



Republic of the Philippines  
Supreme Court  
Manila

EN BANC

**NOEL E. ROSAL,**  
Petitioner,

**G.R. No. 264125**

- versus -

**COMMISSION ON ELECTIONS  
AND JOSEPH SAN JUAN  
ARMOGILA,**  
Respondents.

x-----x

**OSCAR ROBERT H.  
CRISTOBAL,**  
Petitioner,

**G.R. No. 266775**

- versus -

**COMMISSION ON ELECTIONS,  
ALFREDO A. GARBIN, JR.,  
JOSEPH SAN JUAN  
ARMOGILA, AND CARMEN  
GERALDINE ROSAL,\***  
Respondents.

x-----x

**CARMEN GERALDINE ROSAL,**  
Petitioner,

**G.R. No. 266796**

- versus -

\* Also appears as "Geraldine B. Rosal" in some parts of the *rollo*.

**COMMISSION ON ELECTIONS,  
JOSEPH SAN JUAN  
ARMOGILA, ALFREDO A.  
GARBIN, JR., AND OSCAR  
ROBERT H. CRISTOBAL,**  
Respondents.

X-----X

**JOSE ALFONSO V. BARIZO,\*\***  
Petitioner,

**G.R. No. 269274**

Present:

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

- versus -

**COMMISSION ON ELECTIONS  
AND JOSEPH SAN JUAN  
ARMOGILA,**  
Respondents.

Promulgated:

October 22, 2024

X-----X

**DECISION**

**CAGUIOA, J.:**

These are four consolidated Petitions for Certiorari<sup>1</sup> (Petitions) under Rule 65 in relation to Rule 64 of the Rules of Court, filed by petitioners Noel E. Rosal (Noel), Carmen Geraldine Rosal (Carmen), Jose Alfonso V. Barizo

\*\* Also appears as "Al Barizo" in some parts of the *rollo*.

\* On official business, but left concurring vote.

\*\* On official leave, but left concurring vote.

\*\*\* No part.

\*\*\*\* On leave, but left concurring vote.

<sup>1</sup> *Rollo* (G.R. No. 264125), pp. 3-68; *rollo* (G.R. No. 266796), pp. 3-52; *rollo* (G.R. No. 266775), pp. 3-29; *rollo* (G.R. No. 269274), pp. 3-58.



(Barizo), and Oscar Robert H. Cristobal (Cristobal). All Petitions are with applications for the issuance of a temporary restraining order and/or writ of preliminary injunction.

In **G.R. No. 264125**, Noel assails the Resolution<sup>2</sup> dated September 19, 2022 of public respondent Commission on Elections (COMELEC) First Division, which granted the petition for disqualification filed by Joseph San Juan Armogila (Armogila) against Noel and consequently disqualified him to run for the position of Governor in the Province of Albay in the May 9, 2022 National and Local Elections (NLE). Noel also assails the Resolution<sup>3</sup> dated November 18, 2022 of the COMELEC *En Banc*, which denied his motion for reconsideration.

In G.R. No. 264125, a Motion for Leave of Court to File Petition for Intervention with Attached Petition for Intervention<sup>4</sup> was likewise filed by Al Francis C. Bichara (Bichara), praying that the Court order his proclamation as rightful Governor of Albay, following Noel's disqualification.<sup>5</sup>

In **G.R. No. 266796**, Carmen assails the Resolution<sup>6</sup> dated October 4, 2022 of the COMELEC Second Division, which also granted the petition for disqualification filed against her by Armogila and thusly disqualified her, as well, to run for the position of Mayor of Legazpi City in the May 9, 2022 NLE. Carmen also assails the Resolution<sup>7</sup> dated May 4, 2023 of the COMELEC *En Banc*, which partially granted her motion for reconsideration, but ultimately maintained her disqualification on a different ground.

These same Resolutions being challenged by Carmen are likewise being questioned in **G.R. No. 266775** by Cristobal, the incumbent Vice Mayor of Legazpi City, on the ground that they incorrectly declared the second placer in the May 9, 2022 NLE as the duly elected Mayor of Legazpi City.

On the other hand, in **G.R. No. 269274**, Barizo assails the Resolution<sup>8</sup> dated May 5, 2023 of the COMELEC Second Division, which also granted

<sup>2</sup> *Id.* at 71–80. The September 19, 2022 Resolution in SPA No. 22-031 (DC) was signed by Presiding Commissioner Socorro B. Inting (with Separate Concurring Opinion, *id.* at 81–89) and Commissioner Aimee P. Ferolino.

<sup>3</sup> *Id.* at 92–94. The November 18, 2022 Resolution in SPA No. 22-031 (DC) was signed by Chairman George Erwin M. Garcia and Commissioners Socorro B. Inting, Marlon S. Casquejo, Aimee P. Ferolino, and Rey E. Bulay. Commissioner Ernesto Ferdinand P. Maceda, Jr. inhibited and Commissioner Nelson J. Celis took no part.

<sup>4</sup> *Id.* at 862–889.

<sup>5</sup> *Id.* at 885.

<sup>6</sup> *Rollo* (G.R. No. 266796), pp. 53–71. The October 4, 2022 Resolution in SPA No. 22-032 (DC) was signed by Presiding Commissioner Marlon S. Casquejo and Commissioner Rey E. Bulay.

<sup>7</sup> *Id.* at 72–88. The May 4, 2023 Resolution in SPA No. 22-032 (DC) was signed by Chairman George Erwin M. Garcia and Commissioners Socorro B. Inting, Marlon S. Casquejo (concurring and joined in the Separate Opinion of Commissioner Ernesto Ferdinand P. Maceda, Jr.), Aimee P. Ferolino (with Separate Opinion, *id.* at 95–97), Rey E. Bulay, Ernesto Ferdinand P. Maceda, Jr. (with Separate Opinion, *id.* at 89–94), and Nelson J. Celis.

<sup>8</sup> *Rollo* (G.R. No. 269274), pp. 61–70. The May 5, 2023 Resolution in SPA No. 22-030 (DC) was signed by Presiding Commissioner Marlon S. Casquejo and Commissioners Rey E. Bulay and Nelson J. Celis.

the petition for disqualification filed against him by Armogila and thusly disqualified him to run as Councilor in Legazpi City for the May 9, 2022 NLE. Barizo also assails the Resolution<sup>9</sup> dated September 27, 2023 of the COMELEC *En Banc*, which denied his motion for partial reconsideration.

### THE CASE

In three separate petitions for disqualification<sup>10</sup> dated April 11, 2022, Armogila called for the disqualification of Noel, Carmen, and Barizo for alleged violations of Section 68(a)<sup>11</sup> and Section 68(e)<sup>12</sup> in relation to Section 261(v)(2)<sup>13</sup> of the Omnibus Election Code (OEC). Noel, Carmen, and Barizo were then running for the positions of Governor of Albay province, Mayor, and Councilor, respectively, in the City of Legazpi, Albay. Noel's disqualification case was raffled to the COMELEC First Division and was docketed as SPA No. 22-031 (DC). Carmen's disqualification case was raffled to the COMELEC Second Division and was docketed as SPA No. 22-032 (DC). Barizo's disqualification case was also raffled to the COMELEC Second Division and was docketed as SPA No. 22-030 (DC).

The petitions for disqualification similarly alleged that Noel, Carmen, and Barizo engaged in vote-buying under Section 68(a) of the OEC and violated the prohibition under Section 261(v) of the OEC against the release,

<sup>9</sup> *Id.* at 73-75. The September 27, 2023 Resolution in SPA No. 22-030 (DC) was signed by Chairman George Erwin M. Garcia and Commissioners Socorro B. Inting, Marlon S. Casquejo, Aimee P. Ferolino, Rey E. Bulay, Ernesto Ferdinand P. Maceda, Jr., and Nelson J. Celis.

<sup>10</sup> *Rollo* (G.R. No. 264125), pp. 95-102; *rollo* (G.R. No. 266796), pp. 103-110; *rollo* (G.R. No. 269274), pp. 79-86.

<sup>11</sup> **Sec. 68. Disqualifications.** – Any candidate who, in an action or protest in which he is a party is declared by final decision of a competent court guilty of, or found by the Commission of having  
a. given money or other material consideration to influence, induce or corrupt the voters or public officials performing electoral functions[.]

<sup>12</sup> **Sec. 68. Disqualifications.** – Any candidate who, in an action or protest in which he is a party is declared by final decision of a competent court guilty of, or found by the Commission of having

e. violated any of Sections 80, 83, 85, 86 and 261, paragraphs d, e, k, v, and cc, subparagraph 6, shall be disqualified from continuing as a candidate, or if he has been elected, from holding the office. Any person who is a permanent resident of or an immigrant to a foreign country shall not be qualified to run for any elective office under this Code, unless said person has waived his status as permanent resident or immigrant of a foreign country in accordance with the residence requirement provided for in the election laws.

<sup>13</sup> **Sec. 261. Prohibited Acts.** – The following shall be guilty of an election offense:

v. Prohibition against release, disbursement or expenditure of public funds. – Any public official or employee including barangay officials and those of government-owned or controlled corporations and their subsidiaries, who, during forty-five days before a regular election and thirty days before a special election, releases, disburses or expends any public funds for:

2. The Ministry of Social Services and Development and any other office in other ministries of the government performing functions similar to said ministry, except for salaries of personnel, and for such other routine and normal expenses, and for such other expenses as the Commission may authorize after due notice and hearing. Should a calamity or disaster occur, all releases normally or usually coursed through the said ministries and offices of other ministries shall be turned over to, and administered and disbursed by, the Philippine National Red Cross, subject to the supervision of the Commission on Audit or its representatives, and no candidate or his or her spouse or member of his family within the second civil degree of affinity or consanguinity shall participate, directly or indirectly, in the distribution of any relief or other goods to the victims of the calamity or disaster[.]

disbursement, and expenditure of public funds within 45 days before the date of the regular election.<sup>14</sup>

Specifically, Armogila recounted that on March 31, 2022, Barizo posted in his Facebook account an activity called “2-Day Tricycle Driver’s Cash Assistance Payout @ Fishport Legazpi.”<sup>15</sup> The caption of the post read:

“2-Day Tricycle Driver’s Cash Assistance Payout @ Fishport Legazpi.

Thank you Governor Noel E. Rosal, Mayor Gie Rosal, VM Bobby Cristobal, the incumbent [and] aspiring Councilors.

Salamat man sa TODA sa suporta asin marhay na kooperasyon! Mabuhay kamu!

Al Barizo  
Committee on Public Utilities & Energy  
(Transportation)

#tapatsubokmaypuso”<sup>16</sup>

The post was also allegedly accompanied by photographs of Noel, Carmen, and Barizo with numerous individuals who were presumably tricycle drivers who went to the activity to receive the cash assistance.<sup>17</sup>

Armogila claimed that he inquired with the members of the Tricycle Operators’ and Drivers’ Association (TODA) to verify the post of Barizo. The tricycle drivers allegedly told him that as early as March 25, 2022, they were directly contacted by Barizo or his representative, inviting them to the activity. The tricycle drivers were made to understand that the payout was a “cash assistance” in the amount of PHP 2,000.00 from one Mayor Rosal, who may either refer to Noel as the then incumbent Mayor, or Carmen, who was then a mayoralty candidate. Armogila stressed that the messages received by the tricycle drivers expressly manifested gratitude for the support given to Noel, Carmen, and Barizo.<sup>18</sup>

Armogila further recounted that another cash payout in the amount of PHP 2,000.00 was staged by the local government unit (LGU) in favor of the senior citizens on April 2, 2022.<sup>19</sup>

Armogila alleged that the messages and the Facebook post manifested the intention to influence, induce, and corrupt the electorate in casting their

<sup>14</sup> See *rollo* (G.R. No. 264125), pp. 97–99; *rollo* (G.R. No. 266796), pp. 105–107; *rollo* (G.R. No. 269274), pp. 81–83.

<sup>15</sup> *Id.* at 96; *id.* at 104; *id.* at 79.

<sup>16</sup> *Id.*; *id.*; *id.* at 80.

<sup>17</sup> *Id.*; *id.*; *id.*

<sup>18</sup> *Id.* at 96–97; *id.* at 104–105; *id.* at 80–81.

