

EN BANC

[G.R. No. 136587, August 30, 1999]

**ERNESTO "BIBOT" A. DOMINGO, JR., PETITIONER, VS.
COMMISSION ON ELECTIONS AND BENJAMIN "BENHUR" D.
ABALOS, JR., RESPONDENTS.**

D E C I S I O N

GONZAGA-REYES, J.:

Assailed in this special civil action for *certiorari* are the *En Banc* Resolution of the Commission on Elections ("COMELEC"), dated December 1, 1998,^[1] and the Resolution of the COMELEC First Division, dated July 2, 1998,^[2] in SPA No. 98-361, which dismissed, for lack of merit, the petition for disqualification filed against herein private respondent, the incumbent mayor of Mandaluyong City.

In the May 11, 1998 elections, petitioner Ernesto Domingo, Jr. and private respondent Benjamin Abalos, Jr. were both mayoralty candidates of Mandaluyong City. After private respondent's proclamation on May 17, 1998, petitioner filed the instant petition for disqualification, on the ground that, during the campaign period, private respondent "prodded" his father, then incumbent Mandaluyong City Mayor Benjamin Abalos, Sr., to give "substantial allowances" to public school teachers appointed as chairpersons and members of the Boards of Election Inspectors ("BEIs") for Mandaluyong City.

Petitioner's allegations obtain from an incident on April 14, 1998, wherein, in a "Pasyal-Aral" outing for Mandaluyong City public school teachers in Sariaya, Quezon, then Mayor Benjamin Abalos, Sr. announced that the teachers appointed to the BEIs will each be given a hazard pay of P1,000.00 and food allowance of P500.00, in addition to the allowance of P1,500.00.^[3] In the petition for disqualification filed before the COMELEC First Division, petitioner charged that private respondent's influence over his father on this matter was evident from the following declaration of father Abalos, Sr.:

Your President [referring to Mr. Alfredo de Vera, President of the Federation of Mandaluyong Public School Teachers], together with Benhur, *walang tigil `yan kakapunta sa akin* at not because he is my son *siya ang nakikipag-usap sa kanila* and came up with a beautiful compromise. xxx^[4]

As alleged by petitioner, the foregoing statement was revealing of how private respondent "prodded" his father, then Mayor Abalos, Sr., to award "substantial allowances" to the public school teachers who will assume seats in the BEIs in the May 11, 1998 elections, as to influence them into voting for him and ensuring his victory.

Mayor Abalos, Sr.'s speech, as well, as other activities in the aforesaid "Pasyal-Aral" outing, were recorded on videotape per instructions of Mr. Perfecto Doroja, an "associate" of petitioner.^[5] In addition to the videotape, petitioner also submitted photographs of a streamer, hung at the entrance of the Tayabas Bay Beach Resort, Sariaya, Quezon, declaring Mayor Benjamin S. Abalos, Sr. as co-sponsor of the "Pasyal-Aral",^[6] as well as affidavits of three public school teachers who participated in the said activity.^[7]

Petitioner alleges that private respondent's act of "prodding" his father, then incumbent mayor Benjamin S. Abalos, Sr., to give "substantial allowances" to the Mandaluyong City public school teachers constitutes a violation of Section 68 of the Omnibus Election Code, the pertinent provisions of which read:

Sec. 68. *Disqualifications.* - Any candidate who, in an action or protest in which he is 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; xxx shall be disqualified from continuing as a candidate, or if he has been elected, from holding the office. xxx

In dismissing the petition for disqualification for insufficiency of evidence and lack of merit, the COMELEC First Division admonished petitioner and his counsel for attempting to mislead the COMELEC by making false and untruthful statements^[8] in his petition. On reconsideration, the COMELEC, *En Banc*, affirmed the findings and conclusions of its First Division.

Before us, petitioner assails the Resolutions of public respondent COMELEC for being violative of his right to due process, and thus, issued with grave abuse of discretion. It is petitioner's argument that the dismissal of his petition for disqualification on the ground of insufficiency of evidence was unfounded, considering that no hearing on the merits was conducted by public respondent on the matter.

Petitioner next contends that grave abuse of discretion was likewise attendant in public respondent's act of dismissing the petition for disqualification for insufficiency of evidence, despite the "overwhelming" pieces of evidence of petitioner, consisting of the video cassette, pictures and affidavits, which were "not denied" by private respondent.^[9] Petitioner further decries the fact that private respondent presented "no evidence" to substantiate his defense, while all the pieces of evidence that he submitted in his petition for disqualification were strong enough to prove violation by private respondent of Section 68 of the Omnibus Election Code.^[10]

Before touching on the merits, we shall first resolve the procedural matters raised by private respondent; namely, forum-shopping and failure to file this petition on time.

It is not disputed that, in addition to the petition for disqualification, petitioner also filed a criminal complaint^[11] and an election protest *ex abundante cautela*^[12] with public respondent COMELEC. Private respondent contends that, inasmuch as the petition for disqualification and the complaint for election offense involve the same issues and charges, *i.e.*, vote-buying, exerting undue influence on BEI

members, petitioner should be held liable for forum-shopping.

