

EN BANC

[G.R. No. 137266, December 05, 2001]

ANTONIO M. BERNARDO, ERNESTO A. DOMINGO, JR. AND JESUS C. CRUZ, PETITIONERS, VS. BENJAMIN S. ABALOS, SR., BENJAMIN "BENHUR" D. ABALOS, JR., DR. EDEN C. DIAZ, ROMEO F. ZAPANTA, ARCADIO S. DE VERA AND THE COMMISSION ON ELECTIONS, RESPONDENTS.

DECISION

SANDOVAL-GUTIERREZ, J.:

This is a petition for certiorari^[1] seeking the nullification of Resolution No. 98-3208 of the Commission on Elections (COMELEC) *En Banc* promulgated on December 1, 1998 dismissing the complaint for vote buying filed by petitioners against respondents.

On April 21, 1998, petitioners Antonio M. Bernardo, Ernesto A. Domingo, Jr. and Jesus C. Cruz filed with the COMELEC a criminal complaint against respondents Benjamin S. Abalos, Sr., Benjamin C. Abalos, Jr., Dr. Eden C. Diaz, Romeo Zapanta and Arcadio de Vera for vote buying in violation of Section 261, paragraphs (a), (b) and (j) of the Omnibus Election Code (OEC), in relation to Section 28 of Republic Act 6646 and Section 68 of the OEC. The complaint, docketed as E.O. Case No. 98-110, ^[2] alleged that:

1. On April 14, 1998 (Tuesday), respondent Mandaluyong City Mayor Benjamin S. Abalos, Sr., and his son respondent Benjamin "Benhur" C. Abalos, Jr., candidate for City Mayor of the same city in the May 11, 1998 elections, conspiring with respondents Dr. Eden C. Diaz, Schools Division Superintendent, Romeo F. Zapanta, Assistant Schools Division Superintendent, and Arcadio de Vera, President, Mandaluyong Federation of Public School Teachers, sponsored, arranged and conducted an all-expense-free transportation, food and drinks affair for the Mandaluyong City public school teachers, registered voters of said city, at the Tayabas Bay Beach Resort, Sariaya, Quezon Province.
2. Among the identified public school teachers present, brought in around twelve (12) buses, were Corazon Mayoya, Principal of Highway Hills Elementary School, her Assistant Principal and Mr. Dante del Remigio; Mrs. Diaz, Principal of Mandaluyong City High School and Mr. Alvia; Mrs. Parillo, Andres Bonifacio Elementary School; Mrs. Gregoria Ignacio, Principal of Doña Pilar Gonzaga Elementary School and Mrs. Bolantes; Mrs. Diaz, Principal, Nueve de Febrero Elementary School; Ms. Magsalin, Principal of Mandaluyong Science High School and Mrs. Rita Bondayril; Mrs. De

Vera, Fabella Elementary School; Ms. Anselmo, Principal of Isaac Lopez Elementary School and Mrs. Fayton; Mrs. Sylvia Liwanag, District Supervisor, District II, Mrs. Nalaonan, Principal of Amado T. Reyes Elementary School; Mrs. Teresita Vicencio, Mandaluyong City Elementary School; Officers of the Mandaluyong Federation of Public School Teachers namely: Mrs. Erlinda Ilagan, Treasurer; Ms. Nancy de Leon, Auditor; Ms. Fortunata Gondran, PRO; Mr. Nenito Pumariga, Business Manager; Mr. Jose Guerrero, Sgt.-at-arms; and Board Members Ms. Virginia Carillo, Ms. Wilma Fernandez, Mr. Arturo Morales and Mr. Teddy Angeles.

3. During the whole-day affair, the background music loudly and repeatedly played over the sound system was the political jingle advertisement of Mandaluyong City candidate for Mayor, Benjamin "Benhur" Abalos, Jr., sang to the tune of the song 'SHA LALA LALA'.
4. Some of the participants wore T-shirts with the name of candidate "Benhur" Abalos, Jr., printed in over-sized colored letters.
5. Mayor Benjamin Abalos, Sr. delivered a speech wherein he offered and promised the Mandaluyong City public school teachers and employees a "hazard" pay of P1,000.00, and increasing their allowances from P1,500.00 to P2,000.00 for food, or with a total of P3,000.00 which they will get by the end of the month.
6. The offers and promises to said public school teachers, who are members of the Board of Election Inspectors of Mandaluyong City and registered voters thereat, were made a few weeks before the election to induce or unduly influence the said teachers and the public in general (the other guests) to vote for the candidacy of Benjamin "Benhur" Abalos, Jr..
7. The offers and promises of Mayor Abalos, Sr., and the enthusiastic acceptance of said monetary increase of allowances by the public school teachers and employees of Mandaluyong City, is a violation of Section 261 pars. (a), (b) and (j) of the Omnibus Election Code against vote-buying and vote-selling.^[3]

The Director^[4] of the Law Department of the COMELEC conducted a preliminary investigation. All the private respondents filed separate counter-affidavits^[5] with prayer to dismiss the complaint.

On November 26, 1998, the Director of the Law Department submitted his findings to the COMELEC *En Banc* recommending that the complaint be dismissed for insufficiency of evidence.

On December 1, 1998, the COMELEC *En Banc* issued the assailed Resolution No. 98-3208^[6] dismissing the complaint "for insufficiency of evidence to establish a *prima facie* case,"

"Considering that this complaint, being criminal in nature, must have all its allegations supported by direct, strong, convincing and indubitable