<sup>19</sup> *Id.* at 97; *id.* at 105; *id.* at 81.

votes in favor of Noel, Carmen, and Barizo. The timing of the release of the cash assistance and the display of election paraphernalia excluded any other explanation for the payout. The constant mention of the names of Noel, Carmen, and Barizo, who were electoral candidates, in the text messages and in the Facebook post clearly established electioneering. Armogila stressed that Carmen was not an incumbent public official then and hence, her presence during the payout was uncalled for and unnecessary if said activity was indeed part of an official government function.<sup>20</sup>

Armogila further emphasized that Section 261(v)(2) of the OEC provides that “[s]hould [a] calamity or disaster occur, all releases normally or usually coursed through the said [ministries] and offices of other [ministries] shall be turned over to, and administered [and disbursed] by, the Philippine National Red Cross, subject to the supervision of the Commission on Audit or its representatives, and no candidate or his or her spouse or member of his family within the second civil degree of affinity or consanguinity shall participate, directly or indirectly, in the distribution of any relief, or other goods to the victims of the calamity or disaster.” Hence, where the cash assistance was made in response to the pandemic, the OEC has strictly provided for the process and mechanism governing the release of the same. None was, however, followed. Instead, according to Armogila, the release of the funds was facilitated by the office of Barizo, in apparent cooperation with Noel and with the special participation of Carmen.<sup>21</sup>

On April 25, 2022, the COMELEC First and Second Divisions issued Summons with Notice of Preliminary Conference to Noel, Carmen, and Barizo directing them to file their Verified Answer within a non-extendible period of five days from notice. The Preliminary Conference was set on May 4, 2022.<sup>22</sup>

On May 2, 2022, Noel, Carmen, and Barizo each filed their Answer and asked for the resetting of the preliminary conference. All essentially argued that the payout of cash assistance to tricycle drivers and senior citizens cannot be considered as vote-buying as the same was only a continuation of the programs that were already implemented as early as August 2021 under the 2020-2022 Medium Term Public Investment Program (MTPIP) of the Local Government of Legazpi City and were duly reported before the Commission on Audit (COA).<sup>23</sup>

For his part, Barizo also denied having knowledge of the Facebook post. He claimed that although he has an official Facebook page, he was not personally handling the same. He also asserted that his presence during the said cash assistance payout cannot be determined based on the screenshot of the photos submitted by Armogila. The persons who rendered the cash

<sup>20</sup> *Id.* at 98; *id.* at 106; *id.* at 82.

<sup>21</sup> *Id.* at 99; *id.* at 107; *id.* at 83.

<sup>22</sup> *Id.* at 72; *id.* at 55; *id.* at 63.

<sup>23</sup> *See id.* at 73-74; *id.* at 55-56; *id.*

assistance were duly authorized disbursement personnel and not him. Barizo further denied having knowledge of the text messages allegedly received by the tricycle drivers regarding the schedule of the cash payout.<sup>24</sup>

Meanwhile, Noel, Carmen, and Barizo all won as Governor, Mayor, and Councilor, respectively, in the May 9, 2022 NLE.<sup>25</sup>

On May 11, 2022, the COMELEC First Division in SPA No. 22-031 (DC) issued an Order noting Noel's Verified Answer but denying his motion to reset the hearing on the preliminary conference, as it did not find the prior professional engagements of his handling lawyers as sufficient justification to relax the rules. The COMELEC First Division also then considered the case submitted for resolution.<sup>26</sup>

On the other hand, the COMELEC Second Division reset the preliminary conference in the cases of Carmen and Barizo in SPA No. 22-032 (DC) and SPA No. 22-030 (DC), respectively, to May 19, 2022.<sup>27</sup>

On September 19, 2022, the COMELEC First Division in SPA No. 22-031 (DC) granted the petition for disqualification against Noel.<sup>28</sup> It also acted on the previous motions of Noel, specifically the Partial Motion for Reconsideration of the Order dated May 11, 2022 and the Supplemental Partial Motion for Reconsideration with Motion to Admit Marking of Documentary Evidence and Attached Memorandum. Finding no cogent reason to relax the rules, the COMELEC First Division denied these motions.<sup>29</sup>

The COMELEC First Division found that the cash assistance payouts constituted a violation of Section 261(v)(2) of the OEC on the prohibition against the release, disbursement, and expenditure of public funds by public officials and employees for all social welfare and development projects and activities during the campaign period. The COMELEC First Division did not give credence to Noel's argument that the cash assistance was exempted from the prohibition since the activity was just a continuation of what already started in 2021. The COMELEC First Division held that the law does not state that a continuing social welfare and development project is excluded or exempted from the prohibition. The exemption applies only to ongoing public works commenced before the campaign period or similar projects under foreign agreements.<sup>30</sup>

<sup>24</sup> *Rollo* (G.R. No. 269274), p. 63.

<sup>25</sup> *See rollo* (G.R. No. 264125), p. 8; *rollo* (G.R. No. 266796), p. 11; *id.* at 4.

<sup>26</sup> *Id.* at 10, 74.

<sup>27</sup> *Rollo* (G.R. No. 269274), p. 63; *rollo* (G.R. No. 266796), p. 56.

<sup>28</sup> *Rollo* (G.R. No. 264125), pp. 75, 80.

<sup>29</sup> *Id.* at 75.

<sup>30</sup> *Id.* at 79.

The COMELEC First Division also held that the purported compliance with the reportorial requirement pursuant to COA Circular No. 2013-004 was ineffectual. Even assuming that it was not, the requirement is applicable only to exempted ongoing public work projects commenced before the campaign period.<sup>31</sup>

However, even as the COMELEC First Division found Noel to have violated Section 261(v)(2), it nonetheless ruled that he is not guilty of vote-buying under Section 68(a) of the OEC. It found that the evidence attached to the petition shows that the recipients of the payouts were made aware that the amount they received was due them and was not for the purpose of influencing or inducing them to vote for Noel. The text messages of gratitude for the support cannot be construed as having been intended to influence or induce the recipients to vote for Noel or Carmen because nowhere in these messages were their candidacies mentioned.<sup>32</sup>

Noel moved for reconsideration, but the COMELEC *En Banc* issued on November 18, 2022 its assailed Resolution<sup>33</sup> denying the same. Hence, his present Petition in G.R. No. 264125.

On January 26, 2024, Bichara, the second placer in the gubernatorial position in the Province of Albay during the May 9, 2022 NLE, filed a Motion for Leave of Court to File Petition for Intervention with Attached Petition for Intervention before the Court in G.R. No. 264125.<sup>34</sup> Bichara argues therein that he should be declared the rightful governor of Albay following the disqualification of Noel.<sup>35</sup>

Meanwhile, on October 4, 2022, the COMELEC Second Division also granted the petition for disqualification against Carmen in SPA No. 22-032 (DC).<sup>36</sup>

Like the First Division, the COMELEC Second Division also found nothing in the subject Facebook post which would support the charge of vote-buying against Carmen. It found that “[w]hat the [Facebook] post shows is an organized group that appears to be listening to the speaker, nothing else.”<sup>37</sup>

Neither did the COMELEC Second Division find any link between the supposed text messages to the tricycle drivers and Carmen. Said messages did not mention that the sender was she, nor was her name mentioned. As with the affidavits of the tricycle drivers, the COMELEC

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<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 76–77.

<sup>33</sup> *Id.* at 92–94.

<sup>34</sup> *Id.* at 862–889.

<sup>35</sup> *Id.* at 871, 874.

<sup>36</sup> *Rollo* (G.R. No. 266796), p. 70.

<sup>37</sup> *Id.* at 58.

Second Division noted that they were able to identify the sender of the text messages, who was not Carmen. Hence, what they had was only a conjecture that the cash assistance might have come from her.<sup>38</sup>

The COMELEC Second Division also reviewed a compact disc (CD) which purportedly showed a gathering. It observed, however, that it was unclear when such gathering happened. While a senior citizen mentioned a date and from whom the PHP 2,000.00 cash payout came, the COMELEC Second Division noted that the expression of gratitude did not equate to participation or inducement on the part of Carmen.<sup>39</sup>

As to the charge of violation of Section 261(v)(2) of the OEC, the COMELEC Second Division held that the provision does not admit any exemption for as long as the prohibited act transpired during the 45-day ban before a regular election. Citing *Velez v. People*<sup>40</sup> (*Velez*), the COMELEC Second Division held that the law does not state that ongoing social development projects are excluded from the prohibition. The exemption as regards continuing programs or projects only applies to public works and not to social services and development.<sup>41</sup>

The COMELEC Second Division also held that the reporting to COA likewise does not matter, since the only instance that the supervision of COA is required is during a calamity and disaster, where the public funds are turned over to the Philippine Red Cross (PRC). Drawing attention to Section 13<sup>42</sup> of COMELEC Resolution No. 10747,<sup>43</sup> the COMELEC Second Division held that what should have been done by the LGU was to file a petition before the Clerk of COMELEC for the issuance of a Certificate of Exception for the social welfare projects it intended to implement during the prohibited period.<sup>44</sup>

As to the argument of Carmen that she should not be held liable under Section 261(v)(2) of the OEC since she was then a mere candidate and not a public official or employee, the COMELEC Second Division ruled that she should nonetheless be considered as a principal by indispensable cooperation, pursuant to Section 263<sup>45</sup> of the OEC. The COMELEC Second

<sup>38</sup> *Id.* at 58–59.

<sup>39</sup> *Id.* at 59.

<sup>40</sup> 860 Phil. 629 (2019) [Per J. J. Reyes, Jr., Second Division].

<sup>41</sup> *Rollo* (G.R. No. 266796), p. 65.

<sup>42</sup> **SECTION 13. Projects, activities, and programs pertaining to social welfare projects and services (non-infrastructure projects).** – For social welfare projects and services, a petition for issuance of Certificate of Exception shall be filed before the Clerk of the Commission for due notice and hearing.

<sup>43</sup> Rules and Regulations on Prohibition Against Release, Disbursement, or Expenditures of Public Funds and Construction of Public Works, Delivery of Materials for Public Works, and Issuance of Treasury Warrants and Similar Devices (Section 261 (V), (W) of the Omnibus Election Code) in Connection with the May 9, 2022 Synchronized National and Local Elections, December 16, 2021.

<sup>44</sup> *Rollo* (G.R. No. 266796), p. 65.

<sup>45</sup> **Sec. 263. Persons criminally liable.** – The principals, accomplices, and accessories, as defined in the Revised Penal Code, shall be criminally liable for election offenses. If the one responsible be a political party or an entity, its president or head, the officials and employees of the same, performing

Division determined that it was established that Carmen appeared to have benefited from the LGU's project where public funds were definitely released, disbursed, and spent to sponsor the cash payout. The said project, the distribution of the individual cash payouts, the attribution of the project not only to the LGU but to Carmen, as well, and the fact that she eventually won were vital elements of the offense. In other words, Carmen made it appear that she was one with the LGU and with her husband, who was then the incumbent mayor. Her mere presence during the distribution of the cash assistance rendered moral assistance to the LGU.<sup>46</sup>

On October 10, 2022, Carmen filed a motion for reconsideration.<sup>47</sup>

On December 7, 2022, Alfredo A. Garbin, Jr. (Garbin) filed a Motion for Leave to File Petition for Intervention in SPA No. 22-032 (DC). Garbin argued that, as the one who obtained the second highest number of votes for the position of Mayor of Legazpi City during the May 9, 2022 NLE, he stands to be affected by the COMELEC Second Division's Resolution and thus should be allowed to intervene in the case. The COMELEC Second Division granted Garbin's motion.<sup>48</sup>

On February 16, 2023, Cristobal, the candidate who won as Vice Mayor of Legazpi City in the May 9, 2022 NLE, filed his Answer-in-Intervention.<sup>49</sup>

On May 4, 2023, the COMELEC *En Banc* partially granted Carmen's motion for reconsideration, but only insofar as to the ground for upholding her disqualification. The COMELEC *En Banc* held that Carmen cannot be held liable for violating the prohibition against release, disbursement, or expenditure of public funds during the 45-day period prior to election day because she was not a public official at the time the offense was committed. Section 261(v) of the OEC prohibits any public official or employee to release, disburse, or expend public funds for social welfare programs during the prohibited period.<sup>50</sup>

The COMELEC *En Banc* also found it erroneous to relate Section 261(v) of the OEC with Section 263 of the OEC. For one, no evidence was presented to show that the acts committed by Carmen were indispensable in the commission of the offense. Even if she was not present in the activities, the same would have still been held and the distribution of the cash assistance during the prohibited period would still have occurred. Additionally, Section 263 of the OEC is entitled "Persons criminally liable;"

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duties connected with the offense committed and its members who may be principals, accomplices, or accessories shall be liable, in addition to the liability of such party or entity.

<sup>46</sup> *Rollo* (G.R. No. 266796), pp. 67-70.

<sup>47</sup> *Id.* at 74.

<sup>48</sup> *Id.* at 74-75.

<sup>49</sup> *See id.* at 75.

