

Republic of the Philippines
Supreme Court
Manila

EN BANC

BEN D. LADILAD,

Petitioner,

G.R. No. 264071

Present:

GESMUNDO, C.J.,
LEONEN,
CAGUIOA,
HERNANDO,
LAZARO-JAVIER,
INTING,
ZALAMEDA,
LOPEZ, M.,
GAERLAN,
ROSARIO,
LOPEZ, J.,
DIMAAMPAO,
MARQUEZ,
KHO, JR., and
SINGH, JJ.*

- versus -

COMMISSION ON ELECTIONS
and MARY GRACE BANDOY,
Respondents.

Promulgated:

August 13, 2024

X-----X


DECISION

HERNANDO, J.:

This is a Petition for *Certiorari* under Rule 64, in relation to Rule 65, with a prayer for Temporary Restraining Order, *Status Quo Ante* Order, and/or Writ of Preliminary Injunction,¹ assailing the Resolution² of the Commission on

* On official leave.

¹ *Rollo*, pp. 3–20.

² *Id.* at 37–52; 74–79. The November 4, 2014 Resolution in E.O. Case No. 13-261 was decided by Chairman Sixto S. Brillantes, Jr., and Commissioners Lucenito N. Tagle, Elias R. Yusoph, Christian Robert S. Lim,

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Elections (COMELEC) *En Banc*, and the Resolution³ of the Office of the Regional Election Director-Cordillera Administrative Region (ORED-CAR), in E.O. Case No. 13-261.

Relevant Factual Antecedents

On June 27, 2013, Mary Grace Bandoy (Bandoy), a graft researcher, filed a Complaint⁴ against Ben Ladilad (Ladilad) and Luciana M. Villanueva (Villanueva) for violation of the Omnibus Election Code (OEC), in particular, Section 261, paragraphs (g)⁵ and (h),⁶ in relation to COMELEC Resolution No. 9581,⁷ before the COMELEC, for acts allegedly committed during the election period of the 2013 national, local, and Administrative Region of Muslim Mindanao elections.

Ladilad was the President of Benguet State University (BSU). Villanueva, on the other hand, was the Vice President for Research and Extension (OVPRE), also of BSU.

Al A. Parreño, Luie Tito F. Guia, and Arthur D. Lim of the Commission on Elections, Intramuros, Manila. The September 27, 2022 Resolution in E.O. Case No. 13-261 was decided by Chairman George Erwin M. Garcia, and Commissioners Socorro B. Inting, Marlon S. Casuejo, Aimee P. Ferolino, and Rey E. Bulay of the Commission on Elections, Intramuros, Manila.

³ *Id.* at 24–36. The May 18, 2004 Resolution was erroneously referred to as the “Resolution dated 26 May 2014 of the Office of the Regional Election Director-Cordillera Administrative Region” in the dispositive portion of the assailed COMELEC Resolution dated November 4, 2014.

⁴ *Id.* at 294–299.

⁵ Sec. 261. *Prohibited Acts.* – The following shall be guilty of an election offense:

....

(g) *Appointment of new employees, creation of new position, promotion, or giving salary increases.* – During the period of forty-five days before a regular election and thirty days before a special election, (1) any head, official or appointing officer of a government office, agency or instrumentality, whether national or local, including government-owned or controlled corporations, who appoints or hires any new employee, whether provisional, temporary or casual, or creates and fills any new position, except upon prior authority of the Commission. The Commission shall not grant the authority sought unless, it is satisfied that the position to be filled is essential to the proper functioning of the office or agency concerned, and that the position shall not be filled in a manner that may influence the election.

As an exception to the foregoing provisions, a new employee may be appointed in case of urgent need: *Provided, however,* That notice of the appointment shall be given to the Commission within three days from the date of the appointment. Any appointment or hiring in violation of this provision shall be null and void.

(2) Any government official who promotes, or gives any increase of salary or remuneration or privilege to any government official or employee, including those in government-owned or controlled corporations.

⁶ Sec. 261. *Prohibited Acts.* – The following shall be guilty of an election offense:

....

(h) *Transfer of officers and employees in the civil service.* – Any public official who makes or causes any transfer or detail whatever of any officer or employee in the civil service including public school teachers, within the election period except upon prior approval of the Commission.

⁷ 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 (2012).

In such capacities, Ladilad and Villanueva were accused to have caused the illegal detail and transfer within BSU offices of Gretchen Gaye Ablaza (Ablaza) and Frances Noelle* Escalera (Escalera), both BSU employees. Ablaza was transferred from the Graduate School Office (GSO) to the OVPRE on March 25, 2013, through a letter dated March 8, 2013, penned by Villanueva, and approved by Ladilad:⁸

March 8, 2013

DR. BEN D. LADILAD
President
Benguet State University
La Trinidad, Benguet

SIR:

Upon the recommendation of the Human Resource Development Committee (HRDC), the application for study leave of Ms. Ammie S. Dayao, staff under the Office of the Vice President for Research and Extension, has been approved effective January 28, 2013 to March 31, 2013. However, in the absence of a stand-in for her post, she was not able to undertake all her planned activities for the period.

As per discussion with Mr. Wagner F. Grande, head of the Human Resource Management Office, I learned that Ms. Gretchen Gaye C. Ablaza, shall be completing her study leave by March 25, 2013. Prior to her leave, Ms. Ablaza was assigned at the Graduate School Office who was later replaced by Ms. Elvie P. Altatis. In view of this, may I request that Ms. Ablaza be assigned to the OVPRE when she shall return for work. She will be of great assistance to the R&E Sector especially in the field of social research considering her expertise in education management.

Thank you very much and looking forward for your favorable response to this request.

Very truly yours

(sgd.)
LUCIANA M. VILLANUEVA
Vice-President for Research and Extension

APPROVED:

(sgd.)
BEN D. LADILAD, Ph. D., CESO III
President⁹

* Noel in some parts of the *rollo*.

⁸ *Rollo*, p. 367.

⁹ *Id.*

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Meanwhile, Escalera was transferred from the Internal Auditing Service (IAS) to the Human Resource Management Office (HRMO), considering that her initial detail in the HRMO covering the period of March 5, 2012 to March 5, 2013, was about to expire.¹⁰ The questioned detail took effect on March 6, 2013, through Office Order 47, Series of 2013 issued by Ladilad.¹¹

05 March 2013

OFFICE ORDER 47
Series of 2013

To: MS. FRANCES NOEL G. ESCALERA
Subject: DETAIL AT THE HUMAN RESOURCE
MANAGEMENT OFFICE (HRMO)

1. In the exigency of public service, you are hereby ordered to be detailed at the HRMO effective March 6, 2013;
2. As a detailed personnel, you are expected to assist in the implementation of governing laws, rules and policies relative to human resource administration, and other related concerns;
3. It is desired that you shall perform your duties and responsibilities with utmost dedication, commitment and sincerity;
4. This Office Order shall remain in full force until revoked by this office.
5. Please be guided accordingly.

BEN D. LADILAD
President¹²

Ladilad and Villanueva contended that the assignments of Ablaza and Escalera were exempted from the election ban. There was no transfer involved, since what the law prohibits is the actual and physical transfer of an employee from one unit or geographical location to another. Ablaza was granted a study leave from November 5, 2012 to March 24, 2013, during which one Elvie Altatis replaced her at the GSO.¹³ Ablaza was allegedly merely given a post to which she can report back to work after her study leave,¹⁴ and that her assignment to the OVPRE was an inevitable offshoot of a series of personnel movements that transpired before the election period.¹⁵

On the other hand, Escalera's detail to the HRMO by virtue of Office Order 47, Series of 2013 was merely done to hold in abeyance her return to her previous post in the IAS. They aimed to avert the consequences of prohibited

¹⁰ *Rollo*, p. 39, COMELEC Resolution dated November 4, 2014.

¹¹ *Id.* at 301.

¹² *Id.*

¹³ *Id.* at 75.

