

EN BANC

[G.R. No. 178624, June 30, 2009]

JOSE CONCEPCION, JR., PETITIONER, VS. COMMISSION ON ELECTIONS, RESPONDENT.

DECISION

BRION, J.:

Before us is the petition for *certiorari*^[1] filed by Jose Concepcion, Jr. (*petitioner*) "seeking to set aside the ***En Banc Resolution* dated 02 April 2007** and ***Order* dated 8 May 2007**" of respondent Commission on Elections (COMELEC).^[2]

The petition cites and quotes the assailed rulings, then recites that on January 5, 2007, the National Citizen's Movement for Free Elections (*NAMFREL*) filed a Petition for Accreditation to Conduct the Operation Quick Count with the COMELEC, docketed as SSP No. 07-001.^[3] The present petitioner - then the incumbent *Punong Barangay* of *Barangay Forbes Park*, Makati City - was one of the signatories of the *NAMFREL* petition in his capacity as the National Chairman of *NAMFREL*.

On the same date, COMELEC promulgated **Resolution No. 7798**^[4] (*Resolution 7798*) that reads in full -

WHEREAS, Section 3 of Executive Order [EO] No. 94 dated March 2, 1987, provides as follows:

Sec. 3. Prohibition on *barangay* officials. - No *barangay* official shall be appointed as member of the Board of Election Inspectors or as official watcher of each duly registered major political party or any socio-civic, religious, professional or any similar organization of which they may be members.

WHEREAS, the *barangay* is the smallest political unit of government and it is a widely accepted fact that *barangay* officials wield tremendous influence on their constituents or the residents in the *barangay*;

WHEREAS, the Boards of Election Inspectors [*BEIs*] are charged with the duty of maintaining the regularity and orderliness of the election proceedings in each precinct to the end that elections will be honest, orderly, peaceful and credible:

WHEREAS, records of past political exercises show that on election day, the Commission on Elections usually receive numerous complaints against *barangay* officials entering polling places and interfering in proceedings of the *BEIs* thereby causing not only delay in the proceedings, but also political tension among the *BEIs*, the voters and

the watchers in the polling place;

NOW THEREFORE, to insure that elections are peaceful, orderly, regular and credible, the Commission on Elections, by virtue of the powers vested in it by the Constitution, the Omnibus Election Code [OEC], EO No. 94, and other election laws RESOLVED to prohibit, as it hereby RESOLVES to prohibit:

1. The appointment of *barangay* officials which includes the *Punong Barangay, Barangay Kagawad, Barangay Secretary, Barangay Treasurer, and Barangay Tanod*, as Chairman/person and/or Member of the BEIs or as official watcher of any candidate, duly registered major political party, or any similar organization, or any socio-civic, religious, professional [*sic*], in the May 14, 2007 National and Local Elections. **The prohibition extends to *barangay* officials, employees and *tanods*, who are members of accredited citizens' arms.**
2. **The *barangay* officials, employees and *tanods* from staying inside any polling place, except to cast their vote. Accordingly, they should leave the polling place immediately after casting their vote.**

This Resolution shall take effect on the seventh day after the publication in two (2) newspapers of general circulation in the Philippines.

The Education and Information Department shall cause the publication of this Resolution in two (2) daily newspapers of general circulation and shall furnish copies thereof to all field officers of the Commission and the Department of Interior and Local Government, other deputies and heads of accredited political parties.

SO ORDERED. [Emphasis supplied.]

The COMELEC ruled on NAMFREL's petition for accreditation on April 2, 2007 in the assailed Resolution (*April 2, 2007 Resolution*), **conditionally** granting NAMFREL's petition in the following tenor: ^[5]

Having already discussed above the reasons, both factual and legal, for the dismissal of the Verified Opposition, we find the instant petition for accreditation as the citizen's arm of the petitioner NAMFREL meritorious. Pursuant to Section 2(5), Article IX (C) of the 1987 Philippine Constitution and Section 52(k) of the Omnibus Election Code, as amended, this Commission en banc hereby resolves to accredit petitioner NAMFREL as its citizens' arm in the 14 May 2007 national and local elections, subject to its direct and immediate control and supervision.

There is, however, one important condition that must be fulfilled by the petitioner before its accreditation as citizens' arm could legally take effect. Accordingly, Mr. Jose S. Concepcion, Jr., the National Chairman of NAMFREL, must first be removed both as a member and overall Chairman of said organization. As correctly pointed out by the oppositor, Mr. Concepcion, being the Barangay Chairman of Barangay Forbes Park,

Makati City, cannot be a member much more the overall chairman of the citizens' arm such as NAMFREL. *This is explicitly provided for in COMELEC Resolution No. 7798 promulgated on 5 January 2007, pertinent of which we quote:*

WHEREAS, Section 3 of Executive Order No. 94 dated March 2, 1987 provides as follows:

Sec. 3. Prohibition on Barangay officials - No barangay official shall be appointed as member of the Board of Election Inspectors or as watcher of each duly registered major political party or any socio-civic, religious, professional or any similar organization of which they may be members.

xxx xxx xxx

NOW THEREFORE, to insure that the elections are peaceful, orderly, regular and credible, the Commission on Elections, by virtue of the powers vested in it by the Constitution, the OEC, EO No. 94, and other election laws, RESOLVED to prohibit, as it is hereby RESOLVES to prohibit:

1. The appointment of barangay officials which include the Punong Barangay, Kagawad, Barangay Secretary, Barangay Treasurer, and Barangay Tanod, as Chairman / person and/or Members of the BEIs or as official watcher of any candidate, duly registered major political party, or any similar organization, or any socio-civic, religious, professional, in the May 14, 2007 National and Local Elections. The prohibition extends to the barangay officials, employees and tanods, who are members of the accredited citizens' arms.