<sup>50</sup> *Id.* at 76-78.

and hence, is confined to an enumeration of individuals who may incur criminal liability when an election offense is committed.<sup>51</sup>

Nonetheless, the COMELEC *En Banc* held that Carmen should still be disqualified for giving money to influence, induce, or corrupt the voters under Section 68(a) of the OEC. Unlike Section 261(v), Section 68(a) does not distinguish, and it disqualifies any candidate who is found by COMELEC of giving money to influence, induce, or corrupt the voters. The COMELEC *En Banc* found that to an ordinary reader, the Facebook post of Barizo necessarily evoked the message that the cash assistance payouts were given by no other than Noel, Carmen, Cristobal, and the incumbent and aspiring Councilors. There could be no other reasonable interpretation because gratitude is ordinarily and naturally accorded to the giver.<sup>52</sup>

The COMELEC *En Banc* further found that the cash assistance was intended to influence, induce, or corrupt the voters as the Facebook post notably referred to Carmen as “Mayor Gie Rosal,” in apparent reference to the position she was vying for at that time. Election paraphernalia were also displayed during the event. A cursory viewing of the images attached to the Facebook post showed that Carmen was wearing a campaign t-shirt and a hat bearing her name.<sup>53</sup>

The COMELEC *En Banc* also found no doubt as to Carmen’s presence during the cash assistance payout. Instead of denying her participation thereto, Carmen attempted instead to justify the holding of the event by arguing that it was duly reported to COA.<sup>54</sup>

The COMELEC *En Banc* gave credence to the assertion of Armogila that Carmen was not a mere innocent bystander during the cash payout. She was the one who orchestrated the event and facilitated the illegal distribution of cash. She even made it appear that the said distribution was sponsored by private individuals. This was likewise evident from the text messages of Barizo to the tricycle drivers. The affidavits of the tricycle drivers further corroborated that Carmen was the one who gave the cash assistance.<sup>55</sup>

Finally, the COMELEC *En Banc* held that with the disqualification of Carmen, it was only fitting to proclaim Garbin, who garnered the second highest number of votes during the May 9, 2022 NLE, as the City Mayor of Legazpi City.<sup>56</sup>

Hence, the present Petition of Carmen in G.R. No. 266796.

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<sup>51</sup> *Id.* at 78–80.

<sup>52</sup> *Id.* at 76, 80–81.

<sup>53</sup> *Id.* at 81, 83.

<sup>54</sup> *Id.* at 82.

<sup>55</sup> *Id.* at 83–84.

<sup>56</sup> *Id.* at 86–87.



Aggrieved by the COMELEC Resolutions, as well, Cristobal filed before the Court his Petition in G.R. No. 266775. He argues that COMELEC committed grave abuse of discretion in holding that the second placer, Garbin, should be proclaimed as the Mayor to replace Carmen. According to Cristobal, this ruling totally disregarded the rules on succession provided by law and jurisprudence.<sup>57</sup>

On May 11, 2023, the Court issued a *Status Quo Ante* Order,<sup>58</sup> which consolidated Cristobal's and Carmen's Petitions, directed the parties to observe the *status quo* prevailing before the issuance of the assailed COMELEC Resolutions in SPA No. 22-032 (DC), and ordered the respondents to file their consolidated comments.

Meanwhile, on May 5, 2023, the COMELEC Second Division also granted the petition for disqualification against Barizo in SPA No. 22-030 (DC).<sup>59</sup>

Firstly, the COMELEC Second Division also dismissed the charge of vote-buying against Barizo. It found that the text message allegedly sent by his staff was merely an invitation to the recipient to attend the payout activity, as well as the schedule thereof. The Facebook post, on the other hand, merely showed photos of a gathering with messages of gratitude towards the LGU officials, members of TODA, and other individuals who had shown support and cooperation. There was nothing in the photos which showed Barizo giving money or other material consideration to the tricycle drivers or senior citizens. The words of gratitude were insufficient to link him to the act of vote-buying.<sup>60</sup>

Also, the COMELEC Second Division noted that none of the senior citizens reacting to the payout activity and who were shown in the CD submitted by Armogila, mentioned Barizo.<sup>61</sup>

However, the COMELEC Second Division likewise ruled that there was substantial evidence to show Barizo's participation in violating Section 261(v)(2) in relation to Section 68(e) of the OEC. For one, the message in the photos of the Facebook post stated that he either headed or was a member of the Committee on Public Utilities and Energy (Transportation). The COMELEC Second Division, therefore, concluded that in such capacity, Barizo had the wherewithal and the impetus to push for the cash payout. As an incumbent public official, Barizo was in a position to influence local legislation to favor the transportation sector. He can leverage government resources to bolster projects, programs, and activities aligned with his advocacies.<sup>62</sup>

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<sup>57</sup> *Rollo* (G.R. No. 266775), p. 8.

<sup>58</sup> *Id.* at 136-138.

<sup>59</sup> *Rollo* (G.R. No. 269274), pp. 61-70.

<sup>60</sup> *Id.* at 65.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.* at 68.

The COMELEC Second Division also held that although it cannot be clearly determined from the photos in the Facebook post that the man shown speaking to a crowd wearing a shirt with the name “BARIZO” printed on it was Barizo himself, Barizo never denied that he was actually at the activity. Armogila’s allegation of his presence was corroborated by the tricycle drivers who attended the activity.<sup>63</sup>

Thus, the COMELEC Second Division concluded that Barizo was a prominent figure in the expenditure of the public funds handed out to the beneficiaries during the campaign period. His participation benefitted his candidacy and buoyed his victory in the elections.<sup>64</sup>

Barizo filed a motion for partial reconsideration, but the same was denied by the COMELEC *En Banc* on September 27, 2023.<sup>65</sup>

On October 4, 2023, COMELEC issued a Certificate of Finality and Entry of Judgment directing the Secretary of the Department of the Interior and Local Government to immediately implement the Resolution disqualifying Barizo from running as Councilor in the City of Legazpi, Albay in the May 9, 2022 NLE. He was also ordered to cause the peaceful and smooth turnover of the Office of the Councilor to the highest-ranking member of the *Sangguniang Panlalawigan*.<sup>66</sup> Hence, his present Petition in G.R. No. 269274.

## ISSUES

The kernel issue before the Court in these consolidated Petitions is whether COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction in rendering its assailed Resolutions, which disqualified Noel, Carmen, and Barizo (collectively petitioners) from running in the May 9, 2022 NLE. There is also the issue as to whether COMELEC gravely abused its discretion in proclaiming Vice Governor Edcel Greco Lagman (Lagman) and Garbin to replace Noel and Carmen as Governor of Albay and Legazpi City Mayor, respectively.

## THE COURT’S RULING

In resolving these consolidated Petitions filed via Rule 64 in relation to Rule 65 of the Rules of Court, the Court is limited to the finding of whether or not the respondent tribunal committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the assailed Resolutions.<sup>67</sup> Grave abuse of discretion refers to such arbitrary, capricious,

<sup>63</sup> *Id.* at 68–69.

<sup>64</sup> *Id.* at 69.

<sup>65</sup> *Id.* at 73–75.

<sup>66</sup> *Id.* at 246.

<sup>67</sup> *Villarete v. COA*, G.R. No. 243818, April 26, 2022 [Per J. Leonen, *En Banc*].

or whimsical exercise of judgment as is tantamount to lack of jurisdiction.<sup>68</sup> Mere abuse of discretion is not enough; the abuse of discretion must be patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility.<sup>69</sup>

There is grave abuse of discretion when a constitutional organ such as the COMELEC makes manifestly gross errors in its factual inferences such that critical pieces of evidence, which have been nevertheless properly introduced by a party, or admitted, or which were the subject of stipulation, are ignored or not accounted for.<sup>70</sup> A glaring misinterpretation of the constitutional text or of statutory provisions, as well as a misreading or misapplication of the current state of jurisprudence, is also considered grave abuse of discretion. The arbitrariness consists in the disregard of the current state of our law.<sup>71</sup>

Here, the Petitions must prosper if COMELEC, in appreciating and calibrating the evidence as it arrived at the assailed Resolutions, exceeded its authority or exercised its discretion in an excessive, arbitrary, and gravely abusive manner. The grant of the Petitions based on these asserted violations effectively recognizes that, in acting as it did, COMELEC committed errors of the level that effectively affected its jurisdiction.<sup>72</sup>

On the other hand, the Petitions must fail, however, if COMELEC's acts, even though viewed erroneous under the terms of the asserted violations, were still well within the limits of its powers under the Constitution and relevant statutes. The Court must, in such case, recognize COMELEC's exercise of its discretion in issuing the assailed Resolutions to be proper and well within its jurisdiction.<sup>73</sup>

Viewed through this narrow lens, the Court partly grants the Petitions. The Court affirms the COMELEC Resolutions in SPA No. 22-031 (DC) and in SPA No. 22-030 (DC), which disqualified Noel and Barizo, respectively, for violation of Section 261(v)(2) of the OEC. Insofar as the COMELEC Resolutions in SPA No. 22-032 (DC) are concerned, the Court affirms the disqualification of Carmen, albeit on a different ground, which is for violation of Section 261(v)(2) of the OEC.

Anent the issue of who replaces the disqualified and removed elected public officials, the Court is compelled to resolve the same on a much narrower perspective as it weighs the peculiar circumstances arising in this

<sup>68</sup> *David v. Senate Electoral Tribunal*, 795 Phil. 529, 565 (2016) [Per J. Leonen, *En Banc*].

<sup>69</sup> *Aquino v. COMELEC*, 756 Phil. 80, 98 (2015) [Per J. Brion, *En Banc*].

<sup>70</sup> *David v. Senate Electoral Tribunal*, *supra* note 68, at 565.

<sup>71</sup> *Id.* at 566.

<sup>72</sup> *See Aquino v. COMELEC*, *supra* note 69, at 100.

<sup>73</sup> *See id.*

case, warranting a seemingly unprecedented action but one that does not, in itself, aspire to become doctrinal precedent beyond the bounds of the present *sui generis* action.

**I. *COMELEC did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in holding that Noel and Barizo are not guilty of vote-buying under Section 68(a) of the OEC. However, COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction when it held Carmen guilty of vote-buying under the same Section.***

Section 68(a) of the OEC reads:

**Sec. 68. Disqualifications.** – Any candidate who, in an action or protest in which he is a party is declared by final decision of a competent court guilty of, or found by the Commission of having

a. given money or other material consideration to influence, induce or corrupt the voters or public officials performing electoral functions[.]

To be disqualified under the above-quoted provision, the following elements must be proved: (a) the candidate, personally or through his or her instructions, must have given money or other material consideration; and (b) the act of giving money or other material consideration must be for the purpose of influencing, inducing, or corrupting the voters or public officials performing electoral functions.<sup>74</sup> These elements are absent in this case.

The ruling in *Lozano v. Yorac*<sup>75</sup> (*Lozano*) is instructive. The Court in said case upheld the factual findings and conclusions reached by COMELEC in ruling on the disqualification case of Jejomar Binay on the charge of vote-buying in this wise:

Respondent COMELEC, in dismissing the petition for disqualification and in holding that respondent Binay is not guilty of vote buying, ruled as follows:

.....

“There is ample evidence to show that it was not respondent Binay who ‘gave’ the plastic bags containing Christmas gifts to the witnesses who executed affidavits for

<sup>74</sup> *Codilla, Sr. v. De Venecia*, 442 Phil. 139, 174 (2002) [Per J. Puno, *En Banc*].

<sup>75</sup> 280 Phil. 280 (1991) [Per J. Regalado, *En Banc*].



the petitioners. The 'giver' was in fact the Municipality of Makati.

....

"More[,] Petitioners' documentary evidence, among which are Exhibits 'A'; 'A-1'; 'A-2'; 'A-20'; 'B'; 'B-1'; 'B-2'; 'B-25'; 'C-1'; 'C-2'; 'C-27'; 'D'; 'E' and 'F', all show indubitably that the Christmas packages which were distributed between the periods of December 22-30, 1987, were ordered, purchased and paid for by the Municipality of Makati and not by respondent Binay. There is more than prima facie proofs to show that those gift packages received by the witnesses for petitioners were intended as Christmas presents to Makati's indigents in December 1988.

**"It would therefore appear from the evidence submitted by the petitioners themselves that the giver, if any, of the Christmas gifts which were received by the witnesses for the petitioners was in fact, the Municipality of Makati and not respondent Jejomar C. Binay. The presence of respondent Binay, if at all true at the time the gifts were distributed by the Municipality of Makati to the recipients of the Christmas gifts, was incidental. It did not make respondent Binay as the "giver" of those Christmas gifts. Nor did the giving of such gifts by the Municipal Government of Makati influence the recipients to vote for respondent Binay considering that the affiants themselves who testified for the petitioners admitted and were aware that the gift packages came from the Municipality of Makati and not from respondent Jejomar C. Binay.["]**

....