¹⁴ *Id.*

¹⁵ *Id.* at 160.

transfers during the election ban, as Escalera's original detail in the HRMO per Office Order 030, Series of 2012,¹⁶ that ran for a period of one year from March 5, 2012, was set to expire on March 5, 2013.¹⁷ Escalera's work still pertained to IAS's functions despite being performed in HRMO, and thus, there was no transfer.¹⁸

*Ruling of the Office of the Regional Election
Director-Cordillera Administrative Region*

The ORED-CAR recommended the filing of a case for violation of the OEC, Sec. 261(h), against Ladilad in relation to COMELEC Resolution No. 9581,¹⁹ based on the finding that while Ablaza was not technically transferred, Escalera's detail still fell within the prohibition.²⁰

In Ablaza's case, the ORED-CAR construed *transfer* as physically and concurrently "taking [out an] employee from one unit or department or geographical unit, and the putting of such employee into another unit or department of the government... In the instant case, Ablaza was already out of the [GSO] long before the effectivity of the election ban[,] although her deployment took place during the election period. Having been taken out from and being replaced in [the GSO was] but a logical and inevitable consequence of her study leave."²¹ As such, Ablaza's assignment to the OVPRE, as caused by Ladilad and Villanueva, did not need to be authorized by the COMELEC, and thus, not a transfer punishable under election laws.

As regards Escalera, on the other hand, the ORED-CAR deemed Escalera's detail to be a transfer within the purview of Sec. 261(h) in relation to COMELEC Resolution No. 9581, as Ladilad's Office Order indicates on paper that she was being moved from her post in the IAS to the HRMO.²² Thus, it recommended the filing of a criminal information against Ladilad.

The dispositive portion of the ORED-CAR Resolution dated May 18, 2014, reads:

WHEREFORE, in view of the foregoing, on the ground of existence of probable cause, the undersigned respectfully RECOMMENDS to the Law Department the filing of a Criminal Information against respondent *Ben D.*

¹⁶ *Id.* at 348.

¹⁷ *Id.* at 340, Counter-Affidavit (Ladilad and Villanueva) before the ORED-CAR.

¹⁸ *Id.*

¹⁹ 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 (2012).

²⁰ *Rollo*, p. 33 (dorsal page).

²¹ *Id.* at 165, ORED-CAR Resolution dated May 18, 2014.

²² *Id.* at 166-167.

Ladilad for violation of paragraph (h) of Section 261 of the Omnibus Election Code in relation to Comelec Resolution No. 9581.²³ (Emphasis supplied)

The case was elevated to the COMELEC *En Banc*.

Ruling of the Commission on Elections En Banc

The COMELEC *En Banc* considered Ablaza and Escalera's personnel movements as transfers prohibited during the 2013 election period. Thus, it found probable cause against both Ladilad and Villanueva and indicted them for violation of the OEC, Sec. 261(h), in relation to COMELEC Resolution No. 9581.

The dispositive portion of the COMELEC *En Banc* Resolution dated November 4, 2014, reads:

WHEREFORE, premises considered, the Commission *En Banc* **RESOLVED**, as it hereby **RESOLVES**, to **ADOPT with MODIFICATION** the *Resolution* dated May 26, 2014 of the Office of the Regional Election Director-Cordillera Administrative Region. **ACCORDINGLY**, the Law Department of this Commission is hereby **DIRECTED** to **FILE** a criminal charge against respondents Ben D. Ladilad and Luciana M. Villanueva for violation of Section 261, paragraph (h) of the Omnibus Election Code as implemented by COMELEC Resolution No. 9581.

SO ORDERED.²⁴ (Emphasis in the original)

Ladilad and Villanueva moved for reconsideration²⁵ of the COMELEC Resolution dated November 4, 2014, which the COMELEC *En Banc* denied in its Resolution²⁶ dated September 27, 2022.

Now before the Court is the Petition for *Certiorari* by Ladilad alone.

Issue

Did the COMELEC commit grave abuse of discretion amounting to a lack or in excess of jurisdiction when it found probable cause against Ladilad for violation of the OEC, Sec. 261(h), in relation to COMELEC Resolution No. 9581?

Our Ruling

The petition is granted.

²³ *Id.* at 33 (dorsal page).

²⁴ *Id.* at 51.

²⁵ *Id.* at 53–64.

²⁶ *Id.* at 74–79.

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Ladilad asserts that there was no transfer effected on Escalera and Ablaza,²⁷ and alleges that the COMELEC incurred inordinate delay in resolving the case.²⁸

On the latter issue, Ladilad claims that his right to the speedy disposition of the case was violated when it took the COMELEC almost eight years, or until September 27, 2022, to resolve his and Villanueva's Motion for Reconsideration²⁹ of the Resolution dated November 4, 2014. Ladilad decries that he was disadvantaged by the uncertainties of the potential criminal case that may be filed against him; that he was forced to live under a cloud of anxiety and suspicion; that his reputation as a former BSU President was besmirched; and that the delay in the resolution of his Motion for Reconsideration impaired his defense in the event of a full-blown trial.³⁰

Pursuant to the guidelines laid out in *Cagang v. Sandiganbayan* (*Cagang*)³¹ in the assessment of the existence of inordinate delays, particularly on how the right against such delays is invoked, We declare that the resolution of this case before the COMELEC was inordinately delayed.

We focus on the third and fifth guidelines as laid out in *Cagang*:

Third, courts must first determine which party carries the burden of proof. If the *right is invoked within the given time periods* contained in current Supreme Court resolutions and circulars, and the time periods that will be promulgated by the Office of the Ombudsman, *the defense has the burden of proving that the right was justifiably invoked*. If the *delay occurs beyond the given time period and the right is invoked*, the prosecution has the burden of justifying the delay.

If the defense has the burden of proof, it must prove[,] *first*, whether the case is motivated by malice or clearly only politically motivated and is attended by utter lack of evidence, and *second*, that the defense did not contribute to the delay.

Once the burden of proof shifts to the prosecution, the prosecution must prove first, that it followed the prescribed procedure in the conduct of preliminary investigation and in the prosecution of the case; second, that the complexity of the issues and the volume of evidence made the delay inevitable; and third, that no prejudice was suffered by the accused as a result of the delay.

....

Fifth, the right to speedy disposition of cases or the right to speedy trial must be timely raised. *The respondent or the accused must file the appropriate motion upon the lapse of the statutory or procedural periods*. Otherwise, they are

²⁷ *Id.* at 12–16.

²⁸ *Id.* at 16–18.

²⁹ *Id.* at 53–64, filed on November 17, 2014.

³⁰ *Id.* at 18.

³¹ 837 Phil. 815 (2018) [Per J. Leonen, *En Banc*].

deemed to have waived their right to speedy disposition of cases.³² (Emphasis supplied)

We also clarified in *Baya v. Sandiganbayan*³³ that inordinate delay in case disposal, for such to constitute a ground for dismissal, is not just a matter of a lapse of time. What constitutes “vexatious, capricious, and oppressive” delay is determined not by mere mathematical reckoning, but in an *ad hoc*, case-to-case basis.³⁴ *Baya* laid out the four factors comprising the balancing act by which courts determine whether or not a person’s right to a speedy disposition of cases is violated:

The four (4) factors—(1) the *length* of the delay; (2) the *reason* for the delay; (3) the *respondent’s assertion of the right*, and (4) *prejudice to the respondent*—are to be considered together, not in isolation. The interplay of these factors determine whether the delay was inordinate.³⁵ (Emphasis supplied)

Per COMELEC Rules of Procedure, any case or matter submitted to or heard by the COMELEC *En Banc* shall generally be decided within 30 days from the date it is deemed submitted for decision or resolution.³⁶ Eight years passed before the COMELEC decided Ladilad and Villanueva’s Motion for Reconsideration of the Resolution dated November 4, 2014, that found them probably guilty of a violation of the OEC. Given eight years of inaction, the COMELEC now bore the burden of evidence of justifying the delay. However, it has never offered any explanation as to why it took eight years to resolve a motion for reconsideration. There was no mention that it followed its established procedure in the conduct of preliminary investigations and in the prosecution of the case. It did not aver in the slightest that the issues raised in the Motion for Reconsideration were so difficult and complex, or that the case records so voluminous, to reasonably require eight years of evaluation and resolution. The COMELEC also remained silent when Ladilad decried prejudice against him by reason of this eight-year delay. From these circumstances, the delay cannot be said to be reasonable.

In *Peñas v. Commission on Elections*,³⁷ a formal complaint against Joseph Roble Peñas (Peñas) was filed on November 6, 2014 for a violation of the OEC, as amended by Republic Act No. 7166, in particular, Sec. 100, in relation to Sec. 262, for election overspending. It took the COMELEC six years from the filing of the complaint to conclude the preliminary investigation and to resolve Peñas’s case. Unfortunately, the COMELEC failed to justify its delay in concluding the preliminary investigation. Consequently, the Court declared that the COMELEC gravely abused its discretion for its unjustified delay in resolving Peñas’s case.

³² *Id.* at 880–882.

³³ 876 Phil. 57 (2020) [Per J. Leonen, Third Division].

³⁴ *Id.* at 94–95.

³⁵ *Id.* at 101.

³⁶ COMELEC Rules of Procedure, rule 18, sec. 7.

³⁷ UDK-16915, February 15, 2022 [Per J. Lazaro-Javier, First Division].

In the present case, it took the COMELEC eight years to resolve Ladilad's and Villanueva's Motion for Reconsideration of the Resolution dated November 4, 2014, which found probable cause to indict them for a violation of the OEC. Worse, no explanation was offered to justify the said delay, except the sole argument that Ladilad had already waived his right to a speedy disposition of cases for his failure to timely raise the same.³⁸

In order to resolve this issue, a review of the timeline of events is in order.

Bandoy filed the Affidavit-Complaint against Ladilad and Villanueva before the COMELEC ORED-CAR on June 27, 2013.³⁹ Ladilad and Villanueva submitted their Counter-Affidavit on September 13, 2013, and their Supplemental Affidavit on October 14, 2013.⁴⁰ On May 18, 2014, the COMELEC ORED-CAR issued its Resolution recommending the filing of a criminal information against Ladilad, and dismissing the case against Villanueva.⁴¹ Ladilad and Villanueva elevated the case to the COMELEC *En Banc*. On September 4, 2014, Ladilad filed a Motion for Early Resolution of his case.⁴²

On November 4, 2014, the COMELEC *En Banc* issued a Resolution modifying the COMELEC ORED-CAR Resolution dated May 18, 2014, and directing the filing of a criminal charge against both Ladilad and Villanueva for a violation of the OEC, Sec. 261(h), in relation to COMELEC Resolution No. 9581.⁴³ Ladilad filed a Motion for Reconsideration on November 17, 2014,⁴⁴ and a Supplemental Motion for Reconsideration on November 19, 2014.⁴⁵ However, it was only on September 27, 2022, or after almost eight years, that the COMELEC resolved the same.⁴⁶

Given that Ladilad moved for the early resolution of his case on September 14, 2014, when the COMELEC failed to decide his appeal within 30 days as prescribed in the COMELEC Rules of Procedure, Rule 18, Section 7,⁴⁷ it is incorrect for the COMELEC to say that Ladilad had waived his right to a speedy disposition of cases. On the contrary, Ladilad did not sleep on his rights. Certainly, this could not be construed as acquiescence to the delay.⁴⁸

³⁸ *Rollo*, pp. 103–104.

³⁹ *Id.* at 40.

⁴⁰ *Id.* at 42.

⁴¹ *Id.* at 24–36.

⁴² *Id.* at 239–242.

⁴³ *Id.* at 51.

⁴⁴ *Id.* at 53–64.

⁴⁵ *Id.* at 71.

⁴⁶ *Id.* at 74–79.

⁴⁷ Section 7: *Period to Decide by the Commission En Banc*. – Any case or matter submitted to or heard by the Commission en banc shall be decided within thirty (30) days from the date it is deemed submitted for decision or resolution, except a motion for reconsideration of a decision or resolution of a Division in Special Actions and Special Cases which shall be decided within fifteen (15) days from the date the case or matter is deemed submitted for decision, unless otherwise provided by law.

⁴⁸ *Javier v. Sandiganbayan*, 873 Phil. 951, 967 (2020) [Per J. Caguioa, First Division].

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Whether or not the Motion for Early Resolution was directed against his pending motion for reconsideration, the fact remains that he invoked his right to a speedy disposition of his case at one point during the proceedings before the COMELEC *En Banc*. Even if Ladilad did not follow through the resolution of his Motion for Reconsideration thereafter, it cannot be concluded solely from this fact that Ladilad was already deemed to have acquiesced to the COMELEC's delay, to all its consequences, and to the alleged prejudice to his person, reputation, and future defense, and had effectively waived his right to the speedy disposition of his Motion for Reconsideration. After all, aggrieved litigants need not always register their objections to a delay in the case proceedings to preserve their right to the speedy disposition of their cases. Parties are not duty-bound to follow up on their case that is pending before the courts and tribunals.⁴⁹ It is the governing agency, the COMELEC in this instance, that is tasked to promptly resolve it.⁵⁰

Certiorari petitions must be grounded on allegations and evidence of grave abuse of discretion. *Grave abuse of discretion* is that arbitrary, despotic, and whimsical exercise of discretion as to amount to a lack of jurisdiction.⁵¹ Here, the COMELEC adopted the ORED-CAR's recommendations and directed Ladilad and Villanueva's indictment on November 4, 2014, or after the lapse of one year and five months from the time the complaint was filed. In addition, it took the COMELEC eight years, via its Resolution dated September 27, 2022, to deny Ladilad and Villanueva's Motion for Reconsideration, which effectively merely affirmed its recommendation for indictment dated November 4, 2014. By all means, the COMELEC's leisurely manner of handling and disposing the preliminary investigation proceedings against Ladilad had been arbitrary, despotic, and whimsical, and worse, unjustified.

Withal, the Court holds that the COMELEC gravely abused its discretion when it incurred inordinate delay in finding probable cause against Ladilad for a violation of the OEC, specifically, Sec. 261(h).

Considering the foregoing, there is no more imperative to discuss the substantive issues regarding the transfers of Ablaza and Escalera.

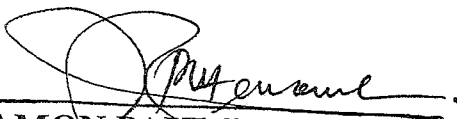
ACCORDINGLY, the instant Petition is **GRANTED**. The Resolutions of the Commission on Elections *En Banc* dated November 4, 2014 and September 27, 2022, and the Resolution of the Office of the Regional Election Director-Cordillera Administrative Region in E.O. Case No. 13-261 dated May 18, 2014, are **REVERSED** and **SET ASIDE**.

⁴⁹ See *Peñas v. Commission on Elections*, UDK-16915, February 15, 2022 [Per J. Lazaro-Javier, First Division].

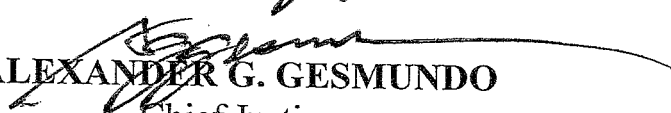
⁵⁰ *Id.*

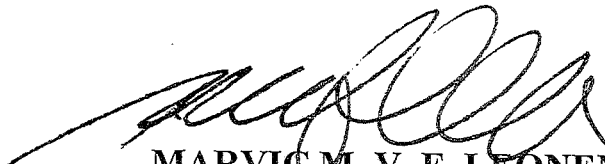
⁵¹ *Tirol v. Tayengco-Lopingco*, G.R. No. 211017, March 15, 2022 [Per J. Inting, First Division].

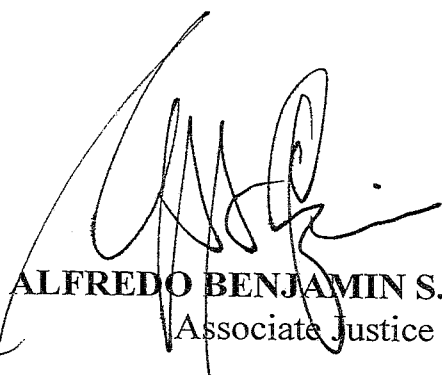
SO ORDERED.


