



Republic of the Philippines  
**Supreme Court**  
 Manila

**EN BANC**

**GOV. EXEQUIEL B. JAVIER,**  
 Petitioner,

**G.R. No. 215847**

Present:

SERENO, *C.J.*,  
 CARPIO,  
 VELASCO, JR.,\*  
 LEONARDO-DE CASTRO,  
 BRION,  
 PERALTA,\*  
 BERSAMIN,\*  
 DEL CASTILLO,\*  
 VILLARAMA, JR.,  
 PEREZ,  
 MENDOZA  
 REYES,  
 PERLAS-BERNABE,  
 LEONEN, and  
 JARDELEZA, *JJ.*

- versus -

**COMMISSION ON ELECTIONS,**  
**CORNELIO P. ALDON, and**  
**RAYMUNDO T. ROQUERO,**  
 Respondents.

Promulgated:  
 January 12, 2016

X-----  
*[Signature]*

**DECISION**

**BRION, J.:**

This is a petition for *certiorari* under Rule 65 in relation to Rule 64 of the Rules of Court, filed to challenge the January 12, 2015 *per curiam* order of the Commission on Elections (*COMELEC/The Commission*) *en banc* in **SPA No. 13-254 (DC)**.<sup>1</sup> The Commission granted the petition to disqualify the petitioner Exequiel Javier and to annul his proclamation as the duly elected governor of Antique.

\* No Part.  
<sup>1</sup> *Rollo*, pp. 10-42, 51-55, 63-82.

*[Handwritten mark]*

### THE ANTECEDENTS

On December 3, 1985, the Batasang Pambansa enacted the Omnibus Election Code (*Election Code*).<sup>2</sup> **Section 261(d) and (e)** of this Code prescribe the following elements of coercion as an election offense:

**Section 261. Prohibited Acts.** –The following shall be guilty of an election offense: x x x

**(d) Coercion of subordinates.** –

(1) Any **public officer**, or any officer of any public or private corporation or association, or any head, superior, or administrator of any religious organization, or any employer or landowner who **coerces or intimidates or compels, or in any manner influence, directly or indirectly, any of his subordinates** or members or parishioners or employees or house helpers, tenants, overseers, farm helpers, tillers, or lease holders **to aid, campaign or vote for or against any candidate or any aspirant** for the nomination or selection of candidates.

(2) Any **public officer** or any officer of any commercial, industrial, agricultural, economic or social enterprise or public or private corporation or association, or any head, superior or administrator of any religious organization, or any employer or landowner who **dismisses or threatens to dismiss, punishes or threatens to punish** by reducing his salary, wage or compensation, or by demotion, transfer, **suspension**, separation, excommunication, ejection, or causing him annoyance in the performance of his job or in his membership, **any subordinate member or affiliate, parishioner, employee or house helper, tenant, overseer, farm helper, tiller, or lease holder, for disobeying or not complying with any of the acts ordered by the former to aid, campaign or vote for or against any candidate, or any aspirant for the nomination or selection of candidates.**

(e) Threats, intimidation, terrorism, use of fraudulent device or other forms of coercion. – Any person who, directly or indirectly, threatens, intimidates or actually causes, inflicts or produces any violence, injury, punishment, damage, loss or disadvantage upon any person or persons or that of the immediate members of his family, his honor or property, or uses any fraudulent device or scheme to compel or induce the registration or refraining from registration of any voter, or the participation in a campaign or refraining or desistance from any campaign, or the casting of any vote or omission to vote, or any promise of such registration, campaign, vote, or omission therefrom. (emphases supplied)

Coercion, as an election offense, is punishable by imprisonment of not less than one year but not more than six years.<sup>3</sup> Notably, Section 68 of the Election Code provides that the Commission may administratively disqualify a candidate who violates Section 261(d) or (e).

<sup>2</sup> Batas Pambansa (B.P.) Blg. 881, (1985).

<sup>3</sup> Sec. 264, Election Code.

On February 20, 1995, Congress enacted Republic Act No. 7890 amending the definition of Grave Coercion under the Revised Penal Code.<sup>4</sup> It increased the penalty for coercion committed in violation of a person's right to suffrage to *prision mayor*. Further, Section 3 of R.A. 7890 expressly repealed Section 26, paragraphs (d)(1) and (2) of the Election Code.

On April 3, 2012, COMELEC issued **Resolution No. 9385**<sup>5</sup> fixing the calendar of activities for the May 2013 elections. The resolution set the election period from January 13, 2013 until June 12, 2013.

On September 3, 2012, Valderrama Municipal Vice-Mayor Christopher B. Maguad filed an administrative complaint for Gross Misconduct/Dereliction of Duty and Abuse of Authority against Valderrama Mayor Mary Joyce U. Roquero (*Mayor Roquero*). This complaint was docketed as Administrative Case No. 05-2012.

On November 9, 2012, the Sangguniang Panlalawigan (*SP*) issued **Resolution No. 291-2012** recommending to Antique Governor Exequiel Javier (*Gov. Javier*) the preventive suspension of Mayor Roquero.

On November 21, 2012, Mayor Roquero filed a petition for *certiorari* and prohibition with prayer for the issuance of a temporary restraining order (*TRO*) before the Regional Trial Court (*RTC*), Branch 12, Antique, against Gov. Javier and the members of the SP to restrain them from proceeding with Administrative Case No. 05-2012. The petition was docketed as **Special Civil Action No. 12-11-86**.

