

EN BANC

[G.R. No. 125629, March 25, 1998]

MANUEL C. SUNGA, PETITIONER, VS. COMMISSION ON ELECTIONS AND FERDINAND B. TRINIDAD, RESPONDENTS.

DECISION

BELLOSILLO, J.:

This petition for *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure seeks to annul and set aside, for having been rendered with grave abuse of discretion amounting to lack or excess of jurisdiction, the 17 May 1996 Resolution of the COMELEC 2nd Division in *Sunga v. Trinidad*, SPA No. 95-213,^[1] dismissing the petition for disqualification against private respondent Ferdinand B. Trinidad pursuant to COMELEC Resolution No. 2050 promulgated 3 November 1988, as amended by COMELEC Resolution No. 2050-A promulgated 8 August 1990, and 30 July 1996 Resolution of the COMELEC En Banc affirming the 17 May 1996 Resolution of the COMELEC 2nd Division.

Petitioner Manuel C. Sunga was one of the candidates for the position of Mayor in the Municipality of Iguig, Province of Cagayan, in the 8 May 1995 elections. Private respondent Ferdinand B. Trinidad, then incumbent mayor, was a candidate for re-election in the same municipality.

On 22 April 1995 Sunga filed with the COMELEC a letter-complaint^[2] for disqualification against Trinidad, accusing him of using three (3) local government vehicles in his campaign, in violation of Sec. 261, par. (o), Art. XXII, of BP Blg. 881 (Omnibus Election Code, as amended). On 7 May 1995, Sunga filed another letter-complaint^[3] with the COMELEC charging Trinidad this time with violation of Sec. 261, par. (e) (referring to threats, intimidation, terrorism or other forms of coercion) of the Omnibus Election Code, in addition to the earlier violation imputed to him in the first letter-complaint. This was followed by an Amended Petition^[4] for disqualification consolidating the charges in the two (2) letters-complaint, including vote buying, and providing more specific details of the violations committed by Trinidad. The case was docketed as SPA No. 95-213.

In a Minute Resolution dated 25 May 1995,^[5] the COMELEC 2nd Division referred the complaint to its Law Department for investigation. Hearings were held wherein Sunga adduced evidence to prove his accusations. Trinidad, on the other hand, opted not to submit any evidence at all.

Meanwhile, the election results showed that Trinidad garnered the highest number of votes, while Sunga trailed second.

On 10 May 1995 Sunga moved for the suspension of the proclamation of Trinidad. However, notwithstanding the motion, Trinidad was proclaimed the elected mayor,

prompting Sunga to file another motion to suspend the effects of the proclamation. Both motions were not acted upon by the COMELEC 2nd Division.

On 28 June 1995 the COMELEC Law Department submitted its Report^[6] to the COMELEC En Banc recommending that Trinidad be charged in court for violation of the following penal provisions of the Omnibus Election Code: (a) Sec. 261, par. (a), on vote buying; (b) Sec. 261, par. (e), on threats, intimidation, terrorism or other forms of coercion; and, (c) Sec. 261, par. (o), on use of any equipment, vehicle owned by the government or any of its political subdivisions. The Law Department likewise recommended to recall and revoke the proclamation of Ferdinand B. Trinidad as the duly elected Mayor of Iguig, Cagayan; proclaim Manuel C. Sunga as the duly elected Mayor; and, direct Sunga to take his oath and assume the duties and functions of the office.

The COMELEC En Banc approved the findings of the Law Department and directed the filing of the corresponding informations in the Regional Trial Court against Trinidad. Accordingly, four (4) informations^[7] for various elections offenses were filed in the Regional Trial Court of Tuguegarao, Cagayan. The disqualification case, on the other hand, was referred to the COMELEC 2nd Division for hearing.

On 2 May 1996 Sunga filed a Second Urgent Motion to Suspend the Effects and Annul the Proclamation with Urgent Motion for Early Resolution of the Petition. But in its 17 May 1996 Resolution, the COMELEC 2nd Division dismissed the petition for disqualification, holding in its Resolution No. 2050 that –

1. Any complaint for disqualification of a duly registered candidate based upon any of the grounds specifically enumerated under Sec. 68 of the Omnibus Election Code, filed directly with the Commission before an election in which respondent is a candidate, shall be inquired into by the Commission for the purpose of determining whether the acts complained of have in fact been committed x x x x

In case such complaint was not resolved before the election, the Commission may *motu proprio*, or on motion of any of the parties, refer the complaint to the Law Department of the Commission as the instrument of the latter in the exercise of its exclusive power to conduct a preliminary investigation of all cases involving criminal infractions of the election laws x x x x

2. Any complaint for disqualification based on Sec. 68 of the Omnibus Election Code in relation to Sec. 6 of Republic Act No. 6646 filed after the election against a candidate who has already been proclaimed as a winner shall be dismissed as a disqualification case. However, the complaint shall be referred for preliminary investigation to the Law Department of this Commission.

Where a similar complaint is filed after election but before proclamation of the respondent candidate, the complaint shall, nevertheless, be dismissed as a disqualification case. However, the complaint shall be referred for preliminary investigation to the Law Department. If, before proclamation, the Law Department makes a *prima facie* finding of guilt and the corresponding information has been filed with the appropriate trial court, the complainant may file a petition for suspension of the proclamation of the respondent with the court before which the criminal case is pending and said court may order the suspension of the proclamation if the evidence of guilt is strong.

As interpreted in the case of *Silvestre v. Duavit*, SPA 94-003, Resolution No. 2050 provides for the outright dismissal of the disqualification case in three cases: (1) The disqualification case was filed before the election but remains unresolved until after the election; (2) The disqualification case was filed after the election and before the proclamation of winners; and (3) The disqualification case was filed after election and after proclamation.

