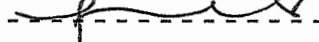


EN BANC

G.R. No. 264661 – CLARYLYN A. LEGASPI, ROMEO R. DOMONDON, JR., BARTOLOME F. DULATRE, ALEJANDRO J. SISON, NESTOR M. JOVELLANOS, JERRYSON T. ICO, ROEL P. DINONG, FERNANDO D. BAUTISTA, BABYLAINÉ C. AQUI, GRACE U. DULATRE, OMAR G. VALDEZ, REYNALDO A. SOQUILA, CRESENCIO I. BELAMIDE, CARLO M. CABAObAO, CRISTY R. REYNADO, JHON PAUL E. CAYABYAB, RUPERTO P. BOTON, THELMA P. VELANO, ADELAlDA V. BOTON, MARIE CYNARA PANAY, ONEIL C. JOVERO, SHEKINAH TOLENTINO, MARIO JIMENEZ, VERGEL T. PEREZ, RACHELLE ANNE PEREZ, CHRISTOPHER R. MILANES, LAUDEMÉR I. FABIA, IRISH CHERRY T. BUSTO, JANLEE REY F. SABADO, KENNETH B. GOTOC, IMELDA A. CUEVA, and MARICEL B. GOTOC, Petitioners, v. COMMISSION ON ELECTIONS, Respondent.

Promulgated:

July 30, 2024

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

SEPARATE OPINION

LAZARO-JAVIER, J.:

The facts are straightforward. After the culmination of the May 2022 National and Local Elections, respondent Commission on Elections (COMELEC), through its Executive Director, received a document denominated as “*APELA PARA SA MANO-MANONG PAGBILANG MULI NG MGA BOTO SA PROBINSYA NG PANGASINAN*” (*APELA*) from a certain Albert O. Quintinita (Quintinita) on May 27, 2022. The *APELA* was a signature campaign demanding a recount of votes cast in the province of Pangasinan because of alleged anomalies in the conduct of the May 2022 National and Local Elections.¹

Through its Letter dated May 31, 2022, respondent’s Law Department informed Quintinita of the proper procedure in filing an election contest. Thereafter, petitioner Atty. Laudemer I. Fabia, as spokesperson of the affected voters, sought reconsideration of the supposed denial of the *APELA* and averred that the *APELA* was not an election protest “but a people’s initiative in the exercise of their sovereign rights as provided for under the Constitution,” and invoked their right to information on matters of public

¹ Decision, pp. 2–3.



concern. Per its Letter dated July 7, 2022, respondent's Law Department advised Quintinita that it has no jurisdiction over the *APELA*.²

Aggrieved, petitioners filed the present Petition for *Certiorari* and *Mandamus*. Essentially, they claimed that respondent's lack of action on the *APELA* amounted to grave abuse of discretion.³ Too, they invoked here their rights of suffrage, to information, and to petition the government for redress of grievances.

The *ponencia* of my esteemed colleague, Associate Justice Samuel H. Gaerlan, accurately synthesized why the elements for the exercise of the Court's power of judicial review have not been established, and, ultimately, why the Petition is fatally defective. Too, it thoroughly discussed the important right of the people to be informed on matters of public concern enshrined under Article III, Section 7⁴ of the 1987 Constitution, and how such right of petitioners had not been violated here as they claim.

I agree.

In addition, it is my view that the dismissal of the Petition is proper primarily because of the **sheer absence of grave abuse of discretion on the part of respondent COMELEC**.

It is well-settled that grave abuse of discretion arises when there is a **capricious and whimsical exercise of judgment so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law**, such as when the power is exercised in an arbitrary and despotic manner by reason of passion or hostility. **It occurs when a court or tribunal violates the Constitution, the law, or existing jurisprudence.**⁵

Here, respondent did not act with grave abuse of discretion amounting to lack or excess of jurisdiction. Respondent clearly acted in accordance with the Constitution, the law, and existing jurisprudence. Respondent's Law Department aptly refrained from taking cognizance of petitioners' *APELA*, which they claimed to be a people's initiative in the exercise of their rights under the Constitution.