The case was re-raffled to the RTC, Branch 11 which issued a writ of preliminary injunction.

Gov. Javier, Vice-Governor Dimamay, and the members of the SP filed a petition for *certiorari* with urgent prayer for TRO and preliminary injunction before the CA, docketed as CA-G.R. SP-07307.

On December 18, 2012, COMELEC issued **Resolution No. 9581**<sup>6</sup> prohibiting any public official from suspending any elective provincial, city, municipal, or barangay officer during the election period for the May 13, 2013 elections. This resolution implements Section 261 (x)<sup>7</sup> of the Election Code.

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<sup>4</sup> An Act Amending Article 286, Section Three, Chapter Two, Title Nine of Act No. 3815, as Amended, Otherwise Known as the Revised Penal Code.

<sup>5</sup> Calendar of Activities and Periods of Certain Prohibited Acts in Connection with the May 13, 2013 National and Local Elections.

<sup>6</sup> In the Matter of Enforcing the Prohibitions Against Appointment or Hiring of New Employees, Creating or Filling of New Positions, Giving Any Salary Increase or Transferring or Detailing Any Officer or Employee in the Civil Service and Suspension of Elective Local Officials, in Connection with the May 13, 2013 Automated Synchronized National, Local and ARMM Regional Elections.

<sup>7</sup> Section 261. **Prohibited Acts** - the following shall be guilty of an election offense:

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(x) *Suspension of elective provincial, city, municipal or barangay officer* –The provisions of law to the contrary notwithstanding during the election period, any public official who suspends,

On January 15, 2013, the CA issued a TRO in CA-G.R. SP-07307.

On January 16, 2013, the RTC, Branch 11 promulgated its judgment granting *certiorari* and prohibition. It ordered the SP to cease and desist from further proceeding with Administrative Case No. 05-2012. It likewise ordered Gov. Javier to refrain from implementing **SP Resolution No. 291-2012** and from preventively suspending Mayor Roquero.

On January 23, 2013, Gov. Javier issued **Executive Order No. 003, S. 2013**, preventively suspending Mayor Roquero for thirty (30) days.

On February 7, 2013, the SP of Antique issued a decision finding Mayor Roquero guilty of **Grave Misconduct in relation with Section 3(e) of R. A. 3019, the Anti-Graft and Corrupt Practices Act, and Grave Abuse of Authority** in relation with Section 5(e) of R.A. No. 6713. The SP suspended her for four (4) months.

Mayor Roquero filed an Election Offense complaint against Gov. Javier for violating Section 261(x) of the Election Code. The case was filed before the COMELEC Law Department and docketed as **Election Offense Case (EOC) No. 13-025**.

Meanwhile (or on March 15, 2013), the CA granted the writ of preliminary injunction filed by Gov. Javier, et al., in CA-G.R. SP-07307. It enjoined Judge Nery Duremdes of the RTC, Branch 11 from conducting further proceedings in SPL Civil Action No. 12-11-86.

On March 22, 2013, private respondents Cornelio P. Aldon (*Aldon*) and Raymundo T. Roquero (*Roquero*) also filed a petition for disqualification before the Commission against Gov. Javier, Vice-Governor Rosie A. Dimamay, and the other members of the SP. The case was docketed as COMELEC **Special Action (SPA) No. 13-254 (DC)**.

Aldon and Roquero sought to disqualify Gov. Javier and the other incumbent officials from running in the 2013 elections on the ground that the latter committed the election offenses of **Coercion of Subordinates** [Sec. 261(d)] and **Threats, Intimidation, Terrorism x x x or Other Forms of Coercion** [Sec. 261(e)] by suspending Mayor Roquero. They alleged that the suspension was political harassment calculated to intimidate the Roqueros into backing out of the 2013 elections.<sup>8</sup>

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without prior approval of the Commission, any elective provincial, city, municipal or barangay officer, unless said suspension be for purposes of applying the Anti-Graft and Corrupt Practices Act in relation to the suspension and removal of elective officials; in which case the provision of this section shall be inapplicable.

<sup>8</sup> Aldon and Roquero were members of the United Nationalist Alliance (*UNA*) Coalition while Gov. Javier and the SP members belonged to the Liberal Party. Aldon was the candidate for governor running against Gov. Javier. On the other hand, Roquero, the husband of suspended Mayor Roquero, was running against Congressman Paolo Everardo S. Javier, the son of Gov. Javier, for a seat in the House of Representatives.

On April 29, 2013, the Clerk of the Commission conducted a conference hearing between the parties.

On April 30, 2013, Gov. Javier (together with the SP Members) filed a motion to dismiss with answer *ex abundante ad cautelam*.

After the May 13, 2013 Elections, only Gov. Javier and SP Members Tobias M. Javier, Edgar D. Denosta, Teopisto C. Estaris, Jr., and Victor R. Condez were proclaimed winners. Hence, the Commission considered the disqualification cases against the losing candidates moot.

On October 3, 2014, the COMELEC Second Division issued a resolution in **SPA No. 13-254 (DC)** disqualifying Gov. Javier and annulling his proclamation as the Governor of Antique. The resolution was penned by Commissioner Elias R. Yusoph.