We rule to the contrary. Forum-shopping exists when the petitioner files multiple petitions or complaints involving the same issues in two or more tribunals or agencies.^[13] The issues in the two cases are different. The complaint for election offense is a criminal case which involves the ascertainment of the guilt or innocence of the accused candidate and, like any other criminal case, requires a conviction on proof beyond reasonable doubt.^[14] A petition for disqualification, meanwhile, requires merely the determination of whether the respondent committed acts as to merit his disqualification from office, and is done through an administrative proceeding which is summary in character and requires only a clear preponderance of evidence.^[15]

Next, petitioner admits receiving a copy of the assailed COMELEC First Division Resolution on July 13, 1998. He also admits filing a motion for reconsideration of the said COMELEC First Division Resolution on July 20, 1998. A copy of the assailed COMELEC *En Banc* Resolution dated December 1, 1998 was received by petitioner on December 4, 1998. Under Section 3, Rule 64 of the Revised Rules of Court, petitions for *certiorari* from orders or rulings of the COMELEC

shall be filed within thirty (30) days from notice of the judgment or final order or resolution sought to be reviewed. The filing of a motion for new trial or reconsideration of the said judgment or final order or resolution xxx shall interrupt the period herein fixed. If the motion is denied, the aggrieved party may file the petition within the remaining period, but which shall not be less than five (5) days in any event, reckoned from notice of denial.

Section 4 of Rule 19 of the COMELEC Rules of Procedure likewise provides:

Effect of motion for reconsideration on period to appeal. - A motion to reconsider a decision, resolution, order or ruling when not *pro-forma*, suspends the running of the period to elevate the matter to the Supreme Court.

Inasmuch as the filing of a motion for reconsideration interrupts the 30-day period within which to file a petition for *certiorari* with this Court, petitioner has effectively consumed seven days of the abovestated 30-day period when he filed his motion for reconsideration. Thus, as correctly pointed out by private respondent, when petitioner received a copy of the assailed COMELEC *En Banc* Resolution, he only had 23 days from December 4, 1998, the date when he received the COMELEC *En Banc* Resolution, or until December 27, 1998^[16], to file the instant petition for *certiorari*. This petition was filed on January 4, 1999.

In any event, whether the petition was filed on time or not, an examination of the records leaves us satisfied that public respondent COMELEC did not commit grave abuse of discretion in dismissing the petition for disqualification.

First, on the issue of due process, we find no violation thereof when public respondent COMELEC decided to dismiss the petition for disqualification without hearing. Well-established is the rule that the essence of due process is simply an opportunity to be heard.^[17] In *Zaldivar vs. Sandiganbayan*^[18], cited in the recent

case of *Bautista vs. COMELEC*^[19], we held that the right to be heard does not only refer to the right to present verbal arguments in court. A party may also be heard through his pleadings. Where opportunity to be heard is accorded, either through oral arguments or pleadings, there is no denial of procedural due process.

Furthermore, the filing by petitioner of a motion for reconsideration accorded him ample opportunity to dispute the findings of the COMELEC First Division, so that he was as fully heard as he might have been had oral arguments actually taken place. Deprivation of due process cannot be successfully invoked where a party was given the chance to be heard in his motion for reconsideration.^[20]

Next, petitioner re-asserts before us the sufficiency of his evidence to prove that private respondent influenced the Mandaluyong City public school teachers, through his father, Abalos, Sr., in the performance of their functions as members of the BEIs.

Petitioner's evidence fails to persuade. First, the affidavits of the three teachers who participated in the controversial "Pasyal-Aral" do not contain anything but the following bare declarations: (1) that they heard Abalos, Sr. promise that he will give hazard pay of P1,000.00 and food allowance of P500.00, in addition to the regular living allowance of P1,500.00, and (2) that, before the May 11, 1998 elections they each received P1,500.00, or half of the total allowances promised by Abalos, Sr. in his speech. Nothing in these affidavits suggests, let alone sets out, knowledge on any degree of participation of private respondent in the grant of these allowances. The name of private respondent was not even mentioned or alluded to by any of the three affiants.

Petitioner also submitted photographs taken of the streamer at the entrance of the Tayabas Bay Beach Resort, welcoming the participants to the "Pasyal-Aral" and declaring the Mandaluyong City School Board and then mayor Abalos, Sr. as co-sponsors of the affair. Since by law, the mayor is a co-chairman of the City School Board^[21], we find nothing unusual in his having co-sponsored the said event. We fail to see the connection between these pictures and the alleged influence wielded by private respondent on the public school teachers of Mandaluyong City.

Yet it is upon the videotape recordings that petitioner lays much reliance on, in proving his case for disqualification. The recordings are supposed to document how former mayor Abalos, Sr. announced that his son, private respondent herein, prodded his father to release substantial allowances to teachers who will act as members of the BEIs. As found by the COMELEC First Division, the name uttered in the announcement was not "Benhur", private respondent's nickname and what petitioner alleged was uttered, but "Lito Motivo", a name which truly sounded unlike "Benhur".^[22] Also, when the COMELEC, through its First Division, viewed the videotape submitted by petitioner, "the speech of Mayor Abalos, Sr. was cut and so (they) also did not see and hear that part of Mayor Abalos, Sr.'s speech allegedly uttered by him."^[23]

In the Petition, petitioner's counsel admitted that the assailed quotation in the petition for disqualification was based on an "erroneous transcript" of the speech which was prepared by somebody else, and which he in turn failed to verify for errors. However, he denies having intended to mislead the COMELEC with the inclusion of this statement, but instead submits that the word "Benhur" was