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WHEREFORE, premises considered, this Commission en banc RESOLVED as it hereby RESOLVES, to grant the instant petition for accreditation finding it imbued with merit.

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The ACCREDITATION herein GRANTED is further SUBJECT TO THE FOLLOWING CONDITIONS:

1. The petitioner is hereby enjoined and encouraged by the Commission *to re-organize in accordance with its own internal rules and procedures as an independent organization, and to submit before election day a list of its responsible officers and members, deleting therefrom the names of any previous officer or member similarly situated with Mr. Jose S. Concepcion, Jr. who are disqualified to be part of the citizens' arm in view of the passage of COMELEC Resolution No. 7798 on 5 January 2007;*

x x x x

9. This accreditation shall be deemed automatically revoked in case petitioner violates any of the provisions and conditions set forth herein. [Italics supplied.]

Soon thereafter, NAMFREL filed a "*Manifestation and Request for Re-Examination*" that: (1) contains information regarding NAMFREL's reorganization and its new set of officers *showing that the petitioner had stepped down as National Chair and had been replaced by a new Chair*; (2) manifests NAMFREL's acceptance of the conditional grant of its petition for accreditation; and (3) includes NAMFREL's request for a re-examination without further arguments of the April 2, 2007 Resolution as it specifically affected the petitioner's membership with NAMFREL. In this Manifestation and Request for Re-examination, NAMFREL outlined its various objections and concerns on the legality or validity of Resolution 7798.

The COMELEC, in its Order of May 8, 2007, noted the information relating to NAMFREL's current officers, and denied the request to examine its (COMELEC's) interpretation of the April 2, 2007 Resolution prohibiting petitioner's direct participation as member and National Chairman of NAMFREL. The COMELEC reasoned out that the April 2, 2007 Resolution is clear, and NAMFREL had not presented any convincing argument to warrant the requested examination.

NAMFREL did not question the COMELEC's ruling.

THE PETITION

Instead of a direct reaction from NAMFREL, the petitioner filed the present petition, ostensibly questioning the COMELEC's April 2, 2007 Resolution, but actually raising issues with respect to Resolution 7798. To illustrate this point, the headings of the petitioner's cited grounds were as follows:

COMELEC HAS ACTED WITHOUT JURISDICTION OR IN EXCESS OF ITS JURISDICTION WHEN IT ISSUED COMELEC RESOLUTION NO. 7798 WHICH HAS NO STATUTORY BASIS.^[6]

COMELEC SERIOUSLY ERRED AND GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OF JURISDICTION OR IN EXCESS OF ITS JURISDICTION WHEN IT RETROACTIVELY APPLIED COMELEC RESOLUTION NO. 7798 TO NAMFREL'S PETITION.^[7]

NAMFREL CHAIRMAN JOSE CONCEPCION WAS NOT ACCORDED DUE PROCESS WHEN HE WAS NEITHER GIVEN THE OPPORTUNITY TO QUESTION COMELEC RESOLUTION NO. 7798 NOR THE OPPORTUNITY TO PRESENT HIS SIDE REGARDING THE PROHIBITION.^[8]

The petitioner expounded on the invalidity of Resolution 7798 with the following arguments which, for brevity and ease of presentation, we summarize below:

1. EO No. 94 - issued by then President Corazon Aquino on December 17, 1986 - prohibits ***the appointment of barangay officials as members of the BEI or as official watchers of each duly registered major political party or any socio-civic, religious, professional or any similar organization of***

which they may be members. This law, according to the petitioner, could not however be the statutory basis of Resolution 7798 because:

- a. the prohibition under EO No. 94 applies only to the February 2, 1987 plebiscite. The restrictive application is evident from a reading of the EO's title^[9] and of one of its *whereas clauses*.^[10]
 - b. nothing in EO No. 94 prohibits the petitioner's membership with NAMFREL or the petitioner's appointment as Chair or member of a duly accredited COMELEC's citizen arm. The petitioner, who then chaired NAMFREL, was never appointed as BEI member or as poll watcher.
 - c. the underlying purpose of Resolution 7798 is to prevent *barangay* officials from wielding their influence during the voting and canvassing stages by entering polling places under the pretext of acting as poll watchers. The petitioner was not a poll watcher; the COMELEC could have therefore simply prohibited the appointment of *barangay* chairmen as BEI members or poll watchers, and would have already achieved its purpose.
 - d. the COMELEC cannot, in the guise of regulation, go beyond or expand the mandate of a law because the COMELEC has no law-making powers.
 - e. Resolution 7798 cannot be applied retroactively. Its effectivity clause provides that it shall be effective on the 7th day after its publication in a newspaper of general circulation, that is, only on January 14, 2007. Since NAMREL's petition was filed on January 5, 2007 (or before Resolution 7798's effectivity), it could not have applied to NAMFREL's petition.
2. Resolution 7798 is an invalid implementing regulation, as it failed to comply with the following requisites for the validity of implementing rules and regulations:
- a. the rules and regulations must have been issued on the authority of law;
 - b. the rules and regulations must be within the scope and purview of the law;
 - c. the rules and regulations must be reasonable;
 - d. the rules and regulations must not be contrary to laws or to the Constitution.
3. On constitutional grounds, the petitioner objected to Resolution 7798 because:
- a. the Resolution is unreasonable, as it bears no relation to the very purpose of the law; its prohibition is harsh, oppressive, and serves no purpose at all.
 - b. Resolution 7798 violates the petitioner's right to association through its enforced removal of the petitioner as member and Chair of NAMFREL.