

NORBI H. EDDING, PETITIONER, VS. COMMISSION ON ELECTIONS AND PABLO BERNARDO, RESPONDENTS.

G.R. No. 112060. July 17, 1995

Ponente: FRANCISCO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-112060/>

FRANCISCO, J.:

In focus once again is the issue of whether or not the Commission on Elections (COMELEC) has jurisdiction to issue Writs of Certiorari against the interlocutory order of the Regional Trial Court (RTC) in election cases.

This is a Special Civil Action for Certiorari and Prohibition with Urgent Prayer for Writ of Preliminary Injunction/Restraining Order, brought before us by petitioner Norbi H. Edding, assailing the Order of the COMELEC dated September 23, 1994 issued in SPR No. 5-93 entitled "Pablo S. Bernardo vs. Honorable Judge Wilfredo G. Ochotorena, Presiding Judge of the Regional Trial Court of Zamboanga del Norte, Branch 9, Sindangan, Zamboanga del Norte, and Norbi H. Edding", which ordered as follows:

"WHEREFORE, in the light of the foregoing and as prayed for, the Commission En Banc hereby ORDERS the issuance of a writ of preliminary injunction upon the petitioner's filing of a cash bond in the amount of One Hundred Thousand Pesos (P100,000.00) in favor of private respondent and conditioned for the payment of damages which private respondent may suffer by reason of issuance of the writ should the Commission finally decide that the petitioner is not entitled thereto, directing:

- 1) Respondent Judge to cease and desist from enforcing the Resolution dated July 13, 1993 issued in connection with Election Case No. SE-10 entitled Norbi H. Edding versus Pablo S. Bernardo, et al.; and
- 2) Respondent Norberto H. Edding to cease and desist from performing the duties and functions of the Office of the Mayor, Sibuco, Zamboanga del Norte. x x x"[1]

Material hereto are the following antecedents:

During the May 1992 elections, petitioner Norbi H. Edding and respondent Pablo S. Bernardo were among the candidates for the office of the municipal mayor of Sibuco, Zamboanga del Norte.

After the canvassing of the election returns, Bernardo was declared winner over Edding by 212 votes. Unconvinced and alleging massive election fraud, Edding filed an election protest on June 9, 1992 with the Regional Trial Court of Sindangan, Zamboanga del Norte docketed as Election Case No. SE-10.[2]

Upon termination of the protest proceedings and recounting of the ballots, the RTC rendered judgment on July 2, 1993 proclaiming Edding as the winner of the election for the mayoralty seat of Sibuco, Zamboanga del Norte, and declaring as null and void the election of respondent Bernardo.[3]

On July 8, 1993, Bernardo filed a Notice of Appeal while Edding moved for the immediate execution of the July 2, 1993 decision.[4] Bernardo opposed Edding's motion, claiming that the RTC has no jurisdiction to order execution pending appeal, and invoked Section 17 of Rule 37 of the COMELEC Rules of Procedure which allows

execution only if the judgment has become final.[5]

On July 12, 1993, the RTC approved Bernardo's Notice of Appeal. On the next day however, July 13, 1993, the RTC granted Edding's Motion for Immediate Execution, and ordered the records of the case to be forwarded to the COMELEC.[6] Thereafter, Edding replaced Bernardo, and assumed office on July 15, 1993.

On July 16, 1993, Bernardo filed with the COMELEC a Petition for Certiorari with Application for Preliminary Injunction and for Issuance of a Temporary Restraining Order, docketed as SPR No. 5-93 seeking to enjoin the Order of the RTC granting execution pending appeal.[7] The COMELEC gave due course to the petition, and issued a temporary restraining order on July 19, 1993.

Finally, the COMELEC issued the assailed Order on September 23, 1993, which Edding received on October 12, 1993.

Hence, the instant petition.

In Our Resolution dated October 21, 1993, we granted petitioner Edding's prayer for a temporary restraining order and ordered respondent COMELEC to cease and desist from further proceeding with SPR No. 5-93. At the same time, we required respondents COMELEC and Bernardo to submit their Comment within ten (10) days from notice.[8]

Respondent COMELEC filed its Comment on December 8, 1993,[9] which Bernardo opted to adopt as his own.[10]

Petitioner advances the argument that in the absence of any conferment on the COMELEC, under the Constitution or by any statute, the COMELEC lacks jurisdiction to issue writs of certiorari. This is in consonance with the pronouncements in the cases of *Garcia, et al. vs. De Jesus, et al.*[11] and *Uy vs. COMELEC, et al.*,[12] which categorically declared that the COMELEC does not have any jurisdiction to grant writs of certiorari, prohibition and mandamus.