The COMELEC held that the preventive suspension of Mayor Roquero under **Executive Order No. 003** violated the election period ban because it was not for the purpose of applying the Anti-Graft and Corrupt Practices Act. It also considered the Commission's findings in **EOC No. 13-025** that there was substantial evidence showing that Gov. Javier acted in bad faith when he suspended Mayor Roquero as a form of punishment for opposing him.<sup>9</sup>

The COMELEC ruled that Gov. Javier's act of preventively suspending Mayor Roquero during the election period ban *fell within the contemplation of Section 261(d) of the Election Code, which is a ground for disqualification under Section 68*. It held that while Section 261(d) of the Election Code was repealed by Republic Act No. 7890, it did not remove coercion "as a ground per se for disqualification under [Section] 68." In fact, R.A. 7890 made Coercion (an election offense) a felony with a higher penalty.<sup>10</sup> The COMELEC added that the general repealing clause of R.A. No. 7890 cannot impliedly repeal Section 68 because the latter was "not absolutely and irreconcilably incompatible with Article 286."<sup>11</sup>

Commissioner Luie Tito F. Guia dissented from the resolution. Commissioner Guia reasoned that the legal basis to dismiss Gov. Javier no longer exists because Section 3 of Republic Act No. 7890 had repealed Section 261(d) of the Election Code. Commissioner Arthur D. Lim took no part in the vote because he did not participate in the deliberations.

With the votes tied at 1-1-1 (one voted to grant, one dissenting, and one not participating), the case failed to obtain the necessary majority. Consequently on October 14, 2014, the COMELEC Second Division issued an order elevating the case to the *en banc* for its disposition.<sup>12</sup>

<sup>9</sup> *Rollo*, pp. 79-80.

<sup>10</sup> *Id.* at 80.

<sup>11</sup> *Id.* at 81.

<sup>12</sup> Pursuant to COMELEC Resolution No. 9711 promulgated on May 28, 2013, in relation to COMELEC Resolution No. 9145.

The Commission *en banc* agreed, as a matter of internal arrangement, to submit their respective opinions explaining their respective votes or their concurrence with either Commissioner Yusoph or Commissioner Guia.

Three (3) Commissioners concurred with Commissioner Yusoph: Chairman Sixto Brillantes, Jr., Commissioner Lucenito Tagle, and Commissioner Arthur Lim. Commissioner Christian Robert Lim joined Commissioner Guia's dissent. Commissioner Al A. Parreño did not participate in the vote as he was away on official business. Thus, the vote was 4-2-1 in favor of disqualification; in a *per curiam* order promulgated on January 12, 2015, the Commission *en banc* disqualified Gov. Javier and annulled his proclamation as the governor of Antique.

On January 20, 2015, Gov. Javier filed the present petition for *certiorari* under Rule 65 in relation with Rule 64 of the Rules of Court.

### **THE PETITION**

The petitioner argues that the Commission *en banc* committed grave abuse of discretion because: (1) its January 12, 2015 order was arrived at on the basis of an "internal arrangement; and (2) the order did not obtain a majority vote because Commissioner Arthur Lim should not have been allowed to participate.

The petitioner also asserts that the Commission erred in ruling that R.A. 7890 did not remove Section 261(d) of the Election Code as a ground for administrative disqualification. Finally, the petitioner maintains that the Commission unconstitutionally set the Election Period for the May 13, 2013 elections in violation of Article IX-C, Section 9 of the Constitution, Sec. 62 (c) of the Local Government Code, and Section 8 of Republic Act No. 7056.<sup>13</sup>

In its comment on the petition, COMELEC, through the Office of the Solicitor General (*OSG*), counters that it did not abuse its discretion in issuing the January 12, 2015 order disqualifying Gov. Javier. The Commission insists that the procedure observed during the proceedings was not infirm and that there was no legal impediment for Commissioner Arthur Lim to participate in the *en banc* vote.

On the alleged errors of law, the Commission insists that there was legal basis to disqualify Gov. Javier under both Sections 261 (d) and (e) of the Election Code; the repeal of Section 261(d) by R.A. 7890 did not *ipso facto* remove coercion as a ground for disqualification under Section 68 of the Election Code. It added that Section 261(e), on the other hand, has not been repealed, either expressly or impliedly.

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<sup>13</sup> An Act Providing for the National and Local Elections in 1992, Paving the Way for Synchronized and Simultaneous Elections Beginning 1995, and Authorizing Appropriations Therefor (1991).

Finally, the Commission asserts that COMELEC Resolution No. 9581 fixing the date of the election period is expressly authorized by Article IX, Section 9 of the Constitution and Section 8 of Republic Act No. 7056.

Based on these submissions, the following issues now confront the Court:

I.

Whether the Commission gravely abused its discretion when it issued Resolution No. 9581 fixing the 2013 election period from January 13, 2013 until June 12, 2013, for the purpose of determining administrative and criminal liability for election offenses.

II.

Whether the Commission erred in ruling that R.A. No. 7890 did not remove coercion as a ground for disqualification under Section 68 of the Election Code.

III.

Whether the Commission *en banc* committed grave abuse of discretion in issuing its Order dated January 12, 2015, disqualifying Gov. Javier and annulling his proclamation as the governor of Antique.

**OUR RULING:**

**After due consideration, we resolve to *grant* the petition.**

**The COMELEC is expressly authorized to fix a different date of the election period.**

The petitioner contends that the election period for the reckoning of administrative and criminal liabilities under election laws should always be the same—90 days before and 30 days after an election—fixed in Article IX-C, Section 9 of the Constitution and Section 8 of Republic Act No. 7056.<sup>14</sup> He argues that the Commission's authority to fix the pre-election period refers only to the period needed to properly administer and conduct orderly elections. The petitioner argues that by extending the period for incurring criminal liability beyond the 90-day period, the Commission encroached on the legislature's prerogative to impute criminal and administrative liability on *mala prohibita* acts. Therefore, COMELEC Resolution Nos. 9385 and 9581 were issued *ultra vires*.