RAMON PAUL L. HERNANDO
Associate Justice

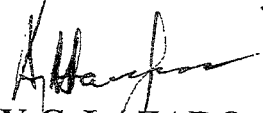
WE CONCUR:


*See separate
concurring opinion*

ALEXANDER G. GESMUNDO
Chief Justice

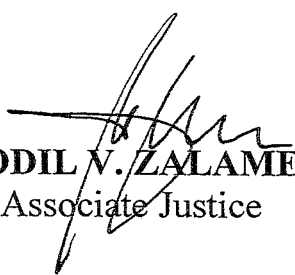

MARVIC M. V. F. LEONEN
Associate Justice


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

*See separate
Concurring
Opinion*


AMY C. LAZARO-JAVIER
Associate Justice

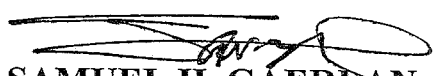

HENRI JEAN PAUL B. INTING
Associate Justice



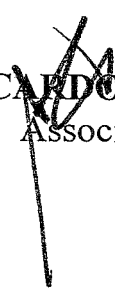
RODIL V. ZALAMEDA
Associate Justice



MARIO V. LOPEZ
Associate Justice



SAMUEL H. GAERLAN
Associate Justice




RICARDO R. ROSARIO
Associate Justice



JHOSEP V. LOPEZ
Associate Justice



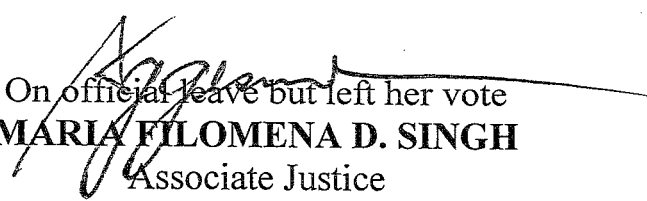
JAPAR B. DIMAAMPAO
Associate Justice



JOSE MIDAS P. MARQUEZ
Associate Justice



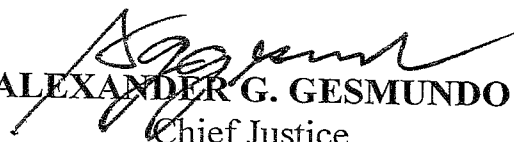
ANTONIO T. KHO, JR.
Associate Justice



On official leave but left her vote
MARIA FILOMENA D. SINGH
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, I certify 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.


ALEXANDER G. GESMUNDO
Chief Justice

EN BANC

G.R. No. 264071 – BEN D. LADILAD, Petitioner, v. COMMISSION ON ELECTIONS and MARY GRACE BANDOY, Respondents.

Promulgated:

August 13, 2024

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CONCURRING OPINION

GESMUNDO, C.J.:

I respectfully write in relation to the above-captioned case.

The *ponencia* resolved to grant the instant Petition for *Certiorari* under Rule 64, in relation to Rule 65, with a prayer for Temporary Restraining Order, *Status Quo Ante* Order, and/or Writ of Preliminary Injunction, filed by petitioner Ben D. Ladilad (Ladilad) assailing the November 4, 2014 and September 27, 2022 Resolutions of the Commission on Elections (COMELEC) *En Banc*, and the May 18, 2004 Resolution of the Office of the Regional Election Director-Cordillera Administrative Region (ORED-CAR).¹

The *ponencia* found that the COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction when it incurred an inordinate delay of eight years in determining the existence of probable cause to indict Ladilad and Luciana M. Villanueva (Villanueva) for violation of Section 261(h) of the Omnibus Election Code (OEC), in relation to COMELEC Resolution No. 9581,² for acts allegedly committed during the election period of the 2013 National, Local, and Administrative Region of Muslim Mindanao Elections.³

¹ *Ponencia*, p. 10.

² 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 (2012).

³ *Ponencia*, pp. 9–10.

As narrated in the *ponencia*, on June 27, 2013, a complaint for violation of Section 261, paragraphs (g)⁴ and (h)⁵ of the OEC was filed by Mary Grace Bandy (Bandy) against Ladilad, the President of Benguet State University (BSU), and Villanueva, the Vice President for Research and Extension, also of BSU.⁶

The complaint alleged that Ladilad and Villanueva caused the illegal detail and transfer of BSU employees Gretchen Gaye Ablaza (Ablaza) and Frances Noelle Escalera (Escalera) during the 2013 election period.⁷ Consequently, on May 18, 2014, the ORED-CAR recommended the filing of a criminal information for violation of Section 261(h) against Ladilad for the transfer of Escalera. It ruled that the transfer of Ablaza was not punishable under election laws.⁸

On November 4, 2014, the COMELEC *En Banc* found probable cause against both Ladilad and Villanueva for violation of Section 261(h) and ordered that a criminal case be filed against them. Ladilad and Villanueva moved for reconsideration. After the lapse of almost eight years, or on September 27, 2022, the COMELEC *En Banc* denied the said motion for reconsideration for lack of merit. Thus, the instant petition for *certiorari* was filed by Ladilad alone.⁹

The *ponencia* granted the petition. It found that the resolution of this case before the COMELEC was inordinately delayed. It underscored that, per the COMELEC Rules of Procedure, any case or matter submitted to or heard by the COMELEC *En Banc* shall generally be decided within 30 days from

⁴ Sec. 261. *Prohibited Acts*. – The following shall be guilty of an election offense:

(g) *Appointment of new employees, creation of new position, promotion, or giving salary increases*. – During the period of forty-five days before a regular election and thirty days before a special election, (1) any head, official or appointing officer of a government office, agency or instrumentality, whether national or local, including government-owned or controlled corporations, who appoints or hires any new employee, whether provisional, temporary or casual, or creates and fills any new position, except upon prior authority of the Commission. The Commission shall not grant the authority sought unless, it is satisfied that the position to be filled is essential to the proper functioning of the office or agency concerned, and that the position shall not be filled in a manner that may influence the election.

As an exception to the foregoing provisions, a new employee may be appointed in case of urgent need: *Provided, however*, That notice of the appointment shall be given to the Commission within three days from the date of the appointment. Any appointment or hiring in violation of this provision shall be null and void.

(2) Any government official who promotes, or gives any increase of salary or remuneration or privilege to any government official or employee, including those in government-owned or controlled corporations.

⁵ Sec. 261. . . .

(h) *Transfer of officers and employees in the civil service*. – Any public official who makes or causes any transfer or detail whatever of any officer or employee in the civil service including public school teachers, within the election period except upon prior approval of the Commission.

⁶ *Ponencia*, p. 2.

⁷ *Id.* at 3.

⁸ *Id.* at 5.

⁹ *Id.* at 6.

the date it is deemed submitted for decision or resolution. However, it observed that eight years had passed before the COMELEC resolved Ladilad and Villanueva's motion for reconsideration of the November 4, 2014 Resolution finding them probably guilty of a violation of the OEC. Considering the eight years of inaction, the COMELEC had the burden of justifying the delay. The *ponencia* noted that the COMELEC never offered any explanation as to its delay, except to argue that Ladilad had already waived his right to a speedy disposition of his case.¹⁰

The *ponencia* held that Ladilad did not waive his right to a speedy disposition of his case. It pointed out that Ladilad moved for early resolution of his case on September 14, 2014. Thus, for the *ponencia*, Ladilad did not sleep on his rights. It clarified that "[w]hether or not the Motion for Early Resolution was directed against his pending motion for reconsideration, the fact remains that he invoked his right to a speedy disposition of his case at one point during the proceedings before the COMELEC *En Banc*."¹¹ It emphasized that parties are not duty-bound to follow-up on their case pending before the courts or tribunals. In fine, the *ponencia* concluded that the COMELEC committed grave abuse of discretion when it incurred excessive and unjustified delay in finding probable cause against Ladilad.¹²

I fully concur in the *ponencia*'s ruling that there was inordinate delay on the part of the COMELEC in resolving Ladilad's case, thereby violating his right to speedy disposition of his case. Hence, the dismissal of the complaint against Ladilad is warranted.

There is inordinate delay on the part of the COMELEC in resolving the preliminary investigation against Ladilad; his right to a speedy disposition of his case was violated

Enshrined in Article III, Section 16¹³ of the 1987 Constitution is the right of all persons to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies. This constitutional right is available not only to the accused in criminal proceedings but also to all parties in all cases, whether civil or administrative in nature, as well as all proceedings,

¹⁰ *Id.* at 6–9.

¹¹ *Id.* at 10.

¹² *Id.*

¹³ Sec. 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.

either judicial or quasi-judicial.¹⁴ Consequently, any party to a case may demand expeditious action from all officials who are tasked with the administration of justice.¹⁵ This includes the COMELEC. Any inordinate delay in the resolution and termination of cases constitutes a violation of the right to speedy disposition of cases.