² *Id.* at 3–6.

³ *Id.* at 3.

⁴ **Section 7.** The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law.

⁵ *Sevilla v. COMELEC*, 843 Phil. 142, 156 (2018) [Per J. Carpio, *En Banc*], citing *Albania v. Commission on Elections*, 810 Phil. 470, 477 (2017) [Per J. Peralta, *En Banc*].

The power of initiative pertains to the power of the people to propose **amendments to the Constitution** or to propose **enactment of legislations through an election called for the purpose.**⁶

As may be gleaned from the first page of the *APELA*,⁷ it was neither a petition to propose amendments to the Constitution nor a proposition to enact national or local legislations. Unfortunately for petitioners, they simply chose the wrong remedy to pursue their cause.

But even assuming that the *APELA* was in fact a people's initiative, petitioners failed to follow the requisites and procedure for the exercise thereof, specifically Section 12 of COMELEC Resolution No. 10650 or the *Revised Rules and Regulations Governing the Conduct of: 1) Initiative on the Constitution; and 2) Initiative and Referendum on National and Local Legislations, viz.:*

Section 12. Filing of the Petition. - (a) The Proponent/s shall secure a certification as to the total number of registered voters in each legislative district from the ERSD based on the data used in the immediately preceding elections, and shall append the same to the Petition under oath (see ANNEX "A"). On the other hand, the ERSD shall transmit to the Office of the Clerk of the Commission a certified copy of the certification issued to the Proponent/s.

The Petition under oath, and the thereto attached certifications from the ERSD and EO mentioned in the immediately preceding paragraph and in Section 15 (a), respectively, must be filed with the Office of the Clerk of the Commission after payment of required filing fee.

It must be alleged in the said Petition under oath, among others, that the required number of signatures was already collected and gathered by the Proponent/s, the signature sheets therefor were already submitted to the concerned Offices of the EO, and a certification therefor was duly issued by the EO.

(b) The Clerk of the Commission shall docket the Petition as **P.I.R.**, evaluate the same, and immediately thereafter, submit a recommendation to the Commission *En Banc* as to whether or not (1) the Proposition is an appropriate subject of the Petition and conforms with Section 8 hereof; and (2) the Petition under oath has:

- (a) The full text of the proposed amendment, which may either be:
 - i. Written on the face of the Petition; or
 - ii. Attached to the Petition, in which case, the Petition must state the fact of such attachment;
- (b) The Reason/s therefor;
- (c) An abstract or summary of the Proposition in not more than one hundred (100) words which shall be legibly written or printed at the top of every page of the Petition. The abstract shall include a clear description of the Proposition's essential content;

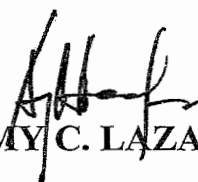
⁶ ARTICLE XVII, SECTION 2, 1987 CONSTITUTION; SECTION 3(a) of REPUBLIC ACT No. 6735, otherwise known as The Initiative and Referendum Act, approved August 4, 1989.

⁷ Decision, pp. 2-3.

- (d) The required attachments mentioned in Section 12 (a) hereof; and
- (e) A statement affirming that before the signatures are affixed, the Proponent/s ensured that Petitioners have read and understood the Petition and the proposed amendment/s to the Constitution, and have known that the signatures constitute approval of the proposed constitutional amendment/s and consent to the filing of the Petition.

The foregoing COMELEC Resolution was brought to petitioners' attention through the Letter dated July 7, 2022 of respondent's Law Department. Verily, respondent did not commit grave abuse of discretion when it declined to act on the *APELA*. In any event, it is quite apparent that what petitioners really wanted was a manual recount of all the votes cast during the May 9, 2022 National and Local Elections, albeit they loosely referred to it as a people's initiative. In either case, however, the Petition is defective in form and substance, hence, dismissible outright.

ALL TOLD, I vote to dismiss the Petition for *Certiorari* and *Mandamus*.


AMY C. LAZARO-JAVIER