

## EN BANC

[ G.R. No. 180164, June 17, 2008 ]

### FLORENTINO P. BLANCO, PETITIONER, VS. THE COMMISSION ON ELECTIONS AND EDUARDO A. ALARILLA, RESPONDENTS

#### DECISION

##### AZCUNA, J.:

This is a petition for *certiorari*<sup>[1]</sup> alleging that the Commission on Elections (COMELEC), Second Division, acted with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the Resolution dated August 28, 2007 disqualifying petitioner from running for an elective office in the May 14, 2007 National and Local Elections.

The facts are as follows:

Petitioner Florentino P. Blanco was the mayor of Meycauayan, Bulacan from 1987 up to 1992.

During the May 8, 1995 elections, petitioner ran as a candidate for the same mayoralty position and won during the canvassing by more than 6,000 votes over private respondent Eduardo A. Alarilla. Private respondent filed a petition for the disqualification of petitioner on the ground of vote-buying which resulted in the suspension of petitioner's proclamation.

On August 15, 1995, public respondent issued a resolution disqualifying petitioner as candidate for the said position due to violation of Sec. 261 (a) of the Omnibus Election Code. This Court affirmed the disqualification under Sec. 68 of the Omnibus Election Code in *Blanco v. COMELEC*, <sup>[2]</sup> G.R. No. 122258, which was promulgated on July 21, 1997.

During the 1998 elections, petitioner again ran as a mayoralty candidate. Domiciano G. Ruiz, a voter of Meycauayan, Bulacan, sought to disqualify him on the basis of the Court's ruling in G.R. No. 122258.

On April 30, 1998, the COMELEC, Second Division, issued a resolution in SPA No. 98-043 dismissing the petition for disqualification on the ground that petitioner was not disqualified under Sec. 68 of the Omnibus Election Code as his previous disqualification in the May 8, 1995 elections attached only during that particular election.

Moreover, the COMELEC stated that "no criminal action was instituted against [petitioner], much less a judgment of conviction for vote-buying under Sec. 261 (a) of the Omnibus Election Code has been rendered against [petitioner] in order that Section 264 of the same [Code] providing for the accessory penalty of

disqualification from holding public office may attach to [petitioner]."

During the May 14, 2001 elections, petitioner again ran for a mayoralty position, but private respondent sought petitioner's disqualification based on the Court's ruling in G.R. No. 122258.

On May 11, 2001, the COMELEC, Second Division, issued a resolution in SPA No. 01-050, this time disqualifying petitioner from running for a mayoralty position in the May 14, 2001 elections under Sec. 40 (b) of the Local Government Code for having been removed from office through an administrative case. It denied petitioner's motion for reconsideration for having been filed beyond the 5-day reglementary period.

During the May 10, 2004 elections, petitioner again ran as a mayoralty candidate, but private respondent sought to disqualify him based on the Court's ruling in G.R. No. 122258. Petitioner withdrew his certificate of candidacy, so the petition for disqualification was dismissed for being moot.

Apprehensive that he would encounter another petition for disqualification in succeeding elections, petitioner filed a petition for declaratory relief before the Regional Trial Court (RTC) of Malolos, Bulacan, for the issuance of a judgment declaring him eligible to run for public office in contemplation of Sec. 40 (b) of the Local Government Code and Secs. 68, 261(a) and 264 of the Omnibus Election Code.

In a Decision dated November 6, 2005, the RTC declared petitioner eligible to run for an elective office.

During the May 14, 2007 elections, petitioner ran anew for a mayoralty position. Again, private respondent sought the disqualification of petitioner based on the Court's ruling in G.R. No. 122258 and the COMELEC Resolution dated May 11, 2001 in SPA No. 01-050.

On August 28, 2007, the COMELEC, Second Division, issued a resolution in SPA Case No. 07-410 disqualifying petitioner from running in the May 14, 2007 elections on the ground that *Blanco v. COMELEC*, G.R. No. 122258, affirmed its disqualification of petitioner in the May 8, 1995 elections, and that the COMELEC Resolution in SPA No. 01-050 also disqualified petitioner under Sec. 40 (b) of the Local Government Code. The COMELEC stated that since petitioner failed to show that he had been bestowed a presidential pardon, amnesty or other form of executive clemency, there is no reason to disturb its findings in SPA No. 01-050.