It must be emphasized that the determination of whether the delay was inordinate is made through the examination of the facts and circumstances surrounding each case, not through a mere mathematical reckoning. Courts should appraise a reasonable period from the point of view of how much time a competent and independent public officer would need in relation to the complexity of a given case. If there has been delay, the prosecution must be able to satisfactorily explain the reasons for such delay and that no prejudice was suffered by the accused as a result. The timely invocation of the accused's constitutional rights must also be examined on a case-to-case basis.¹⁶

In the landmark case of *Cagang v. Sandiganbayan, Fifth Division*,¹⁷ the Court laid down the guidelines for the resolution of issues concerning inordinate delay in the conduct of preliminary investigations by the State's specialized agencies, viz.:

First, the right to speedy disposition of cases is different from the right to speedy trial. While the rationale for both rights is the same, the right to speedy trial may only be invoked in criminal prosecutions against courts of law. The right to speedy disposition of cases, however, may be invoked before any tribunal, whether judicial or quasi-judicial. What is important is that the accused may already be prejudiced by the proceeding for the right to speedy disposition of cases to be invoked.

Second, a case is deemed initiated upon the filing of a formal complaint prior to a conduct of a preliminary investigation. This Court acknowledges, however, that the Ombudsman should set reasonable periods for preliminary investigation, with due regard to the complexities and nuances of each case. Delays beyond this period will be taken against the prosecution. The period taken for fact-finding investigations prior to the filing of the formal complaint shall not be included in the determination of whether there has been inordinate delay.

Third, courts must first determine which party carries the burden of proof. If the right is invoked within the given time periods contained in current Supreme Court resolutions and circulars, and the time periods that

¹⁴ *Peralta v. Commission on Elections*, G.R. No. 261107, January 30, 2024 [Per J. Inting, *En Banc*] at 10. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

¹⁵ *Id.*

¹⁶ *Villanueva v. Commission on Elections*, G.R. No. 260116, July 11, 2023 [Per J. Gaerlan, *En Banc*] at 11–12 (this pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website), citing *Cagang v. Sandiganbayan, Fifth Division*, 837 Phil. 815, 877 (2018) [Per J. Leonen, *En Banc*].

¹⁷ 837 Phil. 815 (2018) [Per J. Leonen, *En Banc*].

will be promulgated by the Office of the Ombudsman, the defense has the burden of proving that the right was justifiably invoked. If the delay occurs beyond the given time period and the right is invoked, the prosecution has the burden of justifying the delay.

If the defense has the burden of proof, it must prove *first*, whether the case is motivated by malice or clearly only politically motivated and is attended by utter lack of evidence, and *second*, that the defense did not contribute to the delay.

Once the burden of proof shifts to the prosecution, the prosecution must prove *first*, that it followed the prescribed procedure in the conduct of preliminary investigation and in the prosecution of the case; *second*, that the complexity of the issues and the volume of evidence made the delay inevitable; and *third*, that no prejudice was suffered by the accused as a result of the delay.

Fourth, determination of the length of delay is never mechanical. Courts must consider the entire context of the case, from the amount of evidence to be weighed to the simplicity or complexity of the issues raised.

An exception to this rule is if there is an allegation that the prosecution of the case was solely motivated by malice, such as when the case is politically motivated or when there is continued prosecution despite utter lack of evidence. Malicious intent may be gauged from the behavior of the prosecution throughout the proceedings. If malicious prosecution is properly alleged and substantially proven, the case would automatically be dismissed without need of further analysis of the delay.

Another exception would be the waiver of the accused to the right to speedy disposition of cases or the right to speedy trial. If it can be proven that the accused acquiesced to the delay, the constitutional right can no longer be invoked.

In all cases of dismissals due to inordinate delay, the causes of the delays must be properly laid out and discussed by the relevant court.

Fifth, the right to speedy disposition of cases or the right to speedy trial must be timely raised. The respondent or the accused must file the appropriate motion upon the lapse of the statutory or procedural periods. Otherwise, they are deemed to have waived their right to speedy disposition of cases.¹⁸

The guidelines set forth in *Cagang* have long been consistently applied in determining whether the accused's right to speedy disposition of cases has been violated. Further, said guidelines have been applied to the delay committed by COMELEC in resolving a complaint for an election offense, as in this case. Indeed, the right to speedy disposition of cases may be invoked to question the inordinate delay committed in the course of preliminary

¹⁸ *Id.* at 880–882.

investigations by the COMELEC. While fact-finding proceedings and investigations do not form part of the criminal prosecution proper, there may be instances when the respondent may already be prejudiced by such proceedings.¹⁹

At this point, I find it proper to refer to the rulings of the Court in *Peñas v. Commission on Elections*,²⁰ *Ecleo v. Commission on Elections*,²¹ *Villanueva v. Commission on Elections*,²² and the most recent case of *Peralta v. Commission on Elections*.²³ While the election offense involved in said cases differ, the facts thereof are substantially similar to the case of *Ladilad* in that the right to speedy disposition of cases was also invoked.

The seminal case on this matter is that of *Peñas*, where the Court applied for the first time to COMELEC investigations the violation of the right to speedy disposition as a ground for dismissal of cases.²⁴

As synthesized by the Court, Joseph Roble Peñas (Peñas) was a candidate for Mayor of Digos City, Davao del Sur during the 2010 National and Local Elections. The COMELEC filed a *motu proprio* complaint against him in 2014 for election overspending or exceeding the expenditure limit as reflected in his Statement of Contributions and Expenditures. The Court observed that the complaint was filed against Peñas on November 12, 2014 while the preliminary investigation was concluded on December 9, 2020, or after more than six years. It noted that the COMELEC failed to observe its own prescribed period for resolving cases and, as such, the burden of justifying the delay shifted to it. The COMELEC offered no reasonable justification for the prolonged conduct of the preliminary investigation as the issue involved, i.e., whether Peñas exceeded the election spending limits under the law, was neither complex nor novel and did not entail the review or examination of voluminous records. The COMELEC cited, by way of justification, the two general elections it had administered during the pendency of the investigation. The Court found that this did not justify the delay of the COMELEC. It was held that the six-year period it took the COMELEC to resolve the complaint grossly prejudiced Peñas. The Court further declared that Peñas did not waive his right to a speedy disposition of his case and against inordinate delay. It reiterated that a respondent in a criminal prosecution or investigation is not duty bound to follow up on his or

¹⁹ *Peñas v. Commission on Elections*, UDK-16915, February 15, 2022 [Per J. Lazaro-Javier, *En Banc*] at 12. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

²⁰ UDK-16915, February 15, 2022 [Per J. Lazaro-Javier, *En Banc*].

²¹ G.R. No. 263061, January 10, 2023 [Per J. Singh, *En Banc*].

²² G.R. No. 260116, July 11, 2023 [Per J. Gaerlan, *En Banc*].

²³ G.R. No. 261107, January 30, 2024 [Per J. Inting, *En Banc*].

²⁴ *Peñas v. Commission on Elections*, UDK-16915, February 15, 2022 [Per J. Lazaro-Javier, *En Banc*] at 15–17. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

her case; it is the governing agency that is tasked to promptly resolve it. Thus, the Court dismissed the criminal action against Peñas.²⁵

The ruling in *Peñas* was reiterated in *Ecleo*, where the Court similarly found that the COMELEC took an unreasonable amount of time to conclude its preliminary investigation on an issue that could be resolved by simple arithmetic, without offering a valid explanation for such protracted investigation. To summarize, the COMELEC, represented by its Campaign Finance Unit, filed a complaint against Glenda Buray Ecleo (Ecleo) on December 13, 2014 for alleged election overspending. However, it was only on June 23, 2021, or after seven years, that the COMELEC *En Banc* issued a resolution directing the Law Department to file an information against Ecleo. The Court declared that this was in flagrant violation of the COMELEC's own rules of procedure. It was observed that a lot of events had occurred since the filing of the complaint and the issuance of the resolution. Ecleo had already completed her term as Governor of Dinagat Islands. Further, she had also been re-elected to the same post and had already completed her second term. Citing *Peñas*, the Court held that there was inordinate delay on the part of the COMELEC in the conduct of its investigation considering that the issue involved was simple and straightforward, without the necessity of examining voluminous records. It was also noted that the COMELEC neither explained the cause for the delay nor proffered the reason why it flouted its own rules of procedure. Accordingly, the Court dismissed the case against Ecleo.²⁶

Similar to the ruling in *Peñas* and *Ecleo*, the Court held in *Villanueva* that there was inordinate delay on the part of the COMELEC when it took almost six years to rule on Agnes Villanueva's (Villanueva) motion for reconsideration of the COMELEC resolution finding probable cause for the filing of a complaint against her for violation of an election offense. The COMELEC Law Department (CLD) initiated proceedings against Villanueva on February 15, 2011. The CLD submitted its recommendation to the COMELEC *En Banc* on April 27, 2015, almost four years after the filing of Villanueva's last pleading on April 15, 2011. The COMELEC *En Banc*, eight months after the submission of the recommendation of its Law Department, issued its December 11, 2015 resolution directing the filing of an information against Villanueva. Thereafter, it took the COMELEC six years, or on January 21, 2022, to rule on Villanueva's motion for reconsideration. The Court noted that during the interim, Villanueva was able to serve three full terms as mayor of Plaridel. Further, by the time the COMELEC finally ordered the filing of charges against her, Villanueva had been elected to the Misamis Occidental Provincial Board. The Court declared that, as in *Peñas* and *Ecleo*, the facts of

²⁵ *Id.* at 12–17, citing *Javier v. Sandiganbayan*, 873 Phil. 951, 966–967 (2020) [Per J. Caguioa, First Division].