Moreover, petitioner asserts that the power of the RTC to grant execution pending appeal in election cases has already been confirmed in the case of *Tobon-Uy vs. COMELEC* (supra) where it was held that "the COMELEC is bereft of authority to deprive Regional Trial Courts of the competence to order execution pending appeal."

On the other hand, respondents contend that the COMELEC has the power to issue writs of certiorari, prohibition and mandamus, invoking Sections 2(2) and 3 of Article IX of the 1987 Constitution, which provides in part:

"SEC. 2. THE COMMISSION ON ELECTIONS SHALL EXERCISE THE FOLLOWING POWERS AND FUNCTIONS:

X X X X X X X X

(2) X X X APPELLATE JURISDICTION OVER ALL CONTESTS INVOLVING ELECTIVE MUNICIPAL OFFICIALS DECIDED BY TRIAL COURTS OF GENERAL JURISDICTION, OR INVOLVING ELECTIVE BARANGAY OFFICIALS DECIDED BY TRIAL COURTS OF LIMITED JURISDICTION.

X X X X X X X X

SEC. 3. THE COMMISSION ON ELECTIONS MAY SIT EN BANC OR IN TWO DIVISIONS, AND SHALL PROMULGATE ITS RULES OF PROCEDURE IN ORDER TO EXPEDITE DISPOSITION OF ELECTION CASE, INCLUDING PRE-PROCLAMATION CONTROVERSIES. X X X"

Respondents anchor their position principally on the dissenting opinion of Justice Abdulwahid Bidin in the aforecited *Garcia* and *Tobon-Uy* cases [supra].

Previously, the rule in our jurisdiction is that the COMELEC is not empowered to issue writs of certiorari, prohibition and mandamus in the absence of any constitutional or statutory grant. This doctrine was initially laid down in the case of *Pimentel vs. COMELEC*[13] and subsequently affirmed in the consolidated cases of *Garcia, et al. vs. De Jesus, et al.* [supra] and *Tobon-Uy vs. COMELEC, et al.* [supra] promulgated on March 4, 1992. Although there was a strong dissenting opinion in the latter cases, which are the very same arguments invoked by respondents, the aforementioned ruling was nevertheless affirmed and reiterated in the succeeding case of *Veloria vs. COMELEC*.[14]

Recently, however, this court decided to abandon the rule laid down in the aforecited cases. In *Relampagos vs. Cumba and the COMELEC*,[15] this court upheld the jurisdiction of the COMELEC to issue writs of certiorari, prohibition and mandamus over election cases where it has appellate jurisdiction by virtue of Section 50 of Batas Pambansa Blg. 697, which provides as follows:

"SEC. 50. Definition. -

x x x x x x x x

The commission is hereby vested with the exclusive authority to hear and decide petitions for certiorari, prohibition and mandamus involving election cases."

Although B.P. Blg. 697 was originally intended to govern the election of the members of the Batasang Pambansa that was held on May 14, 1988 and the selection of sectoral representatives thereafter as provided by the Constitution,[16] the same was not rendered functus officio after the 1984 elections. Some of its provisions remained effective and among which is Section 50. Thus, the Court ruled that:

"This Court agrees with the respondent COMELEC that there are provisions in B.P. Blg. 697 whose lifetime go beyond the 14 May 1984 election or the subsequent selection of sectoral representatives. In fact, by the very wording of the last paragraph of its Section 50, to wit:

SEC. 50. Definition. —

x x x x x x x x

The Commission is hereby vested with the exclusive authority to hear and decide petitions for certiorari, prohibition and mandamus involving election cases. (Underscoring supplied)

it is quite clear that the exercise of the power was not restricted within a specific period of time. Taken in the context of the conspicuous absence of such jurisdiction as ruled in *Pimentel vs. Commission on Elections*, it seems quite obvious that the grant was intended as a remedial legislation to eliminate the seeming incongruity or irrationality resulting in a splitting of jurisdiction pointed out in the dissenting opinion of Justice de Castro in the said case."[17]

Neither was B.P. Blg. 697 totally repealed upon the passage of the Omnibus Election Code[18] considering that the second sentence of the repealing clause in the latter, which reads as follows:

"SEC. 282. Repealing clause. — Presidential Decree No. 1296, otherwise known as the 1978 Election Code, as amended, is hereby repealed. All other election laws, decrees, executive orders, rules and regulations, or parts thereof, inconsistent with the provisions of this Code are hereby repealed, except Presidential Decree No. 1618 and Batas Pambansa Blg. 20 governing the election of the members of the Sangguniang Pampook of Regions IX and XII."