We uphold the foregoing factual findings, as well as the conclusions reached by respondent COMELEC, in dismissing the petition for the disqualification of respondent Binay. No clear and convincing proof exists to show that respondent Binay was indeed engaged in vote buying. The traditional gift-giving of the Municipality of Makati during the Christmas season is not refuted. That it was implemented by respondent Binay as OIC Mayor of Makati at that time does not sufficiently establish that respondent was trying to influence and induce his constituents to vote for him. This would be stretching the interpretation of the law too far. **Petitioner deduces from this act of gift giving that respondent was buying the votes of the Makati residents. It requires more than a mere tenuous deduction to prove the offense of vote-buying. There has to be concrete and direct evidence or, at least, strong circumstantial evidence to support the charge that respondent was indeed engaged in vote-buying.** We are convinced that the evidence



presented, as well as the facts obtaining in the case at bar, do not warrant such finding.<sup>76</sup> (Emphasis supplied)

The foregoing conclusion in *Lozano* strongly applies in this case. The allegations and evidence against Noel, Carmen, and Barizo do not concretely and directly show that they personally initiated, controlled, or supervised the conduct of the cash assistance payouts for the purpose of influencing, inducing, or corrupting the recipients to vote for them.

To begin with, the cash assistance payouts were established to be the project of the LGU, specifically by the City Social Welfare and Development Office (CSWDO). It was a cash assistance program that was already the subject of Appropriation Ordinance No. 15-0007-2022, which was approved by the *Sangguniang Panlungsod* on March 1, 2022. The funds were therefore already obligated, having been included in the 2020-2022 MTPIP of the LGU. The MTPIP, in turn, was adopted by the *Sangguniang Panlungsod* by virtue of Resolution No. 14-0182-2019. The CSWDO had scheduled and started the implementation of the program in August 2021, extending cash assistance payouts to tricycle drivers on September 17, 21, and 24, 2021, and to senior citizens on August 26 to 27, 2021, September 2 to 4, 2021, September 9 to 11, 2021, September 16 to 17, 2021, and September 23 to 24, 2021.<sup>77</sup> In other words, it was sufficiently established that at the time relevant to these cases, the program was an ongoing one, commenced as early as 2021, long before the start of the election and campaign periods on January 9 and February 8, 2022, respectively. Moreover, it was spearheaded by one Maria Marlene G. Manaya of the CSWDO. Given this factual backdrop, it cannot be gainsaid that the decision to go through with the cash assistance payouts did not come from Noel, Carmen, and/or Barizo in any way, shape, or form. Apart from the Facebook post and text messages that merely informed of the events, there was no other evidence presented which would prove that they gave the cash assistance payouts **personally or through their own instructions**.

Furthermore, the Court agrees with the conclusion of the COMELEC First and Second Divisions in the cases of Noel and Barizo in SPA No. 22-031 (DC) and SPA No. 22-030 (DC), respectively, that the evidence presented by Armogila failed to establish that Noel and Barizo intended to influence or induce the recipients to vote for them. The conclusion of the COMELEC First and Second Divisions in their cases, which the COMELEC *En Banc* affirmed, is aligned with the disquisition in *Lozano*.

In Carmen's case in SPA No. 22-032 (DC), however, the COMELEC *En Banc*, on reconsideration, arrived at a completely different conclusion. The COMELEC *En Banc* found that to an ordinary reader, the Facebook post of Barizo necessarily evoked the message that the cash assistance

<sup>76</sup> *Id.* at 292-296.

<sup>77</sup> *Rollo* (G.R. No. 264125), pp. 10, 73-74, and 420.

payout was given by no other than Noel, Carmen, Cristobal, and the incumbent and aspiring councilors. According to the COMELEC *En Banc*, there could be no other reasonable interpretation because gratitude is ordinarily and naturally accorded to the giver. The COMELEC *En Banc* further found that the cash assistance was intended to influence, induce, or corrupt the voters as the Facebook post notably referred to Carmen as “Mayor Gie Rosal,” in apparent reference to the position she was vying for at that time. Election paraphernalia were also displayed during the event. A cursory viewing of the images attached to the Facebook post showed that Carmen was wearing a campaign t-shirt and a hat bearing her name.<sup>78</sup>

Hewing again to the disquisition in *Lozano*, the above pronouncements of the COMELEC *En Banc* in Carmen’s case show that they rest on purely weak assumptions and circumstantial evidence consisting of the gratitude expressed to Carmen, the reference to her as “Mayor,” and the clothing she chose to wear in the event. It bears emphasis that the instant case against Carmen, and also against Noel and Barizo, for that matter, concerns the electoral aspect of Section 68(a) and Section 68(e) in relation to Section 261(v) of the OEC. The administrative proceeding herein required is summary in nature<sup>79</sup> and the appropriate due process standards that apply to COMELEC, as an administrative or quasi-judicial tribunal, are those outlined in the seminal case of *Ang Tibay v. Court of Industrial Relations*.<sup>80</sup> Significantly, one of these standards provides that to support a finding or conclusion, it is not enough that there is merely some evidence; it is imperative that the evidence must, at the very least, be “substantial.” Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.<sup>81</sup>

In contrast to Noel’s case in SPA No. 22-031 (DC), the COMELEC First Division relevantly held that the message of gratitude for the support in the text messages cannot be construed as intended to influence or induce the recipients to vote for Noel or Carmen. Thus:

**Nowhere in the message did it mention the candidacy of the Respondent and his wife nor lure the recipients to vote for them.** Further, the attached video [of the] interview of the senior citizen recipients during the pay-out did not in any way show that the cash assistance is given for the incumbent mayor to take advantage of. **If at all, the evidence attached only revealed that the tricycle drivers and senior citizen recipients are aware that the amount they receive[d] is due to them and not for the purpose of influencing nor inducing them to vote for the Respondent.**<sup>82</sup> (Emphasis supplied)

<sup>78</sup> *Rollo* (G.R. No. 266796), pp. 81–83.

<sup>79</sup> *See Lanot v. COMELEC*, 537 Phil. 332, 360 (2006) [Per J. Carpio, *En Banc*].

<sup>80</sup> 69 Phil. 635 (1940) [Per J. Laurel, *En Banc*].

<sup>81</sup> *See Mendoza v. COMELEC*, 618 Phil. 706, 726 (2009) [Per J. Mendoza, *En Banc*].

<sup>82</sup> *Rollo* (G.R. No. 264125) p. 77.

Insofar as Barizo was concerned, the COMELEC Second Division in SPA No. 22-030 (DC) aptly observed that the text message allegedly sent by his staff was merely an invitation to attend the payout activity, as well as the schedule thereof. The Facebook post, on the other hand, merely showed photos of a gathering with messages of gratitude towards the LGU officials, members of TODA, and other individuals who had shown support and cooperation. The photos did not show Barizo giving money or other material consideration to the tricycle drivers or senior citizens, and the words of gratitude insufficiently linked him to vote-buying.<sup>83</sup>

These uniform conclusions of the COMELEC First and Second Divisions in Noel's and Barizo's cases in SPA No. 22-031 (DC) and SPA No. 22-030 (DC), which, to reiterate, were upheld by the COMELEC *En Banc*, satisfy the substantial evidence threshold in the administrative or electoral aspect of these cases. Indeed, it is an oversimplification to conclude that "gratitude is ordinarily and naturally accorded to the giver,"<sup>84</sup> as there may be a myriad of possible reasons why gratitude is being expressed other than for the reason that money or material consideration was given and received.

Furthermore, even assuming *arguendo* that the messages of gratitude towards petitioners, coupled by their acts of wearing election paraphernalia and promoting their respective candidacies, prove that they intended to take advantage of the cash assistance payouts to advance their candidacies, the first element of vote-buying—the act of giving money or other material consideration—remains absent. As discussed, these payouts were merely continuations of a program of the CSWDO that started even before the relevant election period began. The same is a government project and there is neither allegation nor proof that petitioners used their own personal funds in these projects. Surely, one cannot give what one does not own.

At this juncture, the Court emphasizes that the allegations of vote-buying against all three petitioners are anchored on the very same Facebook post, text messages, and affidavits of tricycle drivers presented by Armogila. The facts of the three cases are, in other words, similar, if not identical. It is highly incongruous, therefore, for COMELEC to arrive at completely opposite conclusions about the guilt of the three petitioners under the same provision, Section 68(a) of the OEC.

To be sure, it is oft-repeated that the rule that factual findings of administrative bodies will generally not be disturbed by courts of justice should be applied with greater force when it concerns COMELEC, as the framers of the Constitution intended to place COMELEC—created and explicitly made independent by the Constitution itself—on a level higher

<sup>83</sup> *Rollo* (G.R. No. 269274), p. 65.

<sup>84</sup> *See rollo* (G.R. No. 266796), p. 81.

than statutory administrative organs.<sup>85</sup> This general rule, however, will not stand in cases where there is absolutely no evidence or no substantial evidence in support of such findings, or when the inference made or the conclusion arrived at on the basis of a certain state of facts is manifestly mistaken.<sup>86</sup>

In these latter cases, COMELEC is deemed to have acted capriciously and whimsically. Resulting errors arising from grave abuse of discretion mutate from an error of judgment to one of jurisdiction, and consequently, the Court is constitutionally duty-bound to step in and correct the grave abuse of discretion committed by COMELEC.<sup>87</sup>

***II. COMELEC did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in holding that Noel and Barizo are guilty of violating Sections 261(v) and 261(v)(2) of the OEC, respectively.***

*A. Section 261(v) prohibits the release, disbursement, or expenditure of public funds by any public official or employee; Section 261(v)(2) further prohibits the direct or indirect participation in the distribution of any relief or other goods of a candidate or his or her spouse or a member of his or her family within the second civil degree of affinity or consanguinity.*

Section 261(v)(2) of the OEC provides:

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

....

**v. Prohibition against release, disbursement or expenditure of public funds. – Any public official or employee including barangay officials and those of government-owned or controlled corporations and their subsidiaries, who, during forty-five days before a regular election and**

<sup>85</sup> See *Mastura v. COMELEC*, 349 Phil. 423, 429 (1998) [Per J. Bellosillo, *En Banc*].

<sup>86</sup> See *Family Planning Organization of the Philippines, Inc. v. NLRC*, G.R. No. 75907, March 23, 1992, 207 SCRA 415, 421 [Per J. Medialdea, First Division].

<sup>87</sup> *Sibuma v. COMELEC*, G.R. No. 261344, January 24, 2023, p. 18 [Per J. Inting, *En Banc*]. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

**thirty days before a special election, releases, disburses or expends any public funds for:**

.....

2. The Ministry of Social Services and Development and any other office in other ministries of the government performing functions similar to said ministry, except for salaries of personnel, and for such other routine and normal expenses, and for such other expenses as the Commission may authorize after due notice and hearing. Should a calamity or disaster occur, all releases normally or usually coursed through the said ministries and offices of other ministries shall be turned over to, and administered and disbursed by, the Philippine National Red Cross, subject to the supervision of the Commission on Audit or its representatives, and **no candidate** or his or her spouse or member of his family within the second civil degree of affinity or consanguinity **shall participate, directly or indirectly, in the distribution of any relief or other goods to the victims of the calamity or disaster[.]** (Emphasis supplied)

Clearly, the above provision of the OEC penalizes as an election offense the act of a **public official or employee of releasing, disbursing, or expending public funds** within 45 days before a regular election or 30 days before a special election. Particularly under the above provision, the public funds should be intended for social development projects undertaken by the Department of Social Welfare and Development (DSWD) and other agencies performing similar functions, except salaries of personnel, routine and normal expenses and such other expenses as may be authorized by COMELEC after due notice and hearing.

The Court in *Velez* has clarified that it would be more in keeping with the object and purpose of the prohibition in Section 261(v)(2) to disallow the release, disbursement, or expenditure of public funds for all social welfare and development projects and activities, **regardless** of whether the activity is undertaken by the DSWD itself or the LGU concerned.<sup>88</sup>

Additionally, the Court clarified that a “continuing” project is not exempted from the prohibition under Section 261(v)(2). The law does not clearly state so, unlike the exemption provided for in Section 261(v)(1) as regards continuing programs or projects relating to public works.<sup>89</sup>

Thus, here, the fact that the cash assistance payout was a continuing or ongoing project of the LGU, which commenced in 2021, will not take it away from the ambit of the prohibition under Section 261(v)(2). It is the timing of such release, disbursement, and expenditure that is material to the issue of

<sup>88</sup> *Velez v. People*, *supra* note 40, at 639.