We do not find this argument meritorious.

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<sup>14</sup> *Rollo*, p. 41.

No less than the Constitution authorizes the Commission to fix the dates of the election period. Article IX-C, Section 9 provides:

Section 9. **Unless otherwise fixed by the Commission in special cases**, the election period shall commence ninety days before the day of election and shall end thirty days thereafter.<sup>15</sup>

Congress, through the Election Code, explicitly recognizes this authority:

Sec. 3. Election and campaign periods. – **Unless otherwise fixed in special cases by the Commission on Elections**, which hereinafter shall be referred to as the Commission, the election period shall commence ninety days before the day of the election and shall end thirty days thereafter.<sup>16</sup> (emphases supplied)

Evidently, the 120-day period is merely the default election period. The Commission is not precluded from fixing the length and the starting date of the election period to ensure free, orderly, honest, peaceful, and credible elections. This is not merely a statutory but a *constitutionally granted* power of the Commission.

Contrary to the petitioner's contention, the Commission's act of fixing the election period does not amount to an encroachment on legislative prerogative. The Commission did not prescribe or define the elements of election offenses. Congress already defined them through the Omnibus Election Code, the Fair Elections Act, and other pertinent election laws.

As defined by Congress, some election offenses and prohibited acts can only be committed during the election period. An element of these offenses (*i.e.*, that it be committed during the election period) is variable, as election periods are not affixed to a specific and permanent date. Nevertheless, the definition of the offense is already complete. By fixing the date of the election period, the Commission did not change what the offense is or how it is committed. There is thus no intrusion into the legislative sphere.

There is also no merit in the petitioner's argument that the extended election period only applies to pre-election activities other than the determination of administrative or criminal liability for violating election laws. Neither the law nor the Constitution authorizes the use of two distinct election periods for the same election. The law does not distinguish between election offenses and other pre-election activities in terms of the applicable election period. Where the law does not distinguish, neither should this Court.

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<sup>15</sup> Art. IX-C, Section 9, PHIL. CONST.

<sup>16</sup> This provision would be subsequently reproduced in Republic Act No. 7056 (1991).



### **The Alleged Lack of Due Process**

We find the petitioner's claim – that the Commission committed grave abuse of discretion since there was no preliminary investigation as required under Section 265 of the Omnibus Election Code – to be misplaced.<sup>17</sup>

**SPA No. 13-254** was an administrative proceeding for disqualification and not a criminal prosecution of an election offense. The due process requirements and the procedures for these are not the same. Section 265 of the Election Code only applies to criminal prosecutions. Disqualification cases are summary in nature and governed by Rule 25 of the COMELEC Rules of Procedure.

There is likewise no merit in the petitioner's allegation that he was denied due process because the Commission adjudicated the issue without conducting any subsequent hearings and without requiring the submission of position papers or memoranda, notarized witness affidavits, or other documentary evidence aside from the annexes included in the petition and the answer.

*Administrative due process* cannot be fully equated with due process in its strict judicial sense.<sup>18</sup> A formal hearing is not always necessary and the observance of technical rules of procedure is not strictly applied in administrative proceedings.<sup>19</sup> The essence of administrative due process is the right to be heard and to be given an opportunity to explain one's side.<sup>20</sup> Where the Commission hears both sides and considers their contentions, the requirements of administrative due process are complied with.

As we held in *Lanot v. Commission on Elections*:<sup>21</sup>

The electoral aspect of a disqualification case determines whether the offender should be disqualified from being a candidate or from holding office. Proceedings are summary in character and require only clear preponderance of evidence. An erring candidate may be disqualified even without prior determination of probable cause in a preliminary investigation. The electoral aspect may proceed independently of the criminal aspect, and vice versa.

The criminal aspect of a disqualification case determines whether there is probable cause to charge a candidate for an election offense. The prosecutor is the COMELEC, through its Law Department, which determines whether probable cause exists. If there is probable cause, the

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<sup>17</sup> Sec. 265. *Prosecution*. – The Commission shall, through its duly authorized legal officers, have the exclusive power to conduct preliminary investigation of all election offenses punishable under this Code, and to prosecute the same. The Commission may avail of the assistance of other prosecuting arms of the government: Provided, however, That in the event that the Commission fails to act on any complaint within four months from filing, the complainant may file the complaint with the office of the fiscal or with the Ministry of Justice for proper investigation and prosecution, if warranted.

<sup>18</sup> *Vivo v. PAGCOR*, G.R. No. 187854, November 12, 2013, 709 SCRA 276, 281.

<sup>19</sup> *Id.* at 281 citing *Imperial, Jr. v. GSIS*, G.R. No. 191224, October 4, 2011, 658 SCRA 497, 505.

<sup>20</sup> *Ombudsman v. Reyes*, G.R. No. 170512, October 5, 2011, 658 SCRA 626, 640.

<sup>21</sup> 537 Phil. 332, 359-360 (2006).

COMELEC, through its Law Department, files the criminal information before the proper court. Proceedings before the proper court demand a full-blown hearing and require proof beyond reasonable doubt to convict. A criminal conviction shall result in the disqualification of the offender, which may even include disqualification from holding a future public office.