²⁶ *Ecleo v. Commission on Elections*, G.R. No. 263061, January 10, 2023 [Per J. Singh, *En Banc*] at 5–7. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

Villanueva's case are not complicated and did not require a review of voluminous records. Nonetheless, the COMELEC failed to explain the reason behind its delay. Instead, the COMELEC placed the blame on Villanueva for not raising the matter during preliminary investigation. The Court observed that this argument had already been addressed in *Peñas*. The Court stressed that it took the COMELEC 11 years just to find probable cause against Villanueva, in violation of its own procedural rules. Thus, the Court declared that the COMELEC violated Villanueva's right to speedy disposition of her case. It dismissed the case against her.²⁷

The same conclusions reached in *Peñas*, *Ecleo*, and *Villanueva* were echoed in the most recent case of *Peralta*. The COMELEC Campaign Finance Unit filed a complaint against Ana Liza Arriola Peralta (Peralta) on May 9, 2015. Three years and nearly three months later, or on August 8, 2018, the COMELEC issued its resolution finding probable cause against Peralta for election overspending. However, Peralta was only furnished with a copy of the resolution more than a year and a half from its issuance, or on February 18, 2020. She sought reconsideration, which the COMELEC denied, after one year and over four months, in its July 14, 2021 resolution. Peralta received a copy thereof only after more than 10 months following its issuance. The Court observed that it took the COMELEC more than six years, from May 9, 2015 to July 14, 2021, to finally recommend the filing of an information against Peralta for election overspending. This is beyond the 20-day period provided under the COMELEC Rules of Procedure. The Court noted that the COMELEC did not offer any explanation or any special circumstance to justify the delay. Thus, citing the ruling in *Peñas* and *Ecleo*, the Court found the COMELEC guilty of inordinate delay in the conduct of its preliminary investigation against Peralta. It dismissed the complaint against her.²⁸

The rulings in *Peñas*, *Ecleo*, *Villanueva*, and *Peralta* are applicable to the case at bench. The relevant facts in said cases are similar to the instant case of *Ladilad*.

To recall, the complaint against *Ladilad* and *Villanueva* was filed on June 27, 2013. The ORED-CAR recommended the filing of the case against *Ladilad* on May 18, 2014. Meanwhile, the COMELEC *En Banc* found probable cause to indict both *Ladilad* and *Villanueva* for violation of Section 261(h) of the OEC in its November 4, 2014 Resolution. *Ladilad* and *Villanueva* moved for reconsideration of the November 4, 2014 Resolution of

²⁷ *Villanueva v. Commission on Elections*, G.R. No. 260116, July 11, 2023 [Per J. Gaerlan, *En Banc*] at 14–16. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

²⁸ *Peralta v. Commission on Elections*, G.R. No. 261107, January 30, 2024 [Per J. Inting, *En Banc*] at 13–17. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

the COMELEC *En Banc*. The COMELEC *En Banc* denied the same in its September 27, 2022 Resolution.²⁹

I agree with the observation of Associate Justice Alfredo Benjamin S. Caguioa during the deliberations for this case that the COMELEC ORED-CAR failed to comply with the prescribed periods under Rule 34, Section 8 of the COMELEC Rules of Procedure.

Rule 34, Section 8 of the COMELEC Rules of Procedure ordains that a preliminary investigation must be terminated by the investigating officer within 20 days after receipt of the counter-affidavits, and a resolution must thereafter be issued within five days, thus:

Section 8. *Duty of Investigating Officer.* — The preliminary investigation must be terminated within twenty (20) days after receipt of the counter-affidavits and other evidence of the respondents, and resolution thereof shall be made within five (5) days thereafter.

Bandoy filed the affidavit-complaint against Ladilad and Villanueva on June 27, 2013. Ladilad and Villanueva were then directed to file their respective counter-affidavits. It appears that Ladilad filed his counter-affidavit before the ORED-CAR on September 13, 2013 and his supplemental counter-affidavit on October 14, 2013.³⁰ Thus, applying the 20-day and five-day periods in Rule 34, Section 8 of the COMELEC Rules of Procedure, the preliminary investigation should have been terminated on November 3, 2013 and the resolution should have been issued by November 8, 2013. Despite the clear mandate of its own rules of procedure, the ORED-CAR issued its Resolution only on May 18, 2014, or after the lapse of six months. Indubitably, as aptly pointed out by Justice Caguioa during the deliberations, the ORED-CAR went beyond the prescribed period for the conduct of a preliminary investigation in violation of its own Rules of Procedure.

Further, I find that the COMELEC *En Banc* itself failed to comply with the prescribed period mandated under its Rules of Procedure with respect to the resolution of the then pending motion for reconsideration of Ladilad and Villanueva. Rule 18, Section 7 of the COMELEC Rules of Procedure provides as follows:

²⁹ *Ponencia*, p. 9.

³⁰ *Id.*

Section 7. *Period to Decide by the Commission En Banc.* — Any case or matter submitted to or heard by the Commission en banc shall be decided within thirty (30) days from the date it is deemed submitted for decision or resolution, except a motion for reconsideration of a decision or resolution of a Division in Special Actions and Special Cases which shall be decided within fifteen (15) days from the date the case or matter is deemed submitted for decision, unless otherwise provided by law. (Emphasis supplied)

It appears that Ladilad filed his motion for reconsideration on November 17, 2014 and his supplemental motion for reconsideration on November 19, 2014.³¹ Consequently, the COMELEC had 30 days therefrom to resolve said motion. The COMELEC *En Banc* took almost eight years to resolve the same, issuing its Resolution only on September 27, 2022.

In sum, *the COMELEC, through the ORED-CAR and the COMELEC En Banc, collectively took nine years to terminate the preliminary investigation against Ladilad – from the filing of the complaint on June 27, 2013 until the resolution denying the motion for reconsideration on September 27, 2022.* In fact, the COMELEC *En Banc* itself took eight years to resolve a mere motion for reconsideration. Despite this, there appears to be *no justification offered by COMELEC as to why its delay should be excused.* Further, the issue in the instant case – whether there is probable cause to believe that Ladilad and Villanueva violated Section 261(h) of the OEC due to personnel movements effected during the election ban period – cannot be classified as complex or novel. It also does not entail the review or examination of voluminous records. *Finally, it cannot be said that the delay in the instant case was due to causes directly attributable to Ladilad.*

To my mind, *the nine years taken by the COMELEC for the conduct of a preliminary investigation and its utter failure to provide sufficient justification for said delay constitutes inordinate delay.* This delay has prejudiced Ladilad as the lapse of the significant amount of time – nine years – has seriously affected the quality of evidence that Ladilad may adduce in his defense. Thus, the assailed COMELEC rulings should be reversed and the criminal action filed against Ladilad be dismissed on account of the COMELEC's violation of Ladilad's right to speedy disposition of his case.

³¹ *Id.*

Ladilad timely invoked his right to speedy disposition of his case; there is no waiver or acquiescence, on his part, to the inordinate delay

I fully agree in the *ponencia*'s finding that Ladilad did not waive his right to a speedy disposition of his case or acquiesced to the inordinate delay. Ladilad invoked it at the earliest opportunity, before this Court, prior to entering his plea during arraignment. Truly, the fact that Ladilad's motion for early resolution was directed against his pending motion for reconsideration is of no matter.