<sup>89</sup> *See id.* at 641.



whether there is a violation of the provision. It may be that these funds had long been obligated prior to the prohibited period (March 25, 2022 to May 8, 2022). It may also be true that the General Fund, Payroll, Journal Entry Vouchers, and Obligation Requests were accomplished prior to March 25, 2022.<sup>90</sup> These, notwithstanding, the fact remains that public funds were paid during the cash assistance payouts that occurred within the prohibited period, or on March 28-29, 2022 and April 2, 2022. To argue that no release, disbursement, and expenditure of public funds happened despite the **literal** payment or handing out of money during the cash assistance payouts would not only be delusional for ignoring an obvious reality, but likewise illogical as it would defeat the purpose of, or even circumvent, the prohibition under Section 261(v).

Truly, a simple reading of Section 261(v)(2) reveals the intention to punish, not so much the acts of obligating the funds or their appropriation. Rather, the evil sought to be prevented is the actual release or payout of public funds during the election period. The reasoning here is not difficult to fathom. Section 261(v)(2), being an election statute, is designed to punish acts which are deleterious to the conduct of a free and fair elections. The law's intention is to prevent a scenario in which incumbent public officials promote their respective candidacies for re-election using public funds by spending the same in cashout activities or projects that help boost their visibility and winnability. The law frowns upon the usage of people's money to distort the democratic process of elections. Given this, it is the act of the release of the funds—the act which is more tangible and can therefore better influence the electorate—that is punished, and not so much the other processes that are typically carried out only within the halls of power and are not done in full public display, and so will not have as much influence upon the voters.

Furthermore, it is not far-fetched to assume that if it was so that the law punishes the act of disbursement only if the initial processes involved in its release likewise took place within the prohibited period, public officials would simply make sure that the necessary forms for the disbursement, release, or expenditure of public funds are signed and accomplished before the prohibited period sets in. Surely, the law neither contemplates nor countenances such an obvious loophole. Section 261(v) should be given a reasonable interpretation, not one which defeats the very purpose for which it was passed.<sup>91</sup> This Court has always cautioned against narrowly interpreting a statute as to defeat the purpose of the legislators and stresses that it is of the essence of judicial duty to construe statutes so as to avoid such a deplorable result of injustice or absurdity.<sup>92</sup> Adhering to Article 10 of

<sup>90</sup> See *rollo* (G.R. No. 264125), pp. 208 and 263.

<sup>91</sup> See *The Secretary of Justice v. Koruga*, 604 Phil. 405, 417 (2009) [Per J. Austria-Martinez, Third Division].

<sup>92</sup> *Id.* at 417.



the Civil Code,<sup>93</sup> therefore, a literal interpretation of Section 261(v) should be rejected if it would be unjust or lead to absurd results.<sup>94</sup>

Thus, Section 261(v) should be understood to mean that when public funds are **actually** spent, exchanged, or paid out during the prohibited period, there should be no denying that said public funds are—for all intents and purposes—released, disbursed, or expended. The actual spending, exchange, or pay out of the public funds, therefore, cannot and should not be divorced from the approval or accomplishment of the mere forms necessitating the same.

By parity of reasoning, the Government Procurement Policy Board's (GPPB) Circular No. 03-2021, titled "Guidelines on the Conduct of Procurement Activities in Relation to the [May 9,] 2022 National and Local Elections," is illuminating. The Circular relevantly provided that Procuring Entities (PEs) were allowed to proceed with the commencement and completion of procurement activities—from the Pre-Procurement Conference until Post-Qualification—during the election period. However, the GPPB cautioned that starting March 25, 2022 to May 8, 2022, PEs were prohibited from issuing a Notice of Award for all kinds of public works, social projects, and housing-related projects, subject to certain exceptions set forth in Section 261(v). In its Non-Policy Matter No. 003 - 2022, the GPPB explained that the rationale behind this prohibition was simple: the issuance of a Notice of Award would "**effectively** result in the release, disbursement, or expenditure of public funds, which is expressly proscribed under the OEC."<sup>95</sup>

In the above scenario, the GPPB reasonably interprets the issuance of a Notice of Award to a winning bidder by the PE as tantamount to the release, disbursement, or expenditure of public funds since at such precise time, there is already a meeting of the minds between the parties and the contract subject of the procurement is perfected.<sup>96</sup> The parties, by then, have agreed upon the essential elements of the contract, i.e., consent, object, and price, and none of them may thereafter disengage therefrom without being liable to the other in an action for specific performance.<sup>97</sup> Well settled is the rule that from the moment the contract is perfected, the parties are bound not only to the fulfillment of its stipulations, but also the consequences which, according to their nature, may be in keeping with good faith, usage, and law.<sup>98</sup> Hence, at this point, the contract price is set apart in favor of the winning bidder; in which case, even if no money or public funds are actually paid or expended yet, the winning bidder already becomes entitled thereto.

<sup>93</sup> ART. 10. In case of doubt in the interpretation or application of laws, it is presumed that the law making body intended right and justice to prevail.

<sup>94</sup> *Automotive Parts & Equipment Company, Inc. v. Lingad*, 140 Phil. 580 (1969) [Per J. Fernando, En Banc].

<sup>95</sup> Emphasis supplied.

<sup>96</sup> *See Sargasso Construction and Development Corporation v. Philippines Ports Authority*, 637 Phil. 259, 277 (2010) [Per J. Mendoza, Second Division].

<sup>97</sup> *See id.* at 277, citing *Central Bank of the Philippines v. Court of Appeals*, 159-A Phil. 21 (1975) [Per J. Barredo, Second Division].

<sup>98</sup> *IP E-Games Ventures, Inc. v. Tan*, 906 Phil. 514, 521 (2021) [Per J. J. Lopez, Third Division].



The interpretation of the GPPB breathes life into the spirit of the prohibition under Section 261(v). As the Board correctly emphasized in its Circular No. 03-2021, the election ban is not designed to paralyze the operations of the government, but to insulate government procurement from political partisan activities, usually in the form of new projects, which are designed to influence the public during elections. A procurement contract for public works, social projects, and housing-related projects awarded during the prohibited period verily creates the danger of posturing before the voting public that incumbent public officials are managing public funds wisely, judiciously, and for the common good, and thereby bolsters the campaign of such incumbents seeking reelection. This danger is all the more created in the instant case when public funds were given **directly** to the voting public who were tricycle drivers and senior citizens, in particular, as a form of cash assistance. There is no denying that when these cash assistance payouts were carried out, there was commission of what Section 261(v) intends to prevent.

However, Noel seeks to exonerate himself from liability under Section 261(v) by arguing that it was not proven that he directly and personally caused the release, disbursement, and expenditure of public funds relating to the cash assistance programs. The Court disagrees.

At the outset, the Court notes that what is very much apparent from the pleadings submitted by Noel is that he does not deny that the cash assistance payouts happened between March 28, 2022 and April 2, 2022. In every argument, he focuses instead on justifying the conduct of these payouts during the said prohibited period. For instance, in his Answer before COMELEC, Noel argued that the cash assistance payout was not a form of vote-buying as it was included in the MTPIP and was passed by the *Sangguniang Panlungsod* via a Resolution in June 2019. He also stressed that the CSWDO wrote to COA on March 18, 2022 about the conduct or schedule of the cash assistance payouts, and that in view thereof, the payout to senior citizens happened on April 2, 2022 as well as other dates in 2022 headed by the CSWDO, while the conduct of the payout to several tricycle drivers happened on March 31, 2022 as well as other dates in 2022.<sup>99</sup> Noel reiterated these submissions in his Motion for Reconsideration before COMELEC and further emphasized in his Supplemental Motion for Reconsideration that the cash assistance payouts have already been extended by the LGU through the CSWDO to several tricycle drivers and senior citizens as early as 2021 and the same have been regularly reported to COA. In other words, the amelioration program had already been set in motion and the LGU simply allowed its continuation during the campaign period.<sup>100</sup>

In short, in his submissions before COMELEC, Noel never raised as an argument that the release, disbursement, expenditure of the subject public funds did not happen during the prohibited period, but only that the

<sup>99</sup> See *rollo* (G.R. No. 264125), pp. 206–208.

<sup>100</sup> See *id.* at 128–132 and 193.

prohibition does not apply since the program was not new and was, instead, a continuing one which the LGU had no other option but to follow through. Hence, in its Resolution in SPA No. 22-031 (DC), the COMELEC First Division found that Noel “admitted that the [payouts were] undertaken with his approval in his capacity as the [then] City Mayor.”<sup>101</sup> As further fleshed out by COMELEC in its Comment before the Court, it relied on Noel’s own admission in his Answer that there was indeed a payout of cash assistance to tricycle drivers and senior citizens during the relevant period at Legazpi City. According to COMELEC, Noel categorically admitted the “existence of the cash payout amounting to Two Thousand Pesos (Php 2,000.00) facilitated by the Local Government Unit (LGU) of Legazpi City on [April 2,] 2022.”<sup>102</sup>

However, a counter-argument is made during the deliberations of this case that the admission on the conduct of the cash assistance payouts is not the same as an admission on the part of Noel that he approved the same, or directly and personally caused the release, disbursement, and expenditure of the subject public funds. This argument is puerile.

Suffice it to state, the justification Noel proffers for the conduct of the cash assistance payouts during the prohibited period is very telling and suggests that he had approved the same, or that, at the very least, he acquiesced thereto. In fact, in the March 18, 2022 letter of the CSWDO to COA about the conduct or schedule of the cash assistance payouts, which Noel also adverts to in all his pleadings, he likewise signed and noted the same. In his Supplemental Motion for Reconsideration before COMELEC, Noel significantly maintained that “as the then Mayor of the City of Legazpi, [he] acted with utmost good faith and in accordance with law when he allowed the implementation of the cash assistance program, even though the implementation thereof fell well within the campaign period.”<sup>103</sup>

Relatedly, Noel cannot escape his liability for signing the necessary forms which approved the release, disbursement, expenditure of the subject public funds. The Court notes at the outset that it is only before this instant Petition before the Court that Noel argues that it was not proven that he directly and personally caused the release, disbursement, and expenditure of public funds relating to the cash assistance programs. He further maintains that the project would have pushed through even without his participation, considering that the funds were already obligated, bore the imprimatur of the *Sangguniang Panlungsod*, and were scheduled for implementation by the CSWDO. Noel’s argument, however, is a stretch of credulity.

Noel does not even categorically deny—as he cannot credibly do so—that he had a hand in the approval of the release, disbursement, and

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<sup>101</sup> *Id.* at 76.

<sup>102</sup> *Id.* at 585.

<sup>103</sup> *Id.* at 186.



expenditure of the subject public funds. Section 344 of the Local Government Code pertinently provides in part that “[e]xcept in cases of disbursements involving regularly recurring administrative expenses such as payrolls for regular or permanent employees, expenses for light, water, telephone and telegraph services, remittances to government creditor agencies such as GSIS, SSS, LBP, DBP, National Printing Office, Procurement Service of the DBM and others, approval of the disbursement voucher by the local chief executive himself shall be required whenever local funds are disbursed.” The cash assistance payouts in this case clearly did not fall within the exception as they were not administrative expenses. Consequently, the certification and approval of the vouchers for the disbursement of the public funds to cover these payouts could not have been done by anyone else other than Noel as the local chief executive. As COMELEC raised in its Comment, Noel, as mayor, was the approving authority of, and had direct control over, the said cash payouts. COMELEC also pointed out that Noel did not present any countervailing evidence showing that the cash payouts were disbursed without his knowledge and consent. Thus, it is beyond cavil that Noel had a direct hand in the release of the subject public funds.<sup>104</sup> This was likewise where COMELEC Commissioner Socorro B. Inting (Commissioner Inting) was coming from in her Separate Concurring Opinion when she aptly held that Noel, being the City Mayor, signed the necessary forms that authorized the release of the funds.<sup>105</sup>

Barizo, on the other hand, had no ostensible participation in the release, disbursement, or expenditure of the public funds used in the project. It was not his obligation as a City Councilor to cause the release or disbursement of the funds. It has not been similarly established how his being a member or the head of the Committee on Public Utilities and Energy (Transportation) could have entailed any such responsibility to release or disburse the public funds used in the project. COMELEC’s conclusion that in such capacity, Barizo had the wherewithal and the impetus to push for the cash payout, is pure speculation.

Neither was there any concrete evidence that Barizo participated in the expenditure of the public funds for the project. Again, as found by the COMELEC Second Division in SPA No. 22-030 (DC), there was no evidence that he gave money or any material consideration to those who attended the event. Whatever facilitation his Facebook post and text messages may have done for the project does not amount to the acts of release, disbursement, or expenditure of public funds.

Insofar as Carmen is concerned, she obviously had no liability, as well, for the release, disbursement, or expenditure of the public funds used in the project, since she was not even holding any elective or appointive position in the LGU at that time.

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<sup>104</sup> *Id.* at 585.

<sup>105</sup> *Id.* at 88.