was found to be in the nature of a general repealing clause which in legal contemplation is a nullity.[19] Moreover the court observed that:

"By the tenor of its aforequoted Repealing clause, it does not evidently appear that the Batasang Pambansa had intended to codify all prior election statutes to replace them with the new Code. It made, in fact, by the second sentence, a reservation that all prior election statutes or parts thereof not inconsistent with any provisions of the Code shall remain in force.

x x x x x x x x

This being the case, the Court painstakingly examined the aforesaid last paragraph of Section 50 of the Omnibus Election Code to determine if the former is inconsistent with any of the provisions of the latter. It found none."^[20]

The present rule therefore established by the aforecited Relampagos case is as follows:

"In the face of the foregoing disquisitions, the Court must, as it now does, abandon the ruling in the Garcia and Uy and Veloria cases. We now hold that the last paragraph of Section 50 of B. P. Blg. 697 providing as follows:

The Commission is hereby vested with exclusive authority to hear and decide petitions for certiorari, prohibition and mandamus involving election cases.

remains in full force and effect but only in such cases where, under paragraph (2), Section 1, article IX-C of the Constitution, it has exclusive appellate jurisdiction. Simply put, the COMELEC has the authority to issue the extraordinary writs of certiorari, prohibition and mandamus only in aid of its appellate jurisdiction."^[21]

But notwithstanding the aforementioned pronouncements, the COMELEC committed grave abuse of discretion in the instant case when it enjoined the order of the RTC, dated July 13, 1993, granting petitioner's motion for immediate execution. Private respondent's petition for certiorari with application for a writ of preliminary injunction before the COMELEC is anchored on the former's claim that the trial court acted without or in excess of jurisdiction and with grave abuse of discretion in granting execution despite the filing of a notice of appeal by private respondent within the reglementary period.^[22]

It appears however that on July 8, 1993, the same day when private respondent filed his notice of appeal with the RTC, petitioner in turn filed his motion for immediate execution. Both actions were therefore seasonably filed within the five-day reglementary period for filing an appeal^[23] since the decision of the RTC was promulgated in open court on July 8, 1993.

The settled rule is that the mere filing of a notice of appeal does not divest the trial court of its jurisdiction over a case and resolve pending incidents.^[24] Where the motion for execution pending appeal was filed within the reglementary period for perfecting an appeal, as in the case at bench, the filing of a notice of appeal by the opposing party is of no moment and does not divest the trial court of its jurisdiction to resolve the motion for immediate execution of the judgment pending appeal because the court must hear and resolve it for it would become part of the records to be elevated on appeal. Since the court has jurisdiction to act on the motion at the time it was filed, that jurisdiction continued until the matter was resolved and was not lost by the subsequent action of the opposing party.^[25]

Considering however that the term of office for the disputed mayoralty seat will already expire on June 30, 1995, in addition to the fact that the election for the next term of office for the contested post has recently been concluded, the instant petition has therefore become moot.

ACCORDINGLY, the petition is hereby DISMISSED.

SO ORDERED.

Narvasa, C.J., Feliciano, Padilla, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Quiason, Puno, Vitug, Kapunan, and Mendoza, JJ., concur.

[1] Rollo, p. 77.

[2] Rollo, p. 25.

[3] Rollo, p. 34.

[4] Rollo, p. 46.

[5] Rollo, p. 51.

[6] Rollo, p. 58.

[7] Rollo, p. 66.

[8] Rollo, p. 79.

[9] Rollo, p. 98.

[10] Rollo, p. 162.

[11] G. R. No. 88158, 206 SCRA (1992).

[12] G. R. No. 97108-09, 206 SCRA (1992).

[13] 101 SCRA 769 (1980).

[14] G. R. No. 94771, 211 SCRA 907 (1992).

[15] G.R. No. 118861 (April 27, 1995).

[16] Section 1, B.P. Blg. 697.

[17] G. R. No. 118861, *supra*, p. 13.

[18] B.P. Blg. 881.

[19] *Ibid*, p. 14, citing C. Dallas Sands, Sutherland, Statutes Construction, s 23.08 Vol. 1A, 4th ed. 1972.

[20] G. R. No. 118861, *Ibid*, pp. 14-15.

[21] G. R. No. 118861, *Ibid*, pp. 15-16.

[22] Rollo, p. 69.

[23] Section 3, Rule 22, COMELEC Rules of Procedure.

[24] *Eudela vs. Court of Appeals*, 211 SCRA 546 (1992).

[25] *Cebu Contractors Consortium vs. Court of Appeals*, 216 SCRA 597, 601 (1992).

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.