If the instant case is deemed to have been filed upon receipt by the COMELEC of the letter-complaint on April 26 1995, it nevertheless remained pending until after the election. If it is deemed to have been filed upon filing of the amended petition on 11 May 1995, it was clearly filed after the election. In either case, Resolution No. 2050 mandates the dismissal of the disqualification case.

His motion for reconsideration having been denied by the COMELEC En Banc, Sunga filed the instant petition contending that the COMELEC committed grave abuse of discretion in dismissing the petition for disqualification in that: first, Sec. 6 of RA No. 6646 requires the COMELEC to resolve the disqualification case even after the election and proclamation, and the proclamation and assumption of office by Trinidad did not deprive the COMELEC of its jurisdiction; second, COMELEC Resolution No. 2050 is null and void as it contravenes Sec. 6 of R.A. No. 6646; third, the fact that COMELEC authorized the filing of four (4) informations against private respondent for violation of the penal provisions of the Omnibus Election Code shows more than sufficient and substantial evidence to disqualify Trinidad, and he should have been so disqualified; and fourth, since Trinidad was a disqualified candidate, it is as if petitioner was the only candidate entitled to be proclaimed as the duly elected mayor.

In his 17-page Comment and Manifestation dated 3 December 1996, the Solicitor General concurred with petitioner's arguments.

Private respondent, on the other hand, postulates *inter alia* that Sunga's letters-complaint of 22 April 1995 and 7 May 1995 were not petitions for disqualification because no filing fee was paid by Sunga; the letters-complaint were never docketed by the COMELEC; and, no summons was ever issued by the COMELEC and private respondent was not required to answer the letters-complaint. It was only on 13 May 1995 when petitioner filed the so-called Amended Petition, docketed for the first time as SPA No. 95-213. Thus, the COMELEC correctly dismissed the disqualification case for having been filed only after the 8 May 1995 elections and the proclamation of private respondent on 10 May 1995, pursuant to COMELEC Resolution No. 2050.

COMELEC filed its Comment on 21 April 1997 relying heavily on Resolution No. 2050 and the *Silvestre v. Duavit*^[8] ruling in support of the dismissal of the disqualification case. The COMELEC insisted that the outright dismissal of a disqualification case was warranted under any of the following circumstances: (a) the disqualification case was filed before the election but was still pending (unresolved) after the election; (b) the disqualification case was filed after the election but before the proclamation of the winner; and, (c) the disqualification case was filed after the election and after the proclamation of the winner.

The issue in this case is whether the COMELEC committed grave abuse of discretion when it dismissed the disqualification case against private respondent Trinidad.

The petition is partly meritorious.

We find private respondent's arguments on the propriety of the letters-complaint puerile. COMELEC itself impliedly recognized in its Resolution that the petition was filed before the 8 May 1995 election in the form of letters-complaint, thus –

This case originally came to the attention of this Commission on 26 April 1995 in a form of letter from petitioner accusing respondent of utilizing government properties in his campaign and praying for the latter's immediate disqualification. Another letter dated 7 May 1995 and addressed to the COMELEC Regional Director of Region II reiterated petitioner's prayer while alleging that respondent and his men committed acts of terrorism and violated the gun ban. Finally, on 11 May 1995, an Amended Petition was filed with the Clerk of Court of the Commission containing substantially the same allegations as the previous letters but supported by affidavits and other documentary evidence.

That the Amended Petition was filed only on 11 May 1995, or after the elections, is of no consequence. It was merely a reiteration of the charges filed by petitioner against private respondent on 26 April 1995 and 7 May 1995 or before the elections. Consequently, the Amended Petition retroacted to such earlier dates. An amendment which merely supplements and amplifies facts originally alleged in the complaint relates back to the date of the commencement of the action and is not barred by the statute of limitations which expired after the service of the original complaint.^[9]

The fact that no docket fee was paid therefor was not a fatal procedural lapse on the part of petitioner. Sec. 18, Rule 42, of the COMELEC Rules of Procedure provides, "If the fees above described are not paid, the Commission may refuse to take action thereon until they are paid and may dismiss the action or proceeding." The use of the word "may" indicates that it is permissive only and operates to confer a discretion on the COMELEC whether to entertain the petition or not in case of non-payment of legal fees. That the COMELEC acted on and did not dismiss the petition outright shows that the non-payment of fees was not considered by it as a legal obstacle to entertaining the same. Be that as it may, the procedural defects have been cured by the subsequent payment of docket fees, and private respondent was served with summons, albeit belatedly, and he submitted his answer to the complaint. Hence, private respondent has no cause to complain that no docket fee was paid, no summons served upon him, or that he was not required to answer.

Neither do we agree with the conclusions of the COMELEC. We discern nothing in COMELEC Resolution No. 2050 declaring, ordering or directing the dismissal of a disqualification case filed before the election but which remained unresolved after the election. What the Resolution mandates in such a case is for the Commission to refer the complaint to its Law Department for investigation to determine whether the acts complained of have in fact been committed by the candidate sought to be disqualified. The findings of the Law Department then become the basis for disqualifying the erring candidate. This is totally different from the other two situations contemplated by Resolution No. 2050, i.e., a disqualification case filed after the election but before the proclamation of winners and that filed after the election and the proclamation of winners, wherein it was specifically directed by the same Resolution to be dismissed as a disqualification case.

Moreover, Resolution No. 2050 as interpreted in *Silvestre v. Duavit* infringes on Sec. 6 of RA No. 6646,^[10] which provides: