

JOSE M. BULAONG, M.D., PETITIONER, VS. COMELEC, FIRST DIVISION, AND LUIS VILLAFUERTE, RESPONDENTS.*G.R. No. 107987. March 31, 1993*

Ponente: ROMERO, J.

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Petitioner Jose M. Bulaong, M. D. and private respondent Luis Villafuerte were both candidates for the office of the provincial governor of Camarines Sur in the May 11, 1992 local elections. Petitioner, having obtained a total of 184,654 votes as against private respondent's vote of 155,359 or a difference of 29,295 votes, was proclaimed by the Provincial Board of Canvassers as the duly elected governor on June 30, 1992. Accordingly, petitioner took his oath of office on July 1, 1992.

On July 9, 1992, private respondent filed an election protest questioning the precinct results of ten (10) Municipalities of Baao, Buhi, Cabusao, Calabanga, Libmanan, Pamplona, Pasacao, Pili, San Fernando and Sipocot and the City of Iriga. Subsequently, on August 21, 1992, private respondent filed an Omnibus Motion praying that the venue for the ballot revision proceedings be conducted at the main office of the Commission on Elections in Intramuros, Manila.[1] Petitioner opposed private respondent's prayer citing that ballot revision proceedings need not be held in Manila since there was no untoward incident that happened during the canvassing of votes from May 12 to May 30, 1992 in Naga City.

Acting on private respondent's prayer, the First Division of the COMELEC through its order dated September 9, 1992 granted private respondent's prayer for a revision of ballots to be held in Manila.[2] This order was received by petitioner on September 16, 1992.

On September 21, 1992, petitioner, fearing that his motion for reconsideration might not be finished on time, filed an "Urgent Motion for One-Day Extension." [3] A day after or on September 22, 1992, petitioner filed his motion for reconsideration dated September 21, 1992.[4]

There being no resolution yet on his motion for extension, petitioner then filed a "Supplement to Urgent Motion for One-day Extension," on October 6, 1992.[5]

On October 12, 1992, petitioner received his copy of the COMELEC's order dated October 6, 1992 denying petitioner's urgent motion for one day extension.[6] On October 14, 1992, petitioner moved to reconsider.[7]

On October 19, 1992, the COMELEC thru its First Division denied petitioner's motion for reconsideration dated September 21, 1992.[8] On the same day, petitioner also filed an Omnibus motion praying that his two motions for reconsideration (Annexes G and J) be certified to the COMELEC en banc pursuant to Section 5 of Rule 19 of the COMELEC Rules of Procedure.[9]

On October 30, 1992, petitioner filed with the COMELEC en banc a manifestation and motion praying that his motions for reconsideration[10] and his Omnibus Motion[11] filed with the First Division be ordered certified to it for resolution.[12] On December 3, 1992, the First Division of the COMELEC denied petitioner's manifestation

that its motions for reconsiderations be certified to the COMELEC en banc because the order directing the Provincial Election Supervisor of Camarines Sur to immediately send the 649 ballot boxes to Manila is merely interlocutory.[13]

Hence, this instant petition for certiorari and mandamus with prayer for a temporary restraining order to enjoin the order of the First Division of the COMELEC dated September 9, 1992. On December 14, 1992, this Court issued a temporary restraining order against public respondent.

On January 26, 1992, Marito Bernales, a candidate for the position of provincial board member in Camarines Sur, filed a motion for intervention alleging that the temporary restraining order we issued has affected the outcome of his electoral protest with the COMELEC (EPC 92-38), his votes being in the same contested ballots subject of the revision proceedings in the case at bar. We granted movant's motion to intervene in our resolution dated February 9, 1992.

The issue at hand is whether or not the First Division of the COMELEC committed grave abuse of discretion when it refused to refer petitioner's motions for reconsideration[14] to the COMELEC en banc notwithstanding mandate of Section 5 of Rule 19 of the COMELEC Rules of Procedure (COMELEC Rules) which provides that:

"How motion for reconsideration disposed of. – Upon the filing of a motion to reconsider a decision, resolution, order or ruling of a Division, the Clerk of Court concerned shall within twenty four (24) hours from the filing thereof, notify the Presiding Commissioner. The latter shall within two (2) days thereafter, certify the case to the Commission en banc."

While petitioner concedes that the order of the COMELEC designating Manila as the venue of the revision proceedings dated September 9, 1992 interlocutory, petitioner nonetheless contends that a reading of Section 2 of Rule 3[15] in conjunction with Section 5 (c) of the same rule[16] would reveal that it is the duty of the First Division of the COMELEC to refer his motion for reconsideration to the COMELEC en banc, since the matter concerning the venue of the revision of ballots is a substantial issue which the latter should review.[17]

Petitioner prays that a writ of mandamus be issued directing the First Division of the COMELEC to certify and elevate his motions for reconsideration to the COMELEC en banc.

We vote to dismiss the instant petition. It is not mandatory on the part of a division of the COMELEC to refer all pending motions for reconsiderations to the COMELEC en banc.

