

## EN BANC

G.R. No. 193643 --- ANTONIO D. DAYAO, ROLANDO P. RAMIREZ and ADELIO R. CAPCO, *Petitioners, versus* COMMISSION ON ELECTIONS and LPG MARKETERS ASSOCIATION, INC., *Respondents*.

G.R. No. 193704 --- FEDERATION OF PHILIPPINE INDUSTRIES, INC., *Petitioner, versus* COMMISSION ON ELECTIONS and LPG MARKETERS ASSOCIATION, INC., *Respondents*.

Promulgated:

January 29, 2013

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### ***SEPARATE OPINION***

**ABAD, J.:**

I vote to dismiss the petitions but for other reasons.

On May 21, 2009 respondent LPG Marketers Association, Inc. (LPGMA) filed with respondent Commission on Elections (COMELEC) a petition for registration as a sectoral organization<sup>1</sup> so it could take part in the 2010 party-list elections.<sup>2</sup> LPGMA claimed that it is an organization of both consumers and small industry players who advocate, among others, an equal and level playing field in the liquefied petroleum gas or LPG industry with the view to making quality, safe, and reasonably priced gas and oil products accessible to the people.

In due course, the COMELEC verified, through its Regional Election Director in the National Capital Region, LPGMA's existence in the constituency for which it seeks registration. Following this, the COMELEC ordered the publication of LPGMA's petition for registration to give interested parties the opportunity to be heard on the registration. Following such publication, the COMELEC conducted a hearing in which it verified the legitimacy and existence of LPGMA, its track record and past activities, the qualifications of its members, and its financial capability to launch and

<sup>1</sup> Docketed as SPP 09-048 (PL).

<sup>2</sup> *Rollo* (G.R. 193643), pp. 126-132.

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sustain a nationwide campaign in the 2010 party-list elections. On January 5, 2010 the COMELEC's First Division granted LPGMA's petition for registration.<sup>3</sup>

Over three months later or on April 12, 2010 petitioners Antonio D. Dayao, Rolando P. Ramirez, and Adelio R. Capco filed with the COMELEC a complaint for cancellation of LPGMA's party-list registration.<sup>4</sup> Petitioners alleged that the incorporators, trustees, and officers of LPGMA were marketers and independent LPG refillers who had a 45% share in the national LPG retail market. Hence, the COMELEC could not consider LPGMA members marginalized and constituted an underrepresented sector of society. On May 6, 2010, four days before the elections, petitioner Federation of Philippine Industries, Inc. intervened and adopted petitioners' complaint.<sup>5</sup>

On August 5, 2010 the COMELEC First Division dismissed petitioners' complaint on the grounds,<sup>6</sup> *first*, that petitioners failed to cite any of the grounds for cancellation of registration enumerated in Section 6 of Republic Act (R.A.) 7941;<sup>7</sup> and *second*, that petitioners filed a late opposition to LPGMA's registration despite notice by publication of its petition in two newspapers of general circulation. Petitioners waited more than three months after the approval of registration before filing their opposition.

Petitioners moved for reconsideration of the First Division's ruling but the COMELEC *En Banc* denied the same on September 6, 2010,<sup>8</sup> hence, these consolidated petitions.

### **The Issue Presented**

The issue presented in these consolidated petitions is: whether or not the COMELEC gravely abused its discretion in dismissing petitioners' complaint for the cancellation of the party-list registration of LPGMA for the reasons a) that the complaint failed to state a proper ground for cancellation of registration; and b) the complaint was filed out of time.

### **Discussion**

In his *ponencia*, Justice Bienvenido L. Reyes would have the Court remand the case to the COMELEC for it to conduct summary evidentiary hearings on the qualifications of LPGMA as a party-list organization had it not been for the fact that the COMELEC issued a Resolution dated December 13, 2012 finding LPGMA compliant with the qualifications set by

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<sup>3</sup> Id. at 246-252.

<sup>4</sup> Id. at 260-267, docketed as SPP 10-010.

<sup>5</sup> *Rollo* (G.R. 193704), pp. 678-684.

<sup>6</sup> *Rollo* (G.R. 193643), pp. 65-70.

<sup>7</sup> The Party-List System Act.

<sup>8</sup> *Rollo* (G.R. 193643), pp. 85-90.

law and jurisprudence. The *ponencia* theorizes that the factual findings in the petition for registration of LPGMA are not final and conclusive on the factual issues raised in the complaint for the cancellation of its registration.

The *ponencia* points out that it did not matter that petitioners failed to file from the beginning an opposition to LPGMA's application for registration as party-list organization. The *ponencia* explains that (a) since Section 6 of R.A. 7941 does not require that the party who initiates an action for cancellation of registration must have previously opposed the registration and (b) since the same Section 6 sets no period for the filing of a complaint for cancellation of registration, it follows that petitioners could file their complaint for cancellation at any time and that the COMELEC was duty bound to hear and adjudicate the same.