**However**, it bears emphasis that Section 261(v)(2) does not only cover the disbursement, release, or expenditure of public funds; it also covers the “**distribution** of any relief or other goods to the victims of the calamity or disaster,” and accordingly prohibits any **candidate or his or her spouse** or member of his or her family within the second civil degree of affinity or consanguinity **to participate, directly or indirectly**, in the distribution thereof. Here, petitioners do not refute that cash assistance payouts did, in fact, take place on two occasions. In other words, monetary social welfare reliefs were **distributed** to tricycle drivers and senior citizens on different occasions. Hence, the question now is whether Noel, Carmen, and Barizo are liable for participating in said distribution, whether directly or indirectly.

In its ordinary meaning, to participate is to take part, to have a part or share in something.<sup>106</sup> To participate directly is to be actively involved or engaged. Meanwhile, to participate indirectly is to be involved or engaged passively, yet the participant’s complicity remains unequivocal.

Here, apart from the pictures which show their presence in the event, there is no showing of any overt act on the part of Noel, Carmen, and Barizo that would be indicative of their **direct** participation therein. In fact, under pain of repetition, what has been established is that the program was spearheaded by the LGU through the CSWDO. There was no evidence presented at all, other than the ambiguous messages of gratitude to herein petitioners, that they actively gave, or in any way lent a hand, in the **distribution** of the cash assistance to the recipients.

The foregoing, notwithstanding, as regards the other prohibition in Section 261(v)(2) as to **indirect** participation in the distribution of any relief or other goods, the Court here finds, and so holds, that there is substantial evidence showing that they nonetheless indirectly participated therein.

Firstly, while the facilitation Barizo extended to the program through his text messages do not equate to acts of release, disbursement, or expenditure of public funds, they nonetheless clearly amounted to, at the very least, an indirect participation in the distribution of the cash assistance. Suffice it to state, the text messages sent by Barizo’s staff informed the President of TODA, Roderick O. Buban (Buban), about the schedule of the cash assistance payouts on March 28 to 29, 2022 and gave instructions to claim the cash assistance at the City Treasurer’s Office should the recipients fail to attend the events. This was attested to by Buban in his affidavit, which Armogila submitted before COMELEC.<sup>107</sup>

In his defense, Barizo only proffers a general denial of these text messages and dismisses the affidavits of Buban and his fellow tricycle driver, Leomar Aringo, as being baseless, self-serving, and speculative. The Court notes, however, that these affidavits and text messages are corroborative of

<sup>106</sup> See <https://www.merriam-webster.com/dictionary/participate#synonyms>.

<sup>107</sup> See *rollo* (G.R. No. 269274), pp. 273–275.

the subsequent Facebook post of Barizo, which chronicled the cash assistance payouts on March 28 to 29, 2022. Again, Barizo denies knowledge of said Facebook post, but this denial simply fails to persuade in view of the fact that he admits that the Facebook account is his official page.<sup>108</sup>

As well, Barizo does not categorically deny his presence at the cash assistance payouts and merely banks on his assertion that an examination of the photos submitted in evidence cannot clearly determine if it was really he who was present in the activity. At the same time, he proffers that “[at any rate,] mere presence . . . was not indispensable for [the] completion [of the activity].”<sup>109</sup> These excuses of Barizo, which are neither here nor there, deserve scant consideration. Notably, as aptly stated again by COMELEC Commissioner Inting in her Separate Concurring Opinion in SPA No. 22-031 (DC), along with Barizo’s Facebook post on March 31, 2022 about the giving of cash assistance to the tricycle drivers, was one photo showing Barizo and Carmen, together with other individuals, present during the activity.<sup>110</sup>

Verily, the acts of facilitation conducted by Barizo, coupled with his personal appearance in the cash assistance payouts, lead to the inescapable conclusion that he had participated therein, albeit indirectly, specifically by gathering and inducing the recipients of the payouts to attend the activity and providing information on how the distribution will be made or where to nevertheless receive the payouts in the event that the recipient fails to attend the distribution, i.e., claim the same from the City Treasurer’s Office. These acts of Barizo were, in fact, crucial to the successful conduct of the payout activity.

Noel and Carmen, on the other hand, do not also categorically deny their presence at the cash assistance payouts, but merely argue in the main that the cash assistance payouts were validly or lawfully conducted. But then again, this denial of the Spouses Rosal crumbles in light of the photos submitted by Armogila, showing them with Barizo and other individuals during the scheduled cash assistance payouts. In this regard, the COMELEC *En Banc* in SPA No. 22-032 (DC) relevantly found that election paraphernalia were also displayed during the event. The photos posted in Barizo’s Facebook post also showed Carmen wearing a campaign t-shirt and a hat bearing her name.<sup>111</sup>

Carmen, however, argues further that by the strict terms of Section 261(v)(2), the candidate’s spouse or member of his family may not participate only when relief or other goods are distributed to the victims of the calamity or disaster by the PRC. Hence, according to Carmen, since the cash assistance in this case did not partake of distribution of relief or other goods to the victims of a calamity or disaster, then Section 261(v)(2) finds

<sup>108</sup> See *id.* at 110.

<sup>109</sup> *Rollo* (G.R. No. 269274), pp. 25, 26.

<sup>110</sup> *Rollo* (G.R. No. 264125), p. 86.

<sup>111</sup> *Rollo* (G.R. No. 266796), p. 83.

no application. She also stresses that it was the Office of the City Treasurer which was involved in the distribution of the relief and not the PRC.<sup>112</sup>

The ruling in *Velez* sufficiently puts to rest the above argument of Carmen. Inasmuch as the Court already ruled therein that it would be more in keeping with the object and purpose of the prohibition in Section 261(v)(2) to apply said prohibition regardless of whether the activity is undertaken by the DSWD itself or the LGU concerned, it should be of no moment here, as well, whether the monetary reliefs were not distributed by the PNRRC but by the LGU through its CSWDO.

Still following *Velez*, it should also not matter that the cash assistance was not given in view of a calamity or disaster. The crux of the prohibition in Section 261(v) is the release, disbursement, or expenditure of public funds. Essentially, Section 261(v)(2) prohibits that such public funds be used for relief efforts to the less fortunate. It specifically adds the proscription against the direct or indirect participation of candidates or their spouse or any member of their family within the second civil degree of affinity or consanguinity in the distribution of such relief goods. It does not matter, therefore, that the candidate is not an incumbent public official when he or she participated during the distribution of the relief goods. The rationale for this is, again, not hard to fathom. Relief effort projects are arguably the best arena for electoral candidates to make themselves visible, known, or endeared to many voters as possible. These objectives can also be obtained through the representation of a candidate's spouse or family members who can be easily associated to said candidate during the distribution of relief goods. The rationale behind the prohibition of Section 261(v)(2) is also true regardless of the motivation behind the relief effort project—be it in light of a recent calamity or disaster, or a “continuing” amelioration project of the LGU for its constituents. In all such instances, the rationale behind the prohibition is undermined: public funds do not get insulated from political partisan activities and government works are easily used for electioneering purposes.

In sum, since Section 261(v)(2) textually prohibits indirect participation in the distribution of any relief or other goods, the disqualification of the Spouses Rosal and Barizo based on the foregoing discussion should accordingly stand.

*B. To fall under the exception under Section 261(v)(2), the LGU should have filed a petition for exception before COMELEC.*

Section 261(v)(2) provides in part that the prohibition against release, disbursement, or expenditure of public funds shall also apply to “[t]he Ministry of Social Services and Development and any other office in other

<sup>112</sup> *Id.* at 37.

ministries of the government performing functions similar to said ministry, **except** for salaries of personnel, and for such other routine and normal expenses, and for such other expenses **as the Commission may authorize after due notice and hearing.**<sup>113</sup> Corollary to this, COMELEC in its Resolution No. 10747 laid down the rules and regulations to enforce the prohibitions provided under Section 261(v) and (w)<sup>114</sup> of the OEC. Relevant to Section 261(v)(2), COMELEC Resolution No. 10747 provides in part:

**SECTION 13. *Projects, activities, and programs pertaining to social welfare projects and services (non-infrastructure projects).*** – For social welfare projects and services, a petition for issuance of Certificate of Exception shall be filed before the Clerk of the Commission for due notice and hearing.

COMELEC points out that in order for an exception from the prohibition under Section 261(v) to apply, the LGU should have followed Section 13 above and filed a petition for issuance of a Certificate of Exception before the Clerk of the COMELEC. Noel, Carmen, and Barizo, however, insist that Section 14 of COMELEC Resolution No. 10747 applies instead:

**SECTION 14. *Projects and programs entailing the use of other state/public funds not covered under Section 261 (v) of the OEC.*** – The release, disbursement or expenditures of other state funds are allowed subject to the following conditions:

a) The projects/programs/activities (“PPAs”) sought to be implemented during the prohibited period of March 25, 2022 to May 08, 2022 were established before the said period and duly reported to the Commission on Audit pursuant to Item 2.1 of its Circular No. 2013-004 dated 30 January 2013[.]

b) The public awareness and information dissemination activities pertaining to these PPAs must conform to the guidelines provided under the said COA Circular.

c) In no instance shall the implementation of PPAs be used as an opportunity by any candidate, his or her spouse, family member within the second civil degree of affinity or consanguinity, political parties, party-list organizations and their nominees to further their candidacy

<sup>113</sup> Emphasis supplied.

<sup>114</sup> **Sec. 261. Prohibited Acts.** – The following shall be guilty of an election offense:

- ....
- w. Prohibition against construction of public works, delivery of materials for public works and issuance of treasury warrants and similar devices. – During the period of forty-five days preceding a regular election and thirty days before a special election, any person who:
- a. undertakes the construction of any public works, except for projects or works exempted in the preceding paragraph; or
  - b. issues, uses or avails of treasury warrants or any device undertaking future delivery of money, goods or other things of value chargeable against public funds.

through their personal appearance in such events, the posting, exhibition or distribution of any form of election propaganda, or any material containing their names, logos, initials, mottos, slogans, images, and other forms of representation attributable to them.

d) Support for or endorsement of candidates, party-list organizations and political parties shall not be made as a condition for the entitlement of the benefits from the PPAs.

e) Candidates, party-list nominees, their spouses, and members of their family within the second civil degree of affinity or consanguinity are strictly prohibited from participating, directly or indirectly, in the distribution of cash, goods or merchandise for scholarships, assistance for burial, healthcare, calamity and other similar programs. A violation of this condition shall subject the candidates or their representatives to liability under Section 261 (o) of the OEC.

As such, Noel, Carmen, and Barizo argue that there was substantial compliance with the exception from the prohibition under Section 261(v)(2) by virtue of the letter dated March 18, 2022 submitted by the CSWDO to COA.

The Court finds for COMELEC.

For one, the interpretation given by an administrative agency to its own rule or regulation that it promulgated pursuant to its rule-making power and which it is charged to implement, is entitled to the greatest weight by the Court. Such interpretation will be followed unless it appears to be clearly unreasonable or arbitrary.<sup>115</sup>

Here, the COMELEC Second Division in SPA No. 22-032 (DC) aptly pointed out that the requirement under Section 14 of COMELEC Resolution No. 10747 applies in instances where projects and programs which require the use of public funds do not fall under Section 261(v) of the OEC. In other words, according to the COMELEC Second Division, the provision is a catch-all provision for other future projects that may come up but do not pertain to social welfare services, among others.<sup>116</sup> This is a reasonable interpretation to the mind of the Court.

To be sure, Noel, Carmen, and Barizo claim that the programs in question were relief programs, as they, in fact, argue that the cash assistance was much needed in light of the COVID-19 pandemic. In examining the 2020-2022 MTPIP submitted by Noel, Carmen, and Barizo in evidence, the COMELEC Second Division observed that the enumerated projects

<sup>115</sup> See *City Government of Makati v. Civil Service Commission*, 426 Phil. 631, 648 (2002), [Per J. Bellosillo, *En Banc*], citing *Geukeko v. Araneta*, 102 Phil. 706, 713 (1957) [Per J. Felix, *En Banc*].

<sup>116</sup> *Rollo* (G.R. No. 266796), p. 66.

definitely fall under the ambit of social welfare services since they are categorized as services for the assistance of the disadvantaged or vulnerable groups.<sup>117</sup>

Again, in *Velez*, the Court held that the prohibition to disallow the release, disbursement, and expenditure of public funds for **all social welfare and development projects and activities** applies to those undertaken by the LGU, as well.<sup>118</sup> Aside from the rationale behind the prohibition, the Court also duly noted that while the DSWD is the lead national government agency mandated to provide comprehensive social welfare programs, the LGUs act as its frontline service providers pursuant to the devolution of powers under the LGC.<sup>119</sup> Surely, there is no rhyme or reason to confine the prohibition under Section 261(v)(2) to the social welfare projects of the DSWD when the LGUs normally or routinely conduct similar ones and the evils the prohibition seeks to prevent are much more manifest at their level, with incumbent public officials running for re-election having the possible motive to take advantage of their positions.

