

EN BANC

[G.R. No. 147904, October 04, 2002]

NESTOR B. MAGNO, PETITIONER, VS. COMMISSION ON ELECTIONS AND CARLOS C. MONTES, RESPONDENTS.

DECISION

CORONA, J.:

Before this Court is a petition for certiorari under Rule 65 which seeks to annul and set aside the resolution dated May 7, 2001 of the Commission on Elections as well as the resolution dated May 12, 2001 denying petitioner's motion for reconsideration.

This petition originated from a case filed by private respondent on March 21, 2001 for the disqualification of petitioner Nestor Magno as mayoralty candidate of San Isidro, Nueva Ecija during the May 14, 2001 elections on the ground that petitioner was previously convicted by the Sandiganbayan of four counts of direct bribery penalized under Article 210 of the Revised Penal Code. It appears that on July 25, 1995, petitioner was sentenced to suffer the indeterminate penalty of 3 months and 11 days of *arresto mayor* as minimum to 1 year 8 months and 21 days of *prision correccional* as maximum, for each of the four counts of direct bribery. Thereafter, petitioner applied for probation and was discharged on March 5, 1998 upon order of the Regional Trial Court of Gapan, Nueva Ecija.

On May 7, 2001, the Commission on Elections (COMELEC) rendered a decision granting the petition of private respondent and declaring that petitioner was disqualified from running for the position of mayor in the May 14, 2001 elections. In ruling against petitioner, the COMELEC cited Section 12 of the BP 881 or the Omnibus Election Code which provides as follows:

Sec. 12. Disqualifications. – Any person who has been declared by competent authority insane or incompetent, or has been sentenced by final judgment for subversion, insurrection, rebellion or for any offense for which he has been sentenced to a penalty of more than eighteen (18) months, or for a crime involving moral turpitude, shall be disqualified to be a candidate and to hold any office, unless he has been given plenary pardon, or granted amnesty.

The disqualifications to be a candidate herein provided shall be deemed removed upon the declaration by competent authority that said insanity or incompetence had been removed or after the expiration of a period of five years from his service of sentence, unless within the same period he again becomes disqualified.

The above provision explicitly lifts the disqualification to run for an elective office of a person convicted of a crime involving moral turpitude after five (5) years from the service of sentence. According to the COMELEC, inasmuch as petitioner was

considered to have completed the service of his sentence on March 5, 1998, his five-year disqualification will end only on March 5, 2003.

On May 10, 2001, petitioner filed a motion for reconsideration but the same was denied by the COMELEC in its resolution dated May 12, 2001.

Hence, this petition.

Petitioner argues that direct bribery is not a crime involving moral turpitude. Likewise, he cites Section 40 of RA 7160, otherwise known as the Local Government Code of 1991, which he claims is the law applicable to the case at bar, not BP 881 or the Omnibus Election Code as claimed by the COMELEC. Said provision reads:

Section 40. Disqualifications. - The following persons are disqualified from running for any elective local position:

(a) Those sentenced by final judgment for an offense involving moral turpitude or for an offense punishable by one (1) year or more of imprisonment, within two (2) years after serving sentence.

X X X X

Petitioner insists that he had already served his sentence as of March 5, 1998 when he was discharged from probation. Such being the case, the two-year disqualification period imposed by Section 40 of the Local Government Code expired on March 5, 2000. Thus, petitioner was qualified to run in the 2001 elections.

Meanwhile, Sonia Lorenzo was proclaimed by the COMELEC as the duly elected mayor of San Isidro, Nueva Ecija. Thus, on June 19, 2001, petitioner filed a supplemental petition which this Court merely noted in its resolution dated June 26, 2001. In his supplemental petition, petitioner assailed the proclamation of Sonia Lorenzo on the ground that the propriety of his disqualification was still under review by this Court. Petitioner likewise asked this Court to declare him as the duly elected municipal mayor instead of Sonia Lorenzo.

On July 18, 2001, the Solicitor-General filed his manifestation and agreed with petitioner that COMELEC should have applied Section 40 of the Local Government Code.

The main issue is whether or not petitioner was disqualified to run for mayor in the 2001 elections. In resolving this, two sub-issues need to be threshed out, namely: (1) whether the crime of direct bribery involves moral turpitude and (2) whether it is the Omnibus Election Code or the Local Government Code that should apply in this situation.

Regarding the first sub-issue, the Court has consistently adopted the definition in Black's Law Dictionary of 'moral turpitude' as:

"x x x an act of baseness, vileness, or depravity in the private duties which a man owes his fellow men, or to society in general, contrary to the accepted and customary rule of right and duty between man and woman or conduct contrary to justice, honesty, modesty, or good morals."^[1]