### **Commissioner Arthur Lim's Participation in the En Banc Voting**

The petitioner further argues that the Commission committed grave abuse of discretion by allowing Commissioner Arthur D. Lim to participate in the proceedings before the Commission *en banc*. The petitioner maintains that because Commissioner Arthur Lim took no part in the proceedings before the COMELEC Second Division, then he should have inhibited from the *en banc* proceedings pursuant to the ruling in *Estrella v. COMELEC*.<sup>22</sup> If we disregard Commissioner Arthur Lim's vote, then the Commission would have failed to attain the necessary majority vote of all the members of the Commission.

The petitioner's reliance on *Estrella* is misplaced because the facts of this case are different from those of the present case. *Estrella* involved two related election cases between the same parties: an election protest and an action for *certiorari*. One party moved for Commissioner Lantion's inhibition which the Commission denied. However, Commissioner Lantion later inhibited himself from the *certiorari* proceeding and was substituted by another Commissioner.<sup>23</sup> The substitution order was also adopted in the election protest case. When the election protest was elevated to the COMELEC *en banc*, Commissioner Lantion participated in the deliberations and voted despite his prior inhibition. This Court granted *certiorari* and held that Commissioner Lantion's piecemeal voluntary inhibition was illegal and unethical.

In the present case, Commissioner Arthur Lim did not inhibit from the proceedings. If the Commissioner had inhibited, there would have been a need to replace him pursuant to Rule 3, Section 6 of the COMELEC Rules of Procedure<sup>24</sup> (as what happened in *Estrella* where there was an issuance of an order designating Commissioner Borra as Commissioner Lantion's substitute). Commissioner Arthur Lim only abstained from voting; he did not participate in the deliberations. When the Commission *en banc*, as a matter of internal arrangement, agreed among themselves to submit their own opinion explaining their respective vote or merely their concurrence

<sup>22</sup> G.R. No. 160465, April 28, 2004, 428 SCRA 315, 320.

<sup>23</sup> Commissioner Ressoracion Borra was designated in place of Commissioner Ralph Lantion *via* an Order dated August 25, 2002.

<sup>24</sup> RULES GOVERNING PLEADINGS, PRACTICE AND PROCEDURE BEFORE IT OR ANY OF ITS OFFICES (1993).

Sec. 6. Change in Composition; Substitution. – The composition of a Division may be changed by the Chairman of the Commission whenever necessary, Provided that no change shall be made more than once every three (3) months; Provided Moreover, that notice thereof in writing shall be furnished the parties in cases pending before the Division concerned. **Whenever there is a vacancy in a Division because a member inhibits himself**, is absent, or is disqualified from sitting in a case, or when a division has only two (2) regular members, the Chairman may appoint a substitute Commissioner, or the Chairman himself may sit as substitute or third member, and in that event he shall preside.

with either Commissioner Elias R. Yusoph or Commissioner Luie Tito F. Guia's position on the matter, no legal or ethical impediment existed preventing him (Commissioner Arthur Lim) from subsequently participating in the deliberations and from casting his vote.

### **COMELEC's Internal Arrangement**

The petitioner also maintains that the Commission gravely abused its discretion when it set aside its own rules and resolved the case through an "internal arrangement." He submits that the Commission should have waited for the assigned *ponente* to write an opinion before agreeing to vote based on the positions of Commissioner Yusoph and Commissioner Guia. The petitioner also claims that the assailed Order is a "midnight decision" and cites the absence of a promulgation date on the front page and of a certification signed by the Chairman as procedural infirmities.

The petitioner clearly refers to Rule 18 of the COMELEC Rules of Procedure which states:

#### Part IV Rule 18 – Decisions

Sec. 1 *Procedure in Making Decisions.* – The conclusions of the Commission in any case submitted to it for decision *en banc* or in Division **shall be reached in consultation** before the case is assigned by raffle to a Member for the writing of the opinion of the Commission or the Division and a certification to this effect signed by the Chairman or the Presiding Commissioner, as the case may be, shall be incorporated in the decision. Any member who took no part, dissented, or abstained from a decision or resolution must state the reason therefor.

**Every decision shall express therein clearly and distinctly the facts and the law on which it is based.** (emphasis supplied)

To our mind, the essence of this provision is: (1) that decisions of the Commission, whether in Division or *en banc*, must be reached in consultation; and (2) that the decisions must state their factual and legal bases. Moreover, Rule 18, Section 1 must be read together with the other provisions of the COMELEC Rules of Procedure, particularly the following related portions:

#### Rule 1 – Introductory Provisions

Sec. 3. *Construction* – These rules shall be **liberally construed** in order to promote the effective and efficient implementation of the objectives of ensuring the holding of free, orderly, honest, peaceful and credible elections and to achieve just, expeditious and inexpensive determination and disposition of every action and proceeding brought before the Commission.

Sec. 4. *Suspension of the Rules* – In the interest of justice and **in order to obtain speedy disposition of all matters** pending before the

Commission, these rules or **any portion thereof may be suspended** by the Commission.

The COMELEC Rules specifically authorize the Commission to suspend the strict application of its rules in the interest of justice and the speedy disposition of cases. In this case, the Commission suspended Rule 18, Section 1. The Commission, as a body, dispensed with the preparation of another *ponencia* and opted to vote on the legal positions of Commissioners Yusoph and Guia. Nevertheless, the decision was evidently reached through consultation. Then Chairman Sixto Brillantes, Jr., Commissioner Lucenito Tagle, and Commissioner Arthur Lim concurred with Commissioner Yusoph. Commissioner Christian Robert Lim joined Commissioner Guia's dissent. Chairman Brillantes, Jr. and Commissioner Arthur Lim also wrote separate concurring opinions. The Court does not see any arbitrariness or infirmity in this internal arrangement that would have deprived the petitioner of due process.