It may not be amiss to point out, as well, that even granting for the sake of argument that Noel, Carmen, and Barizo are correct that Section 14 of COMELEC Resolution No. 10747 should apply here, they would still be found liable under one of the conditions thereof, specifically Section 14(c), which reads:

**SECTION 14. *Projects and programs entailing the use of other state/public funds not covered under Section 261 (v) of the OEC.*** – The release, disbursement or expenditures of other state funds are allowed subject to the following conditions:

....

- c) In no instance shall the implementation of PPAs be used as an opportunity by any candidate, his or her spouse, family member within the second civil degree of affinity or consanguinity, political parties, party-list organizations and their nominees to further their candidacy **through their personal appearance** in such events, the posting, exhibition or distribution of any form of election propaganda, or any material containing their names, logos, initials, mottos, slogans, images, and other forms of representation attributable to them. (Emphasis supplied)

As previously discussed, the presence of Noel, Carmen, and Barizo during the distribution of the cash assistance payouts to tricycle drivers has been substantially established by the photographs in the Facebook post of Barizo, which showed the latter, Noel, and Carmen, together with other numerous individuals, during the said event. Again, to emphasize, Noel,

<sup>117</sup> *Id.* at 64.

<sup>118</sup> *Velez v. People*, *supra* note 40, at 641.

<sup>119</sup> *Id.* at 639.

Carmen, and Barizo did not categorically deny their presence in the payouts, but, instead, relied on the argument that these payouts were lawfully conducted.

Hence, in view of the foregoing, Section 13 of COMELEC Resolution No. 10747, which specifically pertains to “projects, activities, and programs pertaining to social welfare projects and services (non-infrastructure projects)” should apply in this case. What should have been filed was a petition for the issuance of a Certificate of Exception before the Clerk of the COMELEC and not a mere letter sent to COA informing it of the conduct of the cash assistance payouts. Notably, the petition to be filed under Section 13 of COMELEC Resolution No. 10747 is for due notice and hearing, which is what Section 261(v)(2) specifically requires in order to fall under the exception from the prohibition.

As regards the argument of Noel, Carmen, and Barizo that the cash assistance payouts happened during the pandemic, the Court finds that this fact will not remove the prohibition or exempt the events from the prohibition under Section 261(v)(2). To put it bluntly, the Bayanihan Law<sup>120</sup> should not be used as an excuse to skirt the prohibition under the Section. Whatever liberality was granted to the LGUs under the Bayanihan Law was tailored to address the pandemic. The cash assistance payouts in this case **incidentally** happened during the pandemic, as it was, in fact, already at the tail-end of the pandemic. It is fair to say, therefore, that there was hardly any urgency anymore, so to speak, which could have justified noncompliance with Section 261(v)(2).

It does not escape the attention of the Court, as well, that the cash assistance payouts happened on various occasions beginning in August 2021, to wit: August 26 to 27, 2021, and September 2 to 4, 9 to 11, 16 to 17, 21, 23, and 24, 2021. It would not have been impossible or inconvenient for the LGU, therefore, to plan accordingly as to when the next payouts should happen. From September 2021, the LGU had plenty enough time to conduct the payouts until the prohibited period of 45 days (March 25, 2022 to May 8, 2022) before a regular election would have set in. In other words, the LGU had the whole of October of 2021 until February of 2022, or five whole months, to schedule the payouts.

So, too, while the Bayanihan Law is replete with phrases “notwithstanding any law to the contrary,” such should be confined to the very matter the phrases modify (i.e., “Notwithstanding any law to the contrary, the President is hereby authorized to allocate cash, funds, investments, including unutilized or unreleased subsidies and transfers, held by any [government-owned or -controlled corporation] or any national

<sup>120</sup> Republic Act No. 11494 (2020), An Act Providing for COVID-19 Response and Recovery Interventions and Providing Mechanisms to Accelerate the Recovery and Bolster the Resiliency of the Philippine Economy, Providing Funds Therefor, and for Other Purposes, otherwise known as “Bayanihan to Recover as One Act”.

government agency in order to address the COVID-19 pandemic;”<sup>121</sup>). Simply put, the phrase should not be applied to all government processes and to all laws indiscriminately, such that every law that may conflict with the grant or distribution of reliefs and aid during the COVID-19 pandemic should at once and at all cost be disregarded.

More importantly, under the Department of Budget and Management’s Local Circular No. 125 dated April 7, 2020, titled “Guidelines on the Release and Utilization of the *Bayanihan* Grant to Cities and Municipalities [(BGCM)],” it was clearly provided that the BGCM shall be exclusively used by the cities and municipalities for specific COVID-19 related programs, projects, and activities enumerated under item 3.5 of the Circular. On one hand, item 3.6.1 of the Circular expressly provided that the BGCM shall not be allowed to be used for any form of financial or cash assistance.

***III. Violations of Section 68(a) and Section 68(e) in relation to Section 261(v) of the OEC are not mutually exclusive.***

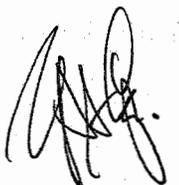
A finding that Noel, Carmen, and Barizo are not guilty of vote-buying, as they had no intention to influence, induce, or corrupt the voters, does not *ipso facto* absolve them of the offense under Section 261(v)(2) of the OEC.

Indeed, the law imposes the prohibition against the release, disbursement, or expenditure of public funds to prevent public officials and employees from utilizing government resources to influence the voters in their choice of candidates for the forthcoming elections. It ensures that public funds and properties are insulated from political partisan activities and that government works shall not be used for electioneering purposes. It also seeks to prevent incumbent public officials from enjoying undue advantage of government resources over which they have easy and convenient access to bolster their campaign. The Section, nonetheless, remains to be preventative and an unqualified deterrence against the use of government resources during the prohibitive period; it does not matter, for instance, whether there was intention at all to commit political partisan activities. Nowhere in the law can it be inferred that the release, disbursement, or spending of public funds must be for electioneering or vote-buying. As long as there was a release, disbursement, or expenditure of public funds within the prohibited period for the enumerated activities under Section 261(v), the offense is committed.

Furthermore, under Section 261(v)(2) in particular, it suffices that a candidate or his or her spouse or member of their family within the second

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<sup>121</sup> *Id.*, sec. 4(ss).



civil degree of affinity or consanguinity participated directly or indirectly in the distribution of relief or goods. Nowhere in the law can it be inferred, as well, that their participation in such distribution is for electioneering or vote-buying purposes.

Indeed, again, it is not difficult to fathom why the prohibition against disbursement of public funds during election season dispenses with the element of intent to corrupt the voters or boost one's election candidacy, as opposed to the offense of vote-buying in which such intent is a basic requisite. Likewise, the former offense is more inclusive in that even those who indirectly participated in the distribution of the subject goods are liable. The fact that government funds are being expended in the former offense and only private funds are used in the latter already provides a clear justification for the distinction. In other words, because state resources are used in illegal disbursement of public funds, the law understandably gives a bigger leeway for the government to hold the respondent accountable, and thereby set a greater deterrence against such practice, as compared to a simple vote-buying offense.

#### ***IV. Re: The petitions-in-intervention of Bichara and Cristobal***

The Court holds that it is too late in the day to entertain the petition-in-intervention of Bichara and therefore dismisses the same.

Notably, Bichara intervenes for the first time before this Court through G.R. No. 264125 and never participated before the COMELEC division in the main case, or its *en banc* on motion for reconsideration. This is a fatal procedural lapse.

The filing of intervention—be it under the Rules of Court or the COMELEC Rules of Procedure—is restricted as to the period therefor. Under the Rules of Court, the same must be done before judgment is rendered by the trial court,<sup>122</sup> whereas under the COMELEC Rules of Procedure, it must be before or during the trial of the action or proceeding.<sup>123</sup>

In his Separate Opinion in *Risos-Vidal v. COMELEC*,<sup>124</sup> Associate Justice Arturo D. Brion (Justice Brion), citing *Ongco v. Dalisay*,<sup>125</sup> explained that “the period within which a person may intervene is restricted, and after the lapse of the period set in Section 2, Rule 19, intervention will no longer be warranted.”<sup>126</sup> This is because, basically, intervention is not an

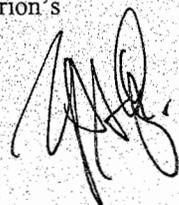
<sup>122</sup> RULES OF COURT, rule 19, sec. 2.

<sup>123</sup> COMELEC RULES OF PROCEDURE, rule 8, sec. 1.

<sup>124</sup> 751 Phil. 479 (2015) [Per J. Leonardo-De Castro, *En Banc*].

<sup>125</sup> 691 Phil. 462, 467 (2012) [Per J. Sereno, Second Division].

<sup>126</sup> J. Brion, Separate Opinion in *Risos-Vidal v. COMELEC*, *supra* note 124, at 576–577. Justice Brion's premise is that Section 2, Rule 19 of the Rules of Court applies.



independent action but is ancillary and supplemental to an existing litigation.” Justice Brion expounded further:

In *Ongco*, the Court further traced the developments of the present rule on the period to file a motion for intervention. The former rule was that intervention may be allowed “before or during a trial.” Thus, there were Court rulings that a motion for leave to intervene may be filed “before or during a trial,” even on the day when the case is submitted for decision as long as it will not unduly delay the disposition of the case. There were also rulings where the Court interpreted “trial” in the restricted sense such that the Court upheld the denial of the motion for intervention when it was filed after the case had been submitted for decision. In *Lichauco v. CA*, intervention was allowed at any time after the rendition of the final judgment. In one exceptional case, the Court allowed the intervention in a case pending before it on appeal in order to avoid injustice.

To cure these inconsistent rulings, the Court clarified in *Ongco* that “[t]he uncertainty in these rulings has been eliminated by the present Section 2, Rule 19, which permits the filing of the motion to intervene at any time before the rendition of the judgment, in line with the ruling in *Lichauco*.

The justification for this amendment is that before judgment is rendered, the court, for good cause shown, may still allow the introduction of additional evidence as this is still within a liberal interpretation of the period for trial. Also, since no judgment has yet been rendered, the matter subject of the intervention may still be readily resolved and integrated in the judgment disposing of all claims in the case, without requiring an overall reassessment of these claims as would be the case if the judgment had already been rendered.

....

The Court further held in *Ongco* that “there is wisdom in strictly enforcing the period set by Rule 19 of the Rules of Court for the filing of a motion for intervention. Otherwise, undue delay would result from many belated filings of motions for intervention after judgment has already been rendered, because a reassessment of claims would have to be done. Thus, those who slept on their lawfully granted privilege to intervene will be rewarded, while the original parties will be unduly prejudiced.”<sup>127</sup> (Citations omitted)

Thus, whichever Rules one applies—whether it be the Rules of Court before this Court or the COMELEC Rules of Procedure before COMELEC—the period as to the filing of the intervention is similar in that it cannot be filed after judgment is rendered by a trial court or tribunal. The objective, as explained by Justice Brion, is two-pronged. First is the avoidance of any undue delay in the case that a belatedly filed intervention may cause. Second, and more importantly, ensuring that the affected parties

<sup>127</sup> *Id.* at 577–578.

are given a chance to present their evidence for the consideration of the trial court or tribunal in resolving the case. These parties include not only the movant-in-intervention, but likewise the respondent-in-intervention or the person adversely affected by a granting of the motion to intervene and ultimately the petition-in-intervention.

The latter reason underscores the importance of the intervention being filed before a trial court or tribunal, which conducts hearings and allows parties to present evidence. This means that the intervention cannot be filed at the first instance before an appeals court such as the Supreme Court, which is not a trier of facts and does not receive evidence of the parties. Rather, it merely considers the evidence on record already threshed out in the lower courts or tribunal.

Applying the foregoing rules on intervention, Bichara's petition-in-intervention which, as mentioned, was first filed only with this Court, must fail. The Court is not a trier of facts; rather it is only called upon in this case to determine the presence of grave abuse of discretion on COMELEC's part in issuing the assailed Resolutions.

To stress, Bichara had a "legal interest in the matter in litigation or in the success of either of the parties, or an interest against both, or that he is so situated as to be adversely affected by [the disqualification proceedings against Noel]," thus, satisfying the requirements of the COMELEC Rules of Procedure for intervention.<sup>128</sup> This means that he could have intervened at the COMELEC level before or during the hearing of the petition for disqualification that Armogila filed against Noel.<sup>129</sup> But he never participated in the said case to present evidence to prove his claims in the present petition.

