, the punishable acts under Section 68 of Batas Pambansa (B.P.) Bilang 881, or the Omnibus Election Code of the Philippines, as amended (OEC).^[12]

As to the acts he allegedly committed, Ejercito claimed that the same are baseless, unfounded, and totally speculative. He stated that the Health Access Program or the E.R. "Orange Card" was a priority project of his administration as incumbent Governor of Laguna and was never intended to influence the electorate during the May 2013 elections. He added that the "Orange Card," which addressed the increasing need for and the high cost of quality health services, provides the Laguneños not only access to medical services but also the privilege to avail free livelihood seminars to help them find alternative sources of income. With respect to the charge of having exceeded the total allowable election expenditures, Ejercito submitted that the accusation deserves no consideration for being speculative, self-serving, and uncorroborated by any other substantial evidence.

Citing *Sinaca v. Mula*,^[13] Ejercito asserted that the petition questioning his qualification was rendered moot and academic by his proclamation as the duly-elected Provincial Governor of Laguna for the term 2013-2016. He perceived that his successful electoral bid substantiates the fact that he was an eligible candidate and that his victory is a testament that he is more than qualified and competent to hold