Moreover, the Commission resorted to this arrangement because, as the petitioner pointed out, three Commissioners were retiring soon. There was a need to resolve the cases because the impending vacancies would have resulted in further delay. Contrary to the petitioner's insinuations, "midnight decisions" are not illegal. Judges and other quasi-judicial officers cannot sit back, relax, and refuse to do their work just because they are nearing retirement or are near the end of their term. As civil servants, they are expected to diligently carry out their duties until their separation from service. Thus, the Commission's suspension of its rules and use of an internal arrangement to expedite its internal proceedings is not at all unusual in collegial bodies. We note that the vote was divided and dissents were filed, thereby indicating the absence of any malicious departure from the usual procedures in arriving at the Commission's ruling on the case.

### **Absence of a Promulgated Date and Failure to Serve Advance Copy**

With respect to the absence of a promulgation date on the first page of the assailed order, this Court directs the petitioner's attention to the last page stating that the Order was "*Given this 12<sup>th</sup> day of January 2015, Manila, Philippines.*"<sup>25</sup> Promulgation is the process by which a decision is published, officially announced, made known to the public, or delivered to the clerk of court for filing, coupled with notice to the parties or their counsel.<sup>26</sup> The order was evidently promulgated on January 12, 2015.

The Commission does not deny that it failed to serve an advance copy of the order to the petitioner as required under Rule 18, Section 5<sup>27</sup> of its Rules. But as we previously held in the cases of *Lindo v. COMELEC*<sup>28</sup> and

<sup>25</sup> *Rollo*, p. 55.

<sup>26</sup> *Lindo v. COMELEC*, 271 Phil. 844, 851 (1991) citing *Neria v. Commissioner of Immigration*, 132 Phil. 276, 284 (1968).

<sup>27</sup> Sec. 5. Promulgation – The promulgation of a decision or resolution of the Commission or a Division shall be made on a date previously fixed, of which notice shall be served in advance upon the parties or their attorneys personally or by registered mail or by telegram.

<sup>28</sup> *Supra* note 26.

*Pimping v. COMELEC*,<sup>29</sup> this kind of procedural lapse does not affect the validity of the order and is insufficient to warrant the grant of a writ of *certiorari* in the absence of any grave abuse of discretion prejudicing the rights of the parties.

**Repeal of Section 261 (d) of Batas Pambansa Blg. 881 by Republic Act No. 7890**

No less than the Constitution empowers the Commission to decide all questions affecting elections except those involving the right to vote.<sup>30</sup> It is the sole arbiter of all issues involving elections. Hence, unless tainted with grave abuse of discretion, simple errors of judgment committed by COMELEC cannot be reviewed even by this Court.<sup>31</sup>

An error of judgment is one that the court may commit in the exercise of its jurisdiction;<sup>32</sup> they only involve errors in the court or tribunal's appreciation of the facts and the law.<sup>33</sup> An error of jurisdiction is one where the act complained of was issued by the court without or in excess of its jurisdiction, or with grave abuse of discretion tantamount to lack or excess of jurisdiction.<sup>34</sup>

A review of the October 3, 2014 COMELEC Second Division resolution (penned by Commissioner Yusoph), however, showed that the main thrust of this resolution –to which four Commissioners concurred in when the case was elevated to the en banc – is faulty.<sup>35</sup> It considered the repeal of Section 261(d) by R.A. No.7890 to be an implied one, which is contrary to the wordings of R.A. 7890.

For clarity, we reproduce the pertinent provisions of R.A. No. 7890, thus:

SECTION 1. Article 286, Section Three, Chapter Two, Title Nine of Act No. 3815, as amended, is hereby further amended to read as follows:

“ART. 286. *Grave Coercions*. – The penalty of *prision correccional* and a fine not exceeding Six thousand pesos shall be imposed upon any person who, without any authority of law, shall, by means of violence, threats or intimidation, prevent another from doing something not prohibited by law, or compel him to do something against his will, whether it be right or wrong.

“If the coercion be committed in violation of the exercise of the right of suffrage, or for the purpose of compelling another to perform any

<sup>29</sup> 224 Phil. 326, 359 (1985).

<sup>30</sup> Article IX-C, §2(3), PHILIPPINE CONSTITUTION.

<sup>31</sup> See this Court's *en banc* ruling involving the review of Commission on Audit cases in *Reblora v. Armed Forces of the Philippines*, G.R. No. 195842, June 18, 2013, 698 SCRA 727, 735.

<sup>32</sup> *Fernando v. Vasquez*, G.R. No. L-26417, January 30, 1970, 31 SCRA 288, 292.

<sup>33</sup> *Villareal v. Aliga*, G.R. No. 166995, January 13, 2014, 713 SCRA 52, 73 citing *People v. Hon. Tria-Tirona*, 502 Phil. 31, 39 (2005).

<sup>34</sup> *Id.*

<sup>35</sup> The COMELEC en banc's January 12, 2015 order essentially summarized the positions and votes of the Chairman and the Commissioners en route to granting the petition for disqualification.

religious act, to prevent him from exercising such right or from so doing such act, the penalty next higher in degree shall be imposed.”

