ROLANDO ABAD, JR., PETITIONER, VS. COMMISSION ON ELECTIONS; HON. OCTAVIO A. FERNANDEZ, JR., PRESIDING JUDGE, SECOND METROPOLITAN CIRCUIT TRIAL COURT, GENERAL NATIVIDAD, NUEVA EC...

G.R. No. 128877. December 10, 1999

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This special civil action for certiorari seeks to annul the COMELEC En Banc Resolution in SPR No. 45-96, dated April 29, 1997. Petitioner ABAD had sought COMELEC's review of respondent Judge's orders issued in the election protest filed against private respondent SARENAS. In said Resolution, the COMELEC denied review, decreeing thus:

> "WHEREFORE, considering that the June 3, 1996 Order of the Court a quo had already attained finality at the time of the filing of this Petition, thus, must remain undisturbed, and there being no showing that the drawing of lots mandated by the Court's Order dated October 3, 1996, was attended by fraud or irregularities, the Commission En Banc RESOLVED to DISMISS the Petition for lack of merit."[1]

The factual antecedents are as follows:

Petitioner Abad and private respondent Sarenas were both candidates for Sangguniang Kabataan (SK) chairman of Barangay Sta. Barbara, Llanera, Nueva Ecija, during the May 6, 1996, SK elections.

Petitioner emerged as winner with 66 votes as against private respondent's 62 votes. Petitioner was thus proclaimed SK chairman of Sta. Barbara.[2]

Private respondent soon thereafter filed an election protest alleging fraud on the part of petitioner through the registration of four unqualified voters. Three voters were allegedly underaged while one lacked the required residency in the barangay. Private respondent asked for a recount of the votes cast.[3]

The election protest was filed before the Second Municipal Circuit Trial Court (MCTC) of Gen. Natividad, Nueva Ecija, presided over by respondent Judge.

In his answer, petitioner claimed that private respondent was barred from questioning the qualifications of the four voters because he failed to ask for their exclusion from the voters' list as provided for under Section 22 of COMELEC Resolution No. 2824, the Rules and Regulations Governing the May 6, 1996 Elections of the SK; and Section 2 of COMELEC Resolution No. 2832, the Instructions for the Registration of Voters in connection with the SK elections. Petitioner contended that the permanent registry list of voters is conclusive on the question of who has the right to vote in an election under the Omnibus Election Code. Petitioner also claimed that a recount is not justified under the provisions of the same Code.

In addition, petitioner charged private respondent with vote-buying. He further alleged error on the part of the

Board of Election Tellers in the appreciation of votes.

In an Order dated June 3, 1996, respondent MCTC Judge Fernandez ruled in favor of private respondent. According to Judge Fernandez, while the registry list of voters is indeed conclusive as to who can vote, this must be disregarded if justice were to prevail. Moreover, said Judge Fernandez, a recount of the votes would not be determinative of who actually won the SK chairmanship. Instead, he ordered that four votes, representing the votes of those persons whose qualification as voters were questioned, be deducted from petitioner.[4]

As this resulted in a 62-62 tie between petitioner and private respondent, Judge Fernandez ordered that the winner be determined via drawing of lots or toss of a coin.[5]

Petitioner appealed to the Regional Trial Court of Cabanatuan City, Branch 26 which, however, dismissed his appeal, since under COMELEC Resolution No. 2824, the decision of the MCTC insofar as the SK election is concerned can only be elevated to the COMELEC en banc through a petition for review and only in meritorious cases. The RTC through Acting Presiding Judge Johnson L. Ballutay ordered remand of the case to the court of origin.[6]

The drawing of lots ordered by the MCTC proceeded on October 3, 1996. Petitioner was absent although he was duly notified of the proceeding.[7] Private respondent Sarenas emerged as winner in the drawing of lots. In an order issued on the same day, the MCTC directed him to take his oath of office and to assume his duties as SK chairman.

Thus petitioner Abad then filed a petition for review with the COMELEC en banc.