Admittedly, the order regarding the revision of ballots is an interlocutory order because it still requires a party to perform certain acts leading to the final adjudication of a case.[18] The order in the case at bar is for the Provincial Election Supervisor of Camarines Sur to transfer the ballot boxes from Camarines Sur to Manila for a recount and revision of ballots, for the purpose of determining who won the gubernatorial race in Camarines Sur.

Being an interlocutory matter, the question now before us is whether or not the First Division of the COMELEC committed grave abuse of discretion in refusing to refer petitioner's motion for reconsideration to the COMELEC en banc. It is our opinion that the COMELEC did not commit grave abuse of discretion. For said motion to be considered en banc, it requires the unanimous vote of the members of the division as mandated by Section 2 of Rule 3 of the COMELEC Rules. In the case at bar, there was an absence of such vote. Instead of withholding its decision on such interlocutory matter, the First Division of the COMELEC decided to exercise its power under Section 6 of Rule 20 of the COMELEC Rules which states:

"When the allegations in a protest or counter-protest so warrant, or whenever in the opinion of the Commission or Division the interest of justice so demands, it shall immediately order the ballot boxes containing ballots and their keys, list of voters with voting records, book of voters and other documents used in the election to be

brought before the Commission, and shall order the revision of the ballots. xxx

The revision of ballots shall be made in the office of the Clerk of Court concerned or at such places as the Commission or Division shall designate, and shall be completed within three (3) months from the date of the order, unless otherwise directed by the Commission." (Underscoring provided)

Similarly, a mandamus proceeding involving a discretionary power of the COMELEC does not lie. A perusal of the aforecited section impliedly reveals the discretionary power of the COMELEC Division or En Banc to order a revision of ballots. This can be gleaned from the use of the phrase, "whenever in the opinion of the Commission or Division the interest of justice so demand." Although in most instances the revision of ballots takes place in the office of the Clerk or Court concerned, revision of ballots may also be held in "such places as the Commission or Division shall designate." Petitioner is to be reminded that mandamus, as a remedy, is available to compel the doing of an act specifically enjoined by law as a duty. It cannot compel the doing of an act involving the exercise of discretion one way or the other.[19] Undoubtedly, the First Division of the COMELEC was within its powers in designating Manila as the venue of the revision of ballots.

Even if we are to consider the case at bar as falling within the jurisdiction of the COMELEC en banc by virtue of Section 3 of Rule 5(c) of the COMELEC Rules, it goes without saying that only motions for reconsideration filed within the five (5) day reglementary period as prescribed by Section 2 of Rule 19[20] of said Rules can be referred to the COMELEC en banc. Petitioner should have filed his motion for reconsideration on or before September 21, 1992 considering that he received the COMELEC's order dated September 9, 1992 on September 16, 1992. Petitioner may have been overly optimistic in expecting that his "urgent motion for one-day extension" would be granted forthwith by the First Division, which it did not. Hence, upon the lapse of five (5) days, the order of the COMELEC dated September 9, 1992 can no longer be questioned; much less can it be referred to the COMELEC en banc.

WHEREFORE, the instant petition is hereby DISMISSED. The temporary restraining order issued by this court against the First Division of the COMELEC enjoining the transfer of ballot boxes to Manila is hereby LIFTED.

SO ORDERED.

Narvasa, C.J., Cruz, Feliciano, Padilla, Bidin, Griño-Aquino, Regalado, Davide, Jr., Nocon, Bellosillo, Melo, Campos, Jr., and Quiason, JJ., concur.
Gutierrez, Jr., J., on terminal leave.

* J. Hugo E. Gutierrez on terminal leave.

[1] Annex C, Rollo, pp. 46-47.

[2] Annex E, p. 55.

[3] Annex F, p. 59.

[4] Annex G, p. 61.

[5] Annex H, p. 71.

[6] Annex I, p. 74.

[7] Annex J, Rollo, p. 75.

[8] Annex K, Rollo, p. 81.

[9] Annex L, p. 82.

[10] Annexes G, J and L.

[11] Annex L, p. 82.

[12] Annex M, p. 87.

[13] Annex N, Rollo, pp. 93-95.

[14] Annexes G, J, and L.

[15] Section 2. The Commission en banc. - The Commission shall sit en banc in cases hereinafter specifically provided, in all other cases where a division is not authorized to act, or where upon a unanimous vote of all the Members of a Division, an interlocutory matter or issue relative to an action or proceeding before it is decided to be referred to the Commission en banc, (Underscoring provided)

[16] Section 5(c). Any motion to reconsider a decision, resolution, order or ruling of a Division shall be resolved by the Commission en banc.

[17] Rollo, p. 12.

[18] *Nepomuceno v. Salazar*, G.R. No. 37165, May 15, 1989, 173 SCRA 366.

[19] *Mateo v. Court of Appeals*, G.R. No. 83354, April 25, 1991, 196 SCRA 280.

[20] Section 2. Period for filing motions for reconsideration. - A motion to reconsider a decision, resolution, order or ruling of a Division shall be filed within five (5) days from the promulgation thereof. Such motion, if not pro-forma, suspends the execution of implementation of the decision, resolution, order or ruling. (Underscoring provided)

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