

## ROBERT E. OLANOLAN, PETITIONER, VS. COMMISSION ON ELECTIONS AND CELSO A. TIZON, RESPONDENTS.

*G.R. NO. 165491. March 31, 2005*

Ponente: GARCIA, J.

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### GARCIA, J.:

Coming to this Court via this verified petition for certiorari, prohibition and mandamus under Rule 65 of the Rules of Court, with prayer for injunctive relief, petitioner Robert E. Olanolan urges us to nullify and set aside the en banc Order[1] dated September 8, 2004 of respondent Commission on Elections (COMELEC) in EAC No. 61-2003 denying his motion for reconsideration of an earlier Resolution[2] dated March 31, 2004 of the Commission's Second Division, the nullification of which, along with said Division's other incidental issuances, are likewise sought in this recourse.

The factual antecedents are, as follows:

Petitioner Roberto E. Olanolan (Olanolan) and private respondent Celso A. Tizon (Tizon) were among the candidates for the position of punong barangay of Barangay 76-A, Bucana, Davao City in the July 15, 2002 barangay elections.

After the voting exercise and canvass, Olanolan was proclaimed the winning candidate, having garnered a total of 4,278 votes as against the 4,268 votes for Tizon, the second placer, or a margin of ten (10) votes.

Tizon attributed his loss to anomalies allegedly perpetrated by, among others, the chairperson, poll clerks and members of the Board of Election Inspectors (BEI). Accordingly, on July 25, 2002, he filed before the Municipal Trial Court in Cities (MTCC), Davao City an election protest,[3] docketed as Election Case No. 844-G-2002, which was eventually raffled to Branch 7 of the court. In it, Tizon prayed for the revision of ballots cast in seventy (72) two precincts located at Bucana Elementary School and thereafter the nullification of Olanolan's proclamation and his (Tizon's) proclamation as the elected punong barangay of Barangay 76-A, Bucana, Davao City.

Inasmuch as Olanolan's answer with counter-protest was belatedly filed, the MTCC would, as stated in its decision, *infra*, enter a general denial for him.

Subsequent developments saw the constitution by the MTCC of a 3-man revision committee which, after conducting a revision and recounting of ballots in the contested precincts, submitted a Revision Committee Report dated September 19, 2002.[4]

During the protest proceedings, it was observed that the ballots used in two (2) of the contested precincts, i.e., Precincts No. 598-A and 608-A, were without COMELEC watermarks and other security features. In fact, page 6[5] of the revision report contained the following entries:

“B) In precinct 598A with a total number of 56 votes for OLANOLAN and 29 for TIZON was excluded from the recounting on the following grounds:

- 1) That the color of the ballots is different from the ballots which were already recounted taken from the previous boxes;
- 2) That upon examination, the ballots in this precinct do not have security code shadow while in the other ballots which were already recounted from the previous ballot boxes have their security code shadow”.

In the same proceedings, the BEI chairman of Precinct No. 598-A, Benigno Silvosa, admitted to receiving from the Davao City Treasurer’s Office the election paraphernalia for that precinct the day before actual voting and then bringing home the same to his residence.[6]

On December 18, 2002, the MTCC rendered judgment[7] dismissing Tizon’s election protest mainly on the strength of the following premises:

In the case of Marcelino Libanan vs. House of Representatives Electoral Tribunal and Jose Ramirez, G.R. No. 129783, December 22, 1997, the court affirmed the ruling of the Tribunal in . . . HRET Case No. 95-020 to the effect that a ballot without BEI chairman’s signature at the back is valid and not spurious, provided that it bears any of these other authenticating marks, to wit: (a) the COMELEC watermark (b) in cases where the COMELEC watermarks are blurred or not readily apparent, the presence of blue and red fibers in the ballot.

In the instant action, petitioner [i.e.,Tizon] failed to show convincing proof that the absence of the COMELEC watermarks particularly on ballots belonging to Precinct 578-A [should have been Precinct 598-A] rendered the same invalid. Nonetheless, even if the COMELEC watermarks are not visible to the naked eye, the ballots under this precinct bore