

EN BANC

[G.R. NO. 160061, October 11, 2006]

**ENGINEER LEONARDO C. LEYALEY, PETITIONER, VS.
COMMISSION ON ELECTIONS, SARIO N. MALINIAS AND TONY
OPPAS, RESPONDENTS.**

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

This resolves the petition for *certiorari* under Rule 65 in relation to Rule 64 of the 1997 Rules of Civil Procedure assailing two Resolutions of the Commission on Elections *En Banc* (Comelec *En Banc*) dated June 13, 2000 and September 11, 2003.

The undisputed facts, as set out in the COMELEC *En Banc* Resolution dated June 13, 2000, are as follows:

The respondent Leonardo C. Leyaley is the OIC, District Engineer, Mountain Province Engineering District, Bontoc, Mountain Province. In connection with the 11 May 1998 national and local elections, he was indicted for violation of Section 261 (v) of B.P. Blg. 881, otherwise known as the "Omnibus Election Code of the Philippines." In their affidavit-complaint, the complainants Sario M. Malinias and Tony Oppas allege:

That we learned that the Department of Public Works and Highways, Regional Office released to the District Engineer of Mountain Province Engineering District, the amount of FOURTEEN MILLION EIGHT HUNDRED FIVE THOUSAND (P14,805,000.00) PESOS both on May 6, 1998. x x x

That the foregoing amount were allegedly disbursed by the Mountain Province Engineering District, Department of Public Works and Highways on ELECTION PERIOD by O.I.C. District Engineer, Leonardo C. Leyaley;

That we believe that disbursement of Government funds on election period is prohibited by law;

x x x x

The respondent denied the allegations of the complainants. Thus, in his counter-affidavit he said:

I strongly and vehemently deny any liability to the above-stated charges as contained in paragraphs 1 and 2 of the Affidavit-Complaint of Sario Malinias and Tony Oppas.

x x x x

The undersigned counter-affidavit (sic) respectfully maintains his innocence of the election offence (sic) or offences (sic) being imputed against him. The above-stated amounts which were allegedly released to the Mountain Province Engineering District, and disbursed by him in his capacity as officer-in-charge of the said district office are covered by the exemption as above-stated. **While the said amounts of money happened to be release during the election period, the same were used in payment of projects which were awarded after a public bidding before the effectivity of the election ban, forty-five days before May 11, 1998** (Attached hereby are copies of the letters of award). [Emphasis supplied]

Aware of the existence of several projects which were awarded as far back as in 1997 and in 1998, and in line with the government policy of fast-tracking completion of government projects, your counter-affiant requested for an exemption from the Regional Director, COMELEC-CAR and the same was granted. x x x

For all the foregoing reasons, your counter-affiant humbly believes that the election ban as stated in paragraph 3 of the affidavit-complaint does not apply to the alleged payment or disbursement made by the district office for which I am being charge [sic]. Counter-affiant also prays that the request of affiants-complainants for investigation and filing of a case be denied and that the above-entitled case be dismissed."

Thereafter, the complainants filed a reply to the respondent's counter-affidavit, while the respondent filed a rejoinder thereto, after which, the parties submitted with the Law Department their respective memoranda.

On 12 November 1999, the Law Department rendered a resolution, the dispositive portion of which reads as follows:

PREMISES CONSIDERED, the Law Department (Investigation and Prosecution Division), RECOMMENDS to dismiss the complaint of Sario M. Malinias and Tony Oppas against Leonardo C. Leyaley for insufficiency of evidence to establish probable cause for violation of Section 261 (v) of the Omnibus Election Code, and that the parties be notified accordingly.^[1]

The COMELEC *En Banc* disapproved the recommendation of the Law Department, reasoning as follows:

As a rule, the release, disbursement or expenditure of public funds within the forty-five (45) days before a regular election and thirty (30) days before a special election, for any and all kinds of public works is prohibited by law. x x x There are, however, exceptions to this rule, one of which is that, when the work undertaken is by contract though

public bidding. However, under this exception, work undertaken by "takay" or "paquiao" system are not considered as work contract. Thus, Section 261 (v) of the Omnibus Election Code provides as follows:

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

X X X X

(v) Prohibition against release, disbursement or expenditure of public funds. — Any public official or employee including barangay officials and those of government-owned or controlled corporations and their subsidiaries, who, during forty-five days before a regular election and thirty days before a special election, releases, disburses or expends any public funds for:

(1) Any and all kinds of public works, except:

(a) Work undertaken by contract through public bidding held, or by negotiated contract awarded, before the forty-five day period before election: Provided, That work for the purpose of this section undertaken under the so called 'takay' or 'paquiao' system shall not be considered as work contract.

In the present case, the public works projects involved herein were undertaken under the "takay" or "paquiao" system. The Law Department, however, said that "strictly speaking" they are not paquiao projects because they "were first subjected to public bidding" before they "were awarded to the party who tendered a bid that is most advantageous to the government." This is untenable. **Section 261(v) of the Omnibus Election Code, explicitly provides that "work for the purpose of this section undertaken under the so called "takay" or "paquiao" system shall not be considered as work contract." Hence, the mere fact that respondent conducted a public bidding before awarding the public works projects to the successful bidders did not change the nature of the work performed under those projects as "work undertaken under the "takay" or "paquiao" system. They cannot be considered as "work undertaken by contract through public bidding" because under the Code, they are NOT work contracts. Otherwise, the prohibition against the release and disbursement of public funds in payment of work undertaken by the "takay" or "paquiao" system could easily be defeated by simply holding a public bidding.**

Besides, the exemption under the penultimate paragraph of Sec. 261(v) of the Omnibus Election Code is applicable only to "ongoing public works projects commenced before the campaign period." The public works projects in the present case were ALREADY COMPLETED on 29 January 1998, i.e., before the campaign period. Hence, they are no longer "ongoing public works projects." It follows that the exemption provided