First, it suffices that the right to speedy disposition of cases be invoked at any stage of the conduct of the preliminary investigation. To rule otherwise would mean that the right must be invoked separately at (1) the initial resolution by the ORED-CAR of Bando's complaint, (2) the first resolution by the COMELEC *En Banc* on the review of the ORED-CAR's resolution, and (3) finally, the final determination by the COMELEC *En Banc* of the motion for reconsideration. Stretching this argument to its practical implications, this denotes that a respondent must invoke the right to speedy disposition of a case at every stage of the preliminary investigation. A singular failure to do so, at any stage thereof, would amount to acquiescence to the delay.

Indeed, I cannot subscribe to this theory that the right to speedy disposition of cases should be invoked separately in each step of the preliminary investigation. Such an interpretation appears to unduly burden the respondent in a preliminary investigation when it is well-established that "[i]t is the duty of the prosecutor to speedily resolve the complaint, as mandated by the Constitution, regardless of whether the petitioner did not object to the delay or that the delay was with his acquiescence provided that it was not due to causes directly attributable to him."³² Simply, it is not the duty of the respondent in a preliminary investigation to follow up on the resolution of the preliminary investigation. Thus, to adopt a contrary interpretation would result in a situation where the respondent must invoke said right at every stage of the preliminary investigation, something that appears to closely resemble "following up" on the resolution by the State's specialized agencies of the preliminary investigation. This cannot be the intention of the 1987 Constitution in providing for the right to speedy disposition of cases,

³² *Cervantes v. Sandiganbayan*, 366 Phil. 602, 609 (1999) [Per J. Pardo, First Division].

especially because a respondent bears no duty to follow up on the resolution of the preliminary investigation against him or her.

Second, case law instructs that there is a timely invocation of the right to speedy disposition of cases if it is made prior to the plea during arraignment.

The ruling of the Court in *Javier v. Sandiganbayan*,³³ applying the fifth guideline in *Cagang* anent the timely assertion of the right to speedy disposition of case, is apropos. In said case, the Court declared that Pete Gerald L. Javier (Javier) and Danilo B. Tumamao's (Tumamao) inaction did not amount to acquiescence. It stated that, despite the lack of any indication that they "followed-up" on the resolution of their case, Javier and/or Tumamao could not be considered to have acquiesced to the delay of five years. This is because respondents in preliminary investigation proceedings do not have any duty to follow up on the prosecution of their case. Furthermore, the Court found that Javier and Tumamao did not waive their right since they filed a Motion to Quash at the earliest opportunity. It was observed that Javier and Tumamao already sought permission from the Sandiganbayan to file a Motion to Quash even before they were even arraigned. Verily, they did not acquiesce to the delay.³⁴

Likewise, in the recent case of *Clarete v. Office of the Ombudsman*,³⁵ the Court found that Arthur Cua Yap (Yap) invoked his right to speedy disposition of cases at the earliest opportunity by doing so before the Sandiganbayan. It declared that the fact that Yap merely asserted said right for the first time before the Sandiganbayan does not amount to waiver, or acquiescence to the Ombudsman's delay. It reiterated that there is no duty on the part of Yap to follow up on the prosecution of his case. Rather, the Office of the Ombudsman had the responsibility to expedite the same within the bounds of reasonable timeliness. Again, the Court emphasized that the respondents in preliminary investigation proceedings do not have any duty to follow up on the prosecution of their case.³⁶

Further, *Peñas* is also edifying. It bears stressing that the petitioner in *Peñas* only invoked his right to a speedy disposition of his case in the petition before the Court. Despite this, the Court still dismissed the complaint against him on the basis that his right had been violated by the COMELEC due to its inordinate delay in the resolution of the preliminary investigation. The Court declared that he timely asserted his right to a speedy disposition of his case

³³ 873 Phil. 951 (2020) [Per J. Caguioa, First Division].

³⁴ *Id.* at 966–967.

³⁵ G.R. No. 232968, April 15, 2024 [Per J. Dimaampao, Third Division].

³⁶ *Id.* at 26–27. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

since he filed his petition before the Court immediately after the COMELEC directed the filing of an information against him. The Court stated that it is sufficient that the right is invoked prior to entering a plea during arraignment.³⁷

Similarly, the Court applied the ruling in *Peñas* to the case of *Villanueva*. There, the COMELEC argued that Villanueva failed to invoke her right to a speedy disposition of her case during preliminary investigation. The Court brushed aside said argument, noting that it had been settled in *Peñas* that “it is sufficient that the right is asserted before entering a plea during arraignment.”³⁸

While the last first two cases do not involve preliminary investigations conducted by the COMELEC but, rather, by the Ombudsman, the doctrine laid down in said cases concerning the right to speedy disposition of cases and its waiver, if any, apply with equal force to preliminary investigations by the COMELEC.

Indeed, the Court has consistently held that a respondent in a criminal prosecution or investigation is not duty bound to follow up on his or her case; it is the governing agency that is tasked to promptly resolve it.³⁹ Further, there is a timely invocation of the right to speedy disposition of cases when it is made before entering a plea during arraignment.⁴⁰

Accordingly, the absence of a motion for early resolution of his motion for reconsideration does not automatically equate to Ladilad’s acquiescence to the delay. It is enough that Ladilad had filed a motion for early resolution before the COMELEC *En Banc* during its review of the ORED-CAR’s Resolution.⁴¹ Further, upon resolution of said motion for reconsideration, Ladilad timely asserted his right to a speedy disposition of his case in the instant Petition for *Certiorari*. To recall, in *Javier*,⁴² *Peñas*, and *Villanueva*, the Court held that it is sufficient that the right is invoked prior to entering a

³⁷ *Peñas v. Commission on Elections*, UDK-16915, February 15, 2022 [Per J. Lazaro-Javier, *En Banc*] at 17 (this pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website), citing *Javier v. Sandiganbayan*, 873 Phil. 951, 967 (2020) [Per J. Caguioa, First Division].

³⁸ *Villanueva v. Commission on Elections*, G.R. No. 260116, July 11, 2023 [Per J. Gaerlan, *En Banc*] at 16 (this pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website), citing *Peñas v. Commission on Elections*, *id.* at 17.

³⁹ *Peñas v. Commission on Elections*, *id.*, citing *Javier v. Sandiganbayan*, 873 Phil. 951, 966 (2020) [Per J. Caguioa, First Division]; *Coscolluela v. Sandiganbayan*, 714 Phil. 55, 64 (2013) [Per J. Perlas-Bernabe, Second Division].

⁴⁰ *Peñas v. Commission on Elections*, *id.*, citing *Javier v. Sandiganbayan*, *id.* at 967.

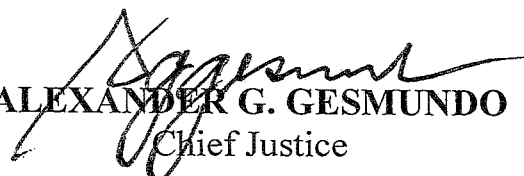
⁴¹ *Ponencia*, p. 10.

⁴² In *Javier*, the Court held that the filing of a Motion to Quash prior to arraignment constituted a timely assertion of the right. It may be surmised from the foregoing that there is a timely assertion of the right to speedy disposition of cases when it is made before entering a plea during arraignment. (*Javier v. Sandiganbayan*, 873 Phil. 951, 967 (2020) [Per J. Caguioa, First Division].)

plea during arraignment. Such is the case here. Ladilad asserted his right to a speedy disposition of the preliminary investigation against him in the Petition for *Certiorari* before the Court, prior to entering any plea during arraignment. Thus, Ladilad timely raised said right.

For these reasons, I concur that the COMELEC violated Ladilad's right to a speedy disposition of his case. The COMELEC's inordinate delay in the resolution of the preliminary investigation against Ladilad grossly prejudiced him as, among others, the length of time that has lapsed may have rendered unavailable the witnesses he may have produced and the documentary evidence he may have supplied in his defense. Accordingly, the complaint against Ladilad for violation of Section 261(h) of the OEC, in relation to COMELEC Resolution No. 9581, must be dismissed.

ACCORDINGLY, I vote to **GRANT** the Petition for the reasons stated above.