Hence, this petition praying that the COMELEC Resolution dated August 28, 2007 be reversed and set aside, and that petitioner be declared as eligible to run for public office.

Petitioner raised these issues:

I.

Whether or not the COMELEC, Second Division, gravely abused its discretion in ruling that petitioner is disqualified to run for an elective

office by reason of the Court's ruling in *Blanco v. COMELEC*, G.R. No. 122258, as well as the Resolution of the COMELEC in SPA No. 01-050.

## II.

Whether or not the COMELEC, Second Division, gravely abused its discretion in ruling that petitioner is disqualified to run for an elective office since he has not been bestowed a presidential pardon, amnesty or any form of executive clemency.<sup>[3]</sup>

The initial issue that has to be determined is whether the Court can take cognizance of this case since petitioner did not file a motion for reconsideration of the Resolution of the COMELEC, Second Division before the COMELEC *en banc* as he went directly to this Court by filing this petition "in accordance with Sec. 7 of Article IX-A of the Constitution," which provides:

Section 7. Each commission shall decide by a majority vote of all its members any case or matter brought before it within sixty days from the date of its submission for decision or resolution. A case or matter is deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the rules of the commission or by the commission itself. Unless otherwise provided by this constitution or by law, any decision, order, or ruling of each commission may be brought to the Supreme Court on *certiorari* by the aggrieved party within thirty days from receipt of a copy thereof.

*Soriano v. COMELEC*<sup>[4]</sup> and *Repol v. COMELEC*<sup>[5]</sup> gave the Court's interpretation of Sec. 7, Article IX-A of the Constitution, thus:

We have interpreted this constitutional provision to mean final orders, rulings and decisions of the COMELEC rendered in the exercise of its adjudicatory or quasi-judicial powers. The decision must be a final decision or resolution of the COMELEC *en banc*. The Supreme Court has no power to review via *certiorari* an interlocutory order or even a final resolution of a Division of the COMELEC. Failure to abide by this procedural requirement constitutes a ground for dismissal of the petition.

However, this rule is not ironclad. In *ABS-CBN Broadcasting Corporation v. COMELEC*, we stated -

This Court, however, has ruled in the past that this procedural requirement [of filing a motion for reconsideration] may be glossed over to prevent a miscarriage of justice, when the issue involves the principle of social justice or the protection of labor, **when the decision or resolution sought to be set aside is a nullity**, or when the need for relief is extremely urgent and *certiorari* is the only adequate and speedy remedy available.<sup>[6]</sup>

The Court holds that direct resort to this Court through a special civil action for *certiorari* is justified in this case since the Resolution sought to be set aside is a nullity. The holding of periodic elections is a basic feature of our democratic government.<sup>[7]</sup> Setting aside the resolution of the issue will only postpone a task that could well crop up again in future elections.<sup>[8]</sup>

In this case, petitioner contends that in *Blanco v. COMELEC*, G.R. No. 122258, he was found only administratively liable for vote-buying in the 1995 elections and was disqualified under Sec. 68 of the Omnibus Election Code, and that he was not disqualified under Sec. 261(a) and Sec. 264 of the Omnibus Election Code since no criminal action was filed against him. He submits that his disqualification was limited only to the 1995 elections and that it did not bar him from running for public office in the succeeding elections.

Petitioner's contention is meritorious.

The Court notes that the Office of the Solicitor General, in its Comment, found this petition meritorious.

Petitioner's disqualification in 1995 in *Blanco v. COMELEC*, G.R. No. 122258, was based on Sec. 68 of the Omnibus Election Code, although the COMELEC, Second Division, pronounced that petitioner violated 261 (a) of the Omnibus Election Code.

Sec. 68 and Sec. 261 (a) of the Omnibus Election Code provide:

Sec. 68. *Disqualifications*. -- Any candidate who, in an action or protest in which he was a party is declared by final decision of 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.<sup>[9]</sup>

Sec. 261. *Prohibited Acts*. -- The following shall be guilty of an election offense:

(a) *Vote-buying and vote-selling*. -- (1) Any person who gives, offers or promises money or anything of value, gives or promises any office or employment, franchise or grant, public or private, or makes or offers to make an expenditure, directly or indirectly, or cause an expenditure to be made to any person, association, corporation, entity, or community in order to induce anyone or the public in general to vote for or against any candidate or withhold his vote in the election, or to vote for or against any aspirant for the nomination or choice of a candidate in a convention or similar selection process of a political party.