On the flip side, he likewise denied Noel, who was the respondent in the petition for disqualification before COMELEC, the opportunity to refute his claims. Notably, Noel is not even the party who will sustain the worst effects of the granting of Bichara's petition. To recall, Bichara moved to intervene in the present case mainly seeking to annul the COMELEC's application of the rules on succession in determining the person to replace Noel as Governor of Albay. Bichara insists that he, as the second placer in the 2022 NLE for the position of Governor, must be proclaimed to replace Noel—similar to how COMELEC resolved Carmen's case. Thus, the real adversely affected party here is not so much Noel but the then Vice Governor Edcel Lagman. Lagman will have to step down as Governor of Albay to make way for Bichara, should the latter's petition in intervention be granted. However, Lagman, even in Bichara's petition in intervention, is not even impleaded—another procedural lapse that bears on Lagman's due process rights and therefor fatal to the petition-in-intervention.

<sup>128</sup> See COMELEC RULES OF PROCEDURE, rule 8, sec. 1.

<sup>129</sup> See J. Brion, Separate Opinion in *Risos-Vidal v. COMELEC*, *supra* note 124, at 579.

Substantively, as well, the Court finds that COMELEC did not gravely abuse its discretion in holding that the Vice Governor should replace Noel following the rules on succession under the LGC. The prevailing jurisprudence is that: (a) if the action is one for disqualification under Sections 12 and 68 of the OEC or Section 40 of the LGC, and the action is granted after the winning candidate—who happens to be the respondent has assumed office, the respondent is simply removed from office and the rules on succession shall apply; (b) if the action is one for material misrepresentation which led to the cancellation of, or denial of due course to, the respondent's certificate of candidacy (CoC) after he or she had already won and assumed office, the decision retroacts to the filing of the respondent's CoC. It avoids such filing, considers the respondent as never having become a candidate, and therefore, leads to the proclamation of the second placer as the qualified "candidate" who gathered the most number of votes.

Thus, under current jurisprudence, the granting, after the elections, of the petitions for disqualification of the respondents must lead to only one effect: the creation of a vacancy in office which must be filled up following the rules on succession. Indeed, a quick browsing of relevant jurisprudence shows that there were hardly ever cases in which a petition for disqualification, under these circumstances, led to a different result, i.e., the second placer rule.

**Normally**, the foregoing rule should also apply in the determination of who replaces Carmen. However, the extraordinary factual circumstances of the case that confront the Court behooves it to exercise caution in simply following the rule and pronouncing that Cristobal should henceforth replace Carmen.

In going through the records of the case, the Court observes that Cristobal was, in fact, likewise identified as an attendee or participant in the subject cash assistance payouts. Once again, the Facebook post alluded to by Armogila in his petitions for disqualification reads:

"2-Day Tricycle Driver's Cash Assistance Payout @ Fishport Legazpi.

Thank you Governor Noel E. Rosal, Mayor Gie Rosal, **VM Bobby Cristobal**, the incumbent [and] aspiring Councilors.

Salamat man sa TODA sa suporta asin marhay na kooperasyon! Mabuhay kamu!

Al Barizo

Committee on Public Utilities & Energy

(Transportation)

#tapatsubokmaypuso"<sup>130</sup>

<sup>130</sup> Rollo (G.R. No. 264125), p. 96; rollo (G.R. No. 266796), p. 104; rollo (G.R. No. 269274), p. 80.

Thus, the COMELEC *En Banc* in its assailed Resolution in SPA No. 22-032 (DC) relevantly concluded:

There is no doubt that to the ordinary reader, the above Facebook post necessarily evokes the message that the said Cash Assistance Payout is given by no other than Governor Noel E. Rosal, Mayor Gie Rosal, **VM Bobby Cristobal**, and the incumbent & aspiring Councilors. There could be no other reasonable interpretation because gratitude is ordinarily and naturally accorded to the giver. Since the Facebook post expressed words of gratitude to the abovementioned individuals, including Respondent, it can reasonably be concluded, in the ordinary course of human nature, that the said cash assistance was given by them.<sup>131</sup> (Emphasis supplied)

With this fact staring the Court in the face, the Court cannot, in good conscience, merely look away and shrug off the doubt it now entertains as to whether Cristobal is also guilty of the same act under Section 261(v)(2) that Carmen and Barizo have been found guilty of. Surely, what is sauce for the goose should be sauce for the gander. It would also be the height of absurdity and impropriety to install someone in power and effectively give the people a leader who, after all, like respondents in this case, seems to have also violated the law and thus appears to be likewise suffering from the same disqualifications for which his predecessor Carmen is being removed from office as a consequence of the present decision.

In resolving this dilemma of applying the rules on succession and proclaiming a successor who appears to be likewise guilty based on the same evidence that led to the removal of Carmen and the other respondents here, the Court is reminded of its duty in taking cognizance of cases involving disqualifications and ineligibilities of already elected officials: that the objective is not merely to ensure that the will of the people is given full force and effect in the selection of who must lead them, but also that these leaders-elect live up to the standards of their respective offices and observe the requirements set by the Constitution and relevant statutes. It has long been settled that the will of the people, crucial as it may be in preserving a democratic republican state such as ours, cannot override the requirements, qualifications and eligibilities set by the law of the land.

Given, however, that Cristobal has not been the subject of the same petition for disqualification by Armogila or by any other person for that matter, the Court cannot make any categorical ruling in this case against him in the interest of due process. As the Court sees it, the fair, reasonable, and prudent course of action it should take is to remand this issue against Cristobal to COMELEC which should accordingly docket the same as a disqualification case to determine the truth of his presence in the subject cash assistance payouts together with the herein petitioners, and if the same likewise warrants his disqualification from office.

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<sup>131</sup> *Rollo* (G.R. No. 266775), p. 41.

**ACCORDINGLY**, the Petition in G.R. No. 264125 is **DISMISSED**. The COMELEC Resolutions dated September 19, 2022 and November 18, 2022 in SPA No. 22-031 (DC), disqualifying Noel E. Rosal to run as Governor of the Province of Albay during the May 9, 2022 National and Local Elections are **AFFIRMED**. The Petition for Intervention of Al Francis C. Bichara filed in the same case is **DISMISSED**.

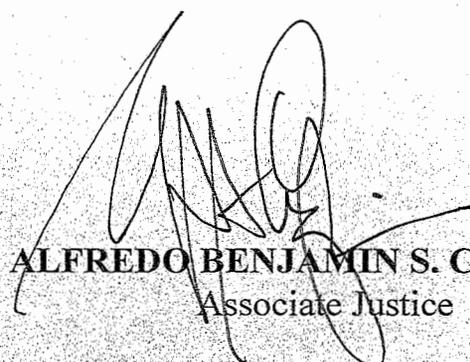
The Petition in G.R. No. 266796 is **DISMISSED**. The COMELEC Resolutions dated October 4, 2022 and May 4, 2023 in SPA No. 22-032 (DC) disqualifying Carmen Geraldine Rosal to run as Mayor in Legazpi City in the May 9, 2022 National and Local Elections are **AFFIRMED**.

The Petition in G.R. No. 266775 is **DECONSOLIDATED** from G.R. No. 264125, G.R. No. 266796, and G.R. No. 269274. *Pro hac vice*, COMELEC is directed, with dispatch, to separately docket a disqualification proceeding against Vice Mayor Oscar Robert H. Cristobal in order to determine whether he is also disqualified from running for the office of Vice Mayor in the 2022 National and Local Elections under Section 261(v)(2) in relation to Section 68 of the Omnibus Election Code.

In the meantime, the *Status Quo Ante* Order issued by the Court on May 11, 2023 is hereby **LIFTED with immediate effect**. Accordingly, the assailed COMELEC Resolutions dated October 4, 2022 and May 4, 2023 in SPA No. 22-032 (DC) shall likewise **immediately take effect**.

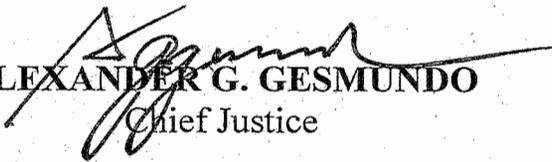
The Petition in G.R. No. 269274 is likewise **DISMISSED** and the COMELEC Resolutions dated May 5, 2023 and September 27, 2023 in SPA No. 22-030 (DC), disqualifying Jose Alfonso V. Barizo to run as Councilor in Legazpi City are **AFFIRMED**, with the **MODIFICATION** that the next highest-ranking Member of the *Sangguniang Panlungsod* be proclaimed to assume the vacated position of Jose Alfonso V. Barizo.

**SO ORDERED.**

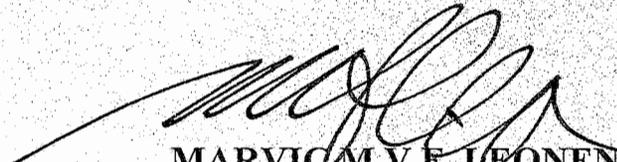


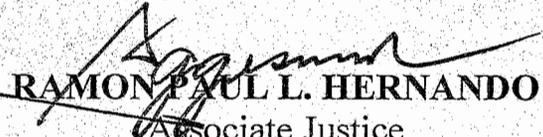
**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

WE CONCUR:

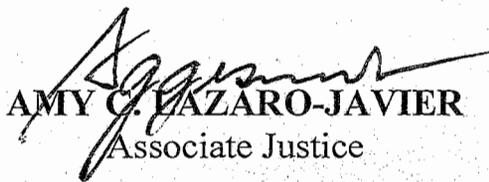
  
**ALEXANDER G. GESMUNDO**  
Chief Justice

(On official business but left  
concurring vote)

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

  
**RAMON PAUL L. HERNANDO**  
Associate Justice

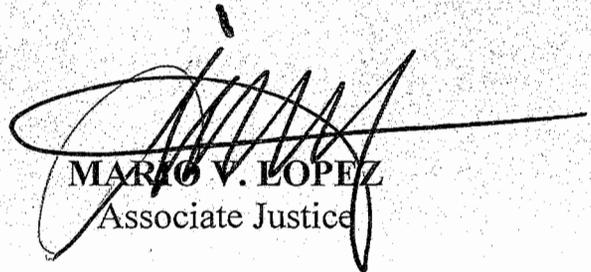
(On official leave but left  
concurring vote)

  
**AMY C. LAZARO-JAVIER**  
Associate Justice

(No Part)  
**HENRI JEAN PAUL B. INTING**  
Associate Justice

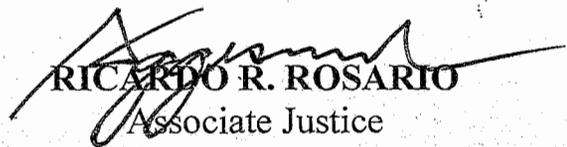
(On leave but left concurring vote)

  
**RODIL V. ZALAMEDA**  
Associate Justice

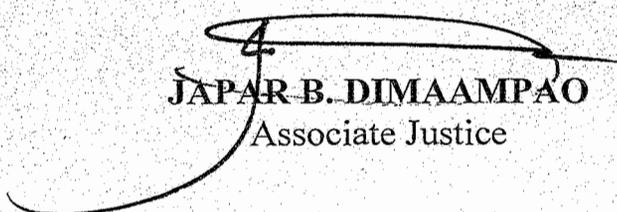
  
**MARIO V. LOPEZ**  
Associate Justice

(On official leave but left  
concurring vote)

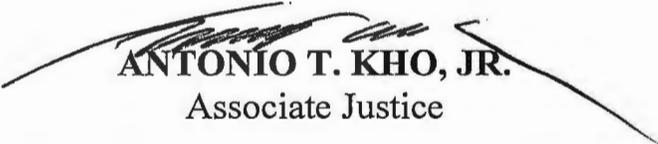
  
**SAMUEL H. GAERLAN**  
Associate Justice

  
**RICARDO R. ROSARIO**  
Associate Justice

  
**JHOSEP Y. LOPEZ**  
Associate Justice

  
**JAPAR B. DIMAAMPAO**  
Associate Justice

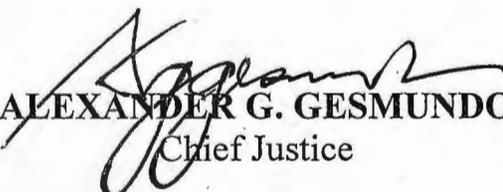
  
**JOSE MIDAS P. MARQUEZ**  
Associate Justice

  
**ANTONIO T. KHO, JR.**  
Associate Justice

  
**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

**CERTIFIED TRUE COPY**

  
**MARIA LUISA M. SANTILLA**  
Deputy Clerk of Court  
OCC-En Banc, Supreme Court