Section 6 of R.A. 7941 provides:

Section 6. *Refusal and/or Cancellation of Registration.* The COMELEC may, *motu proprio* or upon verified complaint of any interested party, refuse or cancel, after due notice and hearing, the registration of any national, regional or sectoral party, organization or coalition on any of the following grounds:

- (1) It is a religious sect or denomination, organization or association, organized for religious purposes;
- (2) It advocates violence or unlawful means to seek its goal;
- (3) It is a foreign party or organization;
- (4) It is receiving support from any foreign government, foreign political party, foundation, organization, whether directly or through any of its officers or members or indirectly through third parties for partisan election purposes;
- (5) It violates or fails to comply with laws, rules or regulations relating to elections;
- (6) It declares untruthful statements in its petition;
- (7) It has ceased to exist for at least one (1) year; or
- (8) It fails to participate in the last two (2) preceding elections or fails to obtain at least two per centum (2%) of the votes cast under the party-list system in the two (2) preceding elections for the constituency in which it has registered.

But Section 6 above does not, contrary to the *ponencia*'s thesis, set rules of procedure from which one can draw inferences based on what such rules fail to expressly provide. Section 6 is pure substantive law. It does not pretend to prescribe a comprehensive and unique procedure designed for the cancellation of registration of a party-list organization. What it substantially does is simply vest on the COMELEC the power to refuse registration or order its cancellation on specified grounds. The detailed rules that govern refusal or cancellation of registration are found in the COMELEC Rules of Procedure.

Obviously, the power to refuse registration provided in Section 6 above refers to the action that the COMELEC may take in relation to an

original petition for registration as party-list organization under Section 5 of R.A. 7941.<sup>9</sup> To “refuse” registration is to presume that a petition for registration has been made. On the other hand, it is implicit that the power to cancel registration refers to the action that the COMELEC may take after it has already granted registration. The *ponencia* is right that an action for cancellation of registration previously granted is allowed under Section 6.

But it cannot be implied from the right to bring an action to cancel registration under Section 6 that a COMELEC resolution granting registration can never become final. The COMELEC exercises adjudicative power when it grants or refuses registration or cancels one that it has previously granted.<sup>10</sup> Consequently, like the exercise of any adjudicative power that the law vests in the COMELEC, its ruling, which either grants or refuses registration or cancels one previously granted, can attain finality after 15 days following its promulgation.<sup>11</sup>

Can the finality of a ruling granting registration be reconciled with the provision of R.A. 7941 which allows the filing of an action for cancellation of registration that the COMELEC has previously granted?

The answer is yes. The grounds for cancellation of registration assume that the grantee committed fraud or misrepresentation in obtaining registration. For instance, the COMELEC rules require a party-list applicant to state in its verified petition “(8) That it is not a religious sect or denomination,” a ground for refusing or cancelling registration. Religious sects or denominations are disqualified from running as party-list organizations. If it turns out that the grantee of registration lied in its petition because it in fact merely fronts for a religious sect, any voter can file an action for the cancellation of its registration. A decision fraudulently obtained cannot become final.

Here, LPGMA, as an applicant in the original petition for registration, carried the burden of proving the affirmative of its claim that it was entitled to registration as a party-list organization since it represented a marginalized and underrepresented sector. Thus, although petitioners did not intervene to oppose LPGMA’s application for registration, the COMELEC heard the affirmative issue, which the law itself tendered, regarding the marginalized and underrepresented status of LPGMA’s members. The COMELEC received evidence on that issue and resolved the same with a ruling that

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<sup>9</sup> Section 5. Registration. Any organized group of persons may register as a party, organization or coalition for purposes of the party-list system by filing with the COMELEC not later than ninety (90) days before the election a petition verified by its president or secretary stating its desire to participate in the party-list system as a national, regional or sectoral party or organization or a coalition of such parties or organizations, attaching thereto its constitution, by-laws, platform or program of government, list of officers, coalition agreement and other relevant information as the COMELEC may require: Provided, That the sectors shall include labor, peasant, fisherfolk, urban poor, indigenous cultural communities, elderly, handicapped, women, youth, veterans, overseas workers, and professionals.

<sup>10</sup> Part V, F (Special Proceedings), Rule 32 (Registration of Political Parties or Organizations), COMELEC Rules of Procedure.

<sup>11</sup> Section 13(c), Rule 18, COMELEC Rules of Procedure.

LPGMA met the requirement. And, when no one appealed from that ruling, the same became final and executory.

Notably, petitioners did not claim in its complaint for cancellation that LPGMA submitted falsified evidence that misled the COMELEC in granting its registration. Petitioners simply wanted the COMELEC to reopen the registration proceeding, retry an issue it had already adjudicated based on evidence, require LPGMA to once again prove its qualifications, and allow petitioners to present evidence which, ironically, were already available to them at the time the original registration was being heard.

The LPGMA won in the May 10, 2010 elections, the 18<sup>th</sup> nationwide among the great number of sectoral party-list organizations that ran. This is the clearest affirmation of its qualification.

**ACCORDINGLY**, I vote to **DISMISS** the consolidated petitions for failure to show that the COMELEC committed grave abuse of discretion in issuing its challenged orders.



**ROBERTO A. ABAD**

Associate Justice