In its Resolution dismissing the petition, the COMELEC said:

> "On the basis of the facts presented the Commission En Banc holds that the June 3, 1996 Order of the Municipal Trial Court had, as of the filing of the Petition for Review already become final. In short, the Petition as regards said Order had prescribed. Records show that the decision of the Trial Court annulling the proclamation of Abad and declaring a tie between him and Sarenas, to be broken by a drawing of lots, was received by Abad on June 5, 1996. Though he appealed said Order to the Regional Trial Court, the remedy availed of was not the one obtaining under COMELEC Resolution 2824, Section 49 of which provides:
> `Finality of Proclamation. - The proclamation of the winning candidates shall be final. However, the Metropolitan Trial Courts/Municipal Trial Courts/Municipal Circuit Trial Courts shall have original jurisdiction over all election protest cases, whose decision shall be final. The Commission En Banc in meritorious cases may entertain a petition for review of the decision of the MeTC/MTC/MCTC in accordance with the COMELEC Rules of Procedure. An appeal bond of P2,000.00 shall be required which shall be refundable if the appeal is found meritorious.'

More properly, and conformably with said provision, Petitioner should have directed his Petition to the Commission En Banc within thirty days from June 5, 1996, the date the decision was served upon him. Even if we assume that his procedural lapse was justifiable thus permit his appeal to the RTC to stay the running of the prescriptive period, he should have rectified his error upon receipt of the Order of the RTC dismissing his Appeal on July 10, 1996. Petitioner had several opportunities to avail of the correct remedy. Yet, he procrastinated and acted only when he lost the drawing of lots to respondent. Considering therefore that Petitioner failed to question the propriety of the Order of the Court a quo dated June 3, 1996, the same had become final and executory.

The October 3, 1996 Order of the MTC, is issued in implementation of the June 3, 1996 Order, declaring a tie between Petitioner and Respondent Sarenas and directing a drawing of lots to break it. Having become executory as of October 3, 1996, its implementation become mandatory. Records show that Petitioner was duly notified of the proceedings. He did not appear despite notice. He can not invoke his non-appearance as an excuse for

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questioning the proceedings. The same was conducted in public. No irregularity or anomaly attending the proceeding was proven by Petitioner. There is therefore no cogent reason to warrant the setting aside of the result thereof."[8]

Hence, this petition. While petitioner raises principally the issue of grave abuse of discretion on the part of the COMELEC for not declaring as null and void the challenged orders of the trial court, the more fundamental issue here, in our view, involves the COMELEC's own jurisdiction. The Court cannot proceed further in this case without resolving that issue.

Note that from the trial court, petitioner proceeded directly to the COMELEC en banc. Apparently, he was proceeding pursuant to Section 49 of COMELEC Resolution No. 2824, which provides:

> "xxx The Commission en banc in meritorious cases may entertain a petition for review of the decision of the MetC/MTC/MCTC in accordance with the Comelec Rules of Procedure. xxx"

But we find this rule not in accord but in conflict with Article IX-C, Section 3 of the Constitution, which states that:

> "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 cases, including pre-proclamation controversies. All such election cases shall be heard and decided in division, provided that motions for reconsideration of decisions shall be decided by the Commission en banc." (Emphasis supplied.)

In Sarmiento v. Commission on Elections,[9] we ruled that the COMELEC, sitting en banc, does not have the requisite authority to hear and decide election cases in the first instance. This power pertains to the divisions of the Commission. Any decision by the Commission en banc as regards election cases decided by it in the first instance is null and void.

In the recent case of Zarate v. COMELEC,[10] this rule has been reiterated. We nullified the decision of the COMELEC en banc in Zarate, which incidentally also concerns a 1996 SK election case appealed directly from the MTC. We remanded the case and ordered it assigned to an appropriate division of the COMELEC.

Thus, consistent with the rulings in Zarate and Sarmiento cases, we are now constrained to declare as null and void the questioned resolution of the COMELEC en banc in this case of Abad (SPR No. 45-96).

WHEREFORE, the instant petition is GRANTED. The decision of the COMELEC en banc in SPR No. 45-96 is SET ASIDE and the Commission is ordered to assign the case to one of its Divisions for prompt resolution.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Purisima, Buena, Gonzaga-Reyes, Ynares-Santiago and De Leon, Jr., JJ., concur.
Pardo J., no part.

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[1] Rollo, p. 54.

[2] Id. at 26.

[3] Id. at 27-31.

[4] Id. at 45.

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[5] Ibid.

[6] Rollo, pp. 47-48.

[7] Id. at 52.

[8] Id. at 52-54.

[9] 212 SCRA 307, 313 (1992).

[10] G.R. No. 129096, promulgated on November 19, 1999, p. 8.

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