**SEC. 2. Section 261, Paragraphs (d)(1) and (2), Article XXII of Batas Pambansa Blg. 881 is hereby repealed.**

SEC. 3. All other election laws, decrees, executive orders rules and regulations, or parts thereof inconsistent with the provisions of this Act are hereby repealed.

X X X X

A repeal may be express or implied.<sup>36</sup> An express repeal is one wherein a statute declares, usually in its repealing clause, that a particular and specific law, identified by its number or title, is repealed.<sup>37</sup> An implied repeal, on the other hand, transpires when a substantial conflict exists between the new and the prior laws. In the absence of an express repeal, a subsequent law cannot be construed as repealing a prior law unless an irreconcilable inconsistency and repugnancy exist in the terms of the new and the old laws.<sup>38</sup>

In the present case, it is clear that R.A. No. 7890 expressly repealed Section 261, paragraphs (d)(1) and (2) of the Omnibus Election Code. The COMELEC Second Division’s October 3, 2014 resolution, however, treated this repeal as merely an implied one. Commissioner Yusoph reasoned out as follows:

Moreover, the general repealing clause in Section 3 of RA 7890 **cannot impliedly repeal** Section 68 because the latter is not absolutely and irreconcilably incompatible with Article 286, as amended by RA 7890. Meaning, a case for disqualification due to coercion under Section 68 can very well stand apart from the criminal case for coercion under Article 286, as amended. This is so because Section 68 involves an administrative proceeding intended to disqualify a candidate whereas Article 286, supra, involves a criminal proceeding intended to penalize coercion. Both laws, therefore, can be given effect without nullifying the other, hence the inapplicability of implied repeal.

To firm up our stance against **implied repeal** of coercion as a ground for disqualification, the following pronouncements of the Supreme Court are guiding:

“**Implied repeal** by irreconcilable inconsistency takes place when the two statutes cover the same subject matter; they are so clearly inconsistent and incompatible with each other that they cannot be reconciled or harmonized; and both cannot be given effect, that is, that one law cannot be enforced without nullifying the other.”

“Well-settled is the rule is statutory construction that **implied repeals** are disfavored. In order to effect a repeal by implication, the latter

<sup>36</sup> See *Commissioner of Internal Revenue v. Solidbank Corp.*, 462 Phil. 96, 119 (2003).

<sup>37</sup> *Penera v. Commission on Elections*, G.R. No. 181613, September 11, 2009, 599 SCRA 609, 639-640.

<sup>38</sup> See *Bank of Commerce v. Planters Development Bank*, G.R. No. 154470-71, September 24, 2012, 681 SCRA 521, 545.

statute must be so irreconcilably inconsistent and repugnant with the existing law that they cannot be made to reconcile and stand together. The clearest case possible must be made before the inference of **implied repeal** may be drawn, for inconsistency is never presumed. x x x<sup>39</sup>

We point out that this resolution and the dissenting opinion of Commissioner Guia became the basis of the internal arrangement reached upon by the Commission *en banc* whereby the commissioners agreed to submit their respective opinions explaining their votes or their concurrence with either Commissioner Yusoph or Guia.

As earlier stated, the vote was 4-2-1 in favor of disqualification; in a *per curiam* order promulgated on January 12, 2015, the Commission *en banc* disqualified Gov. Javier and annulled his proclamation as the governor of Antique. Chairman Brillantes and Commissioner Arthur Lim wrote their own opinions concurring with the position of Commissioner Yusoph, while Commissioner Tagle submitted his vote concurring with the opinions of Commissioner Yusoph and Chairman Brillantes.

In his Separate Opinion, Chairman Brillantes agreed with Commissioner Yusoph that the repeal of Section 261(d) by R.A. No. 7890 was merely implied, and made the following disquisition:

x x x x

The Supreme Court, in a long line of cases, has constantly disfavored and struck down the use of repeal by implication. Pursuant to jurisprudence, well entrenched is the rule that an implied repeal is disfavored. The apparently conflicting provisions of a law or two laws should be harmonized as much as possible, so that each shall be effective. For a law to operate to repeal another law, the two laws must actually be inconsistent. The former must be so repugnant as to be irreconcilable with the latter act. Stated plainly, a petition for disqualification on the ground of coercion shall be taken differently and distinctly from coercion punishable under the RPC for the two can very well stand independently from each other. x x x Therefore, unless proven that the two are inconsistent and would render futile the application and enforcement of the other, only then that a repeal by implication will be preferred. x x x<sup>40</sup>

A law that has been expressly repealed ceases to exist and becomes inoperative from the moment the repealing law becomes effective.<sup>41</sup> The discussion on implied repeals by the Yusoph resolution, (and the concurring opinion of Chairman Brillantes, Jr.), including the concomitant discussions on the absence of irreconcilable provisions between the two laws, were thus misplaced. The harmonization of laws can only be had when the repeal is implied, not when it is express, as in this case.

The COMELEC's reasoning that coercion remains to be a ground for disqualification under Section 68 of the Election Code despite the passage of

<sup>39</sup> *Rollo*, p. 81, emphasis ours.

<sup>40</sup> *Id.* at 57.

<sup>41</sup> See *JG Summit Holdings, Inc. v. Court of Appeals*, 458 Phil. 581, 609-610 (2003).

R.A. No. 7890 is erroneous. To the point of our being repetitive, R.A. No. 7890 expressly repealed Section 261 d(1) and (2) of Batas Pambansa Blg. 881, rendering these provisions inoperative. The effect of this repeal is to *remove* Section 261(d) from among those listed as ground for disqualification under Section 68 of the Omnibus Election Code.

In his Memorandum/Concurring Opinion, Commissioner Arthur Lim stated that the petition for disqualification is anchored not only on violation of Section 261 (d), but also on the violation of Section 261(e) in relation to Section 68 of the OEC. We point out, however, that the COMELEC Second Division's October 3, 2014 resolution in SPA No. 13-254 (disqualifying Gov. Javier and annulling his proclamation as the Governor of Antique) was premised solely on violation of Section 261(d) of the OEC; it did not find that Gov. Javier – even by substantial evidence – violated the provisions of Section 261(e). For clarity and accuracy, we quote the pertinent portions of the COMELEC's (Second Division) October 3, 2014 resolution:

Ineluctably, the act of Gov. Javier in preventively suspending Mayor Roquero during the Election period ban falls within the contemplation of Section 261(d) of the Election Code which is a ground for disqualification under Section 68, Election Code. That is, Gov. Javier issued Executive Order No. 003 suspending Mayor Roquero to coerce, intimidate, compel, or influence the latter to collaborate with or campaign for the former, or to punish the latter for having manifested political opposition against the former. For that, he must be disqualified.<sup>42</sup>

With the express repeal of Section 261(d), the basis for disqualifying Javier no longer existed. As we held in *Jalosjos, Jr. v. Commission on Elections*,<sup>43</sup> [t]he jurisdiction of the COMELEC to disqualify candidates is limited to those enumerated in Section 68 of the Omnibus Election Code. All other election offenses are beyond the ambit of COMELEC jurisdiction. They are criminal and not administrative in nature.<sup>44</sup> Pursuant to sections 265 and 268 of the Omnibus Election Code, the power of the COMELEC is confined to the conduct of preliminary investigation on the alleged election offenses for the purpose of prosecuting the alleged offenders before the regular courts of justice.<sup>45</sup>

There is grave abuse of discretion justifying the issuance of the writ of *certiorari* when there is such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction,<sup>46</sup> where power is exercised arbitrarily or in a despotic manner by reason of passion, prejudice, or personal hostility amounting to an evasion of positive duty, or to virtual refusal to perform the duty enjoined, or to act at all in contemplation of law,

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<sup>42</sup> *Rollo*, p. 80.

<sup>43</sup> G.R. No. 193237, October 9, 2012, 683 SCRA 1, 29-30, citing *Codilla, Sr. v. de Venecia*, 442 Phil. 139, 177-178, 393 SCRA 639, 670 (2002).

<sup>44</sup> *Id.*

<sup>45</sup> See *Blanco v. COMELEC, et al.*, 577 Phil. 622, 633 (2008), citing *Codilla v. De Venecia*, G.R. No. 150605, December 10, 2002, 393 SCRA 639.

<sup>46</sup> *Abad Santos v. Province of Tarlac*, 67 Phil. 480 (1939); *Tan v. People*, 88 Phil. 609 (1951); *Pajo v. Ago*, 108 Phil. 905 (1960).



as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility.<sup>47</sup>

To our mind, the COMELEC gravely abused its discretion when it disqualified Gov. Javier based on a provision of law that had already been *expressly* repealed. Its stubborn insistence that R.A. No. 7890 merely impliedly repealed Section 261(d) despite the clear wordings of the law, amounted to an arbitrary and whimsical exercise of judgment.

**WHEREFORE**, premises considered, we hereby **GRANT** the petition and **SET ASIDE** the January 12, 2015 *per curiam* order of the Commission on Elections *en banc* in SPA No. 13-254 (DC).

**SO ORDERED.**

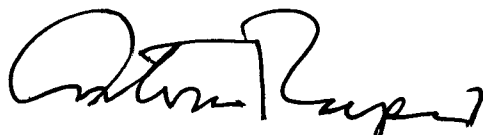


**ARTURO D. BRION**  
Associate Justice

**WE CONCUR:**




**MARIA LOURDES P. A. SERENO**  
Chief Justice



**ANTONIO T. CARPIO**  
Associate Justice

(No Part)

**PRESBITERO J. VELASCO, JR.**  
Associate Justice



**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice

(No part)

**DIOSDADO M. PERALTA**  
Associate Justice


(No Part)

**LUCAS P. BERSAMIN**  
Associate Justice

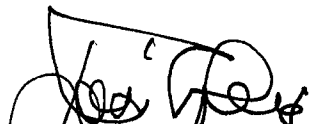
(No Part)

**MARIANO C. DEL CASTILLO**  
Associate Justice

<sup>47</sup> *Tavera-Luna, Inc. v. Nable*, 67 Phil. 341 (1939); *Alafriz v. Nable*, 72 Phil. 278 (1941); *Liwanag v. Castillo*, 106 Phil. 375 (1959).



**MARTIN S. VILLARAMA, JR.**  
Associate Justice




**JOSE PORTUGAL PEREZ**  
Associate Justice



**JOSE CATRAL MENDOZA**  
Associate Justice



**BIENVENIDO L. REYES**  
Associate Justice



**ESTELA M. PERLAS-BERNABE**  
Associate Justice



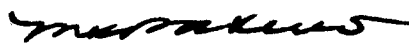
**MARVIC M.V.F. LEONEN**  
Associate Justice



**FRANCIS H. JARDELEZA**  
Associate Justice

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.



**MARIA LOURDES P. A. SERENO**  
Chief Justice