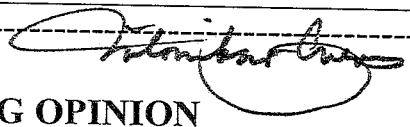

ALEXANDER G. GESMUNDO
Chief Justice

EN BANC

G.R. No. 264071 — BEN D. LADILAD, Petitioner, v. COMMISSION ON ELECTIONS and MARY GRACE BANDOY, Respondents.

Promulgated:

August 13, 2024

X----------X

SEPARATE CONCURRING OPINION

CAGUIOA, J.:

I concur in the *ponencia*. I write this Separate Concurring Opinion in the hopes that by tackling some of the issues raised during the deliberations of the case, I may be able to even slightly contribute to the jurisprudence relevant to this case.

During the case deliberations, it was suggested that while the Commission on Elections (COMELEC) delayed in resolving the preliminary investigation against Ben D. Ladilad (Ladilad) for violation of Section 261, paragraphs (g)¹ and (h)² of the Omnibus Election Code (OEC), in relation to COMELEC Resolution No. 9581³ during the 2013 National and Local Elections, Ladilad already acquiesced to such delay for consciously allowing his *motion for reconsideration* to remain unresolved for eight years without objection. It was further raised that although Ladilad did file a *motion for early resolution* once, the same was made to expedite the resolution of the *main*

¹ SECTION 261. *Prohibited Acts*. – The following shall be guilty of an election offense:

.....
(g) *Appointment of new employees, creation of new position, promotion, or giving salary increases*. – During the period of forty-five days before a regular election and thirty days before a special election, (1) any head, official or appointing officer of a government office, agency or instrumentality, whether national or local, including government-owned or controlled corporations, who appoints or hires any new employee, whether provisional, temporary or casual, or creates and fills any new position, except upon prior authority of the Commission. The Commission shall not grant the authority sought unless, it is satisfied that the position to be filled is essential to the proper functioning of the office or agency concerned, and that the position shall not be filled in a manner that may influence the election.

As an exception to the foregoing provisions, a new employee may be appointed in case of urgent need: *Provided, however*, That notice of the appointment shall be given to the Commission within three days from the date of the appointment. Any appointment or hiring in violation of this provision shall be null and void.

(2) Any government official who promotes, or gives any increase of salary or remuneration or privilege to any government official or employee, including those in government-owned or controlled corporations.

² SECTION 261. *Prohibited Acts*. – The following shall be guilty of an election offense:

.....
(h) *Transfer of officers and employees in the civil service*. – Any public official who makes or causes any transfer or detail whatever of any officer or employee in the civil service including public school teachers, within the election period except upon prior approval of the Commission.

³ 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 (2012).



case for preliminary investigation—not the *motion for reconsideration*, which is the specific stage in the case in which COMELEC incurred in delay.

I disagreed then—as I do now—and asked that the Court reconsider the suggestion being that it appeared to be contrary to settled jurisprudence of recent times.

In speedy disposition cases involving preliminary investigations, the period from when the complaint is filed to when the presence of probable cause is ultimately determined is counted for purposes of determining whether there was inordinate delay. This means that, if a motion for reconsideration is filed against the resolution in the main case, the period spent in resolving such motion for reconsideration is likewise considered, i.e., it is added to the period during which the main case remained unresolved. Thus, in *Peñas v. COMELEC*⁴ (*Peñas*), the Court, in assessing whether there was inordinate delay in the resolution of the complaint for the election offense of election overspending under Section 262 of the OEC, looked at or considered the pendency of the case from the filing of the Complaint on November 6, 2014, to the initial finding by the COMELEC *en banc* of probable cause on November 5, 2018, all the way to its denial of the motion for reconsideration on December 9, 2020. The Court ultimately held therein that the total period of more than six years delay in the preliminary investigation was inordinate, so that COMELEC did, in fact, committed a violation of Joseph Roble Peñas' right to speedy disposition of cases.

In the present case, following *Peñas*' computation, the total delay of COMELEC should be counted not just during the pendency of the *motion for reconsideration*. Rather, the period from the filing of the *complaint* on June 27, 2013, to the initial finding of probable cause by the COMELEC *en banc* on November 4, 2014, all the way to its resolution of the *motion for reconsideration* on September 27, 2022. Thus, a total of more than nine years should be the period considered in determining inordinate delay by COMELEC. After all, the entire period of delay was committed by just one body—the COMELEC—and the resolution of the main case itself was delayed although the period thereof is dwarfed by the protracted delay in the *motion for reconsideration* stage.

It makes sense, therefore, that an objection to such delay, made in any stage thereof as long as it has already arisen because the period under the relevant rules to resolve the case has lapsed, should still be considered in determining whether or not there was a waiver or acquiescence by the respondent. Here, the COMELEC Rules of Procedure (COMELEC Rules) requires the COMELEC *en banc* to resolve cases within 30 days from the time they are deemed submitted for resolution.⁵ When the COMELEC *en banc* first

⁴ UDK-16915, February 15, 2022 [Per J. Lazaro-Javier, First Division].

⁵ COMELEC Rules of Procedure, Rule 18, sec. 7.



delayed in the resolution of the main case which ultimately took more than a year to resolve, Ladilad already filed a *motion for early resolution*.

That he failed to object again to the continued delay of COMELEC of eight more years in resolving the *motion for reconsideration* is of no moment. As held in *Peñas*, **it is the duty of COMELEC to justify its delay the moment it fails to observe its own prescribed period to resolve cases.**⁶ It is not respondent's responsibility to repeatedly remind COMELEC of such duty. Requiring litigants to regularly call the attention of the government to resolve pending cases, especially litigants who already did so previously, is unreasonable and encourages slackness on the part of government officials, who are expected to be aware of their own mandates.

Also, during the case deliberations, a distinction was submitted between *Peñas* and the present case in that, allegedly, the respondent in the former had no legitimate avenues to object to COMELEC's delay whereas Ladilad in this case had such opportunity and, in fact, did file a *motion for early resolution* in the main case.

To stress, *Peñas*, like Ladilad, also involved a preliminary investigation of an election offense case by COMELEC; thus, it treated therein the same COMELEC Rules as that which applies here. It stands to reason then that the lack of any legitimate avenue to object to delay during COMELEC's preliminary investigation in the *Peñas* case, is likewise true in the present preliminary investigation case for the election offense of illegal transfer by Ladilad.

Indeed, the "legitimate avenue" to invoke the right to speedy disposition of cases refers to interlocutory pleadings which the relevant rules sanction, such as a motion to dismiss. It cannot refer to just about any action such as a *motion for early resolution* which merely prays to expedite the resolution of the case and does not invoke a fundamental right such as the right to speedy disposition of cases which can ultimately lead to—as it does in the present Decision of the Court—the dismissal of the Complaint. *Peñas* referred to the case of *Javier v. Sandiganbayan*,⁷ where the Court noted that the Ombudsman's Rules of Procedure prohibits motions to dismiss, except those grounded on lack of jurisdiction, leading it to conclude that there were no legitimate avenues in preliminary investigations before the Ombudsman to invoke the subject right.⁸ *Peñas*, noting that the COMELEC Rules likewise has such prohibition, arrived at the same conclusion that there was no proper channel to object to inordinate delay by COMELEC in preliminary investigation cases.⁹ Needless to say, the same is true for Ladilad, being

⁶ *Peñas v. COMELEC*, *supra* note 4, at 14. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

⁷ 873 Phil. 951 (2020) [Per J. Caguioa, First Division].

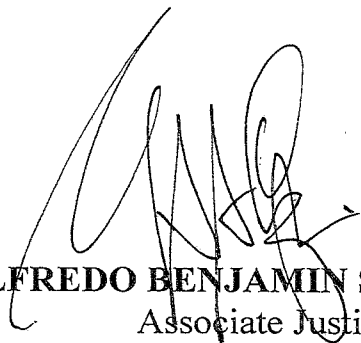
⁸ *Peñas v. COMELEC*, *supra* note 4, at 16. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

⁹ *Id.* at 17. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.



covered by the same COMELEC Rules that applied in *Peñas*. In short, Ladilad also lacked legitimate avenue to question the delay committed by COMELEC in resolving the preliminary investigation of the complaint against him.

In light of the foregoing, I hereby concur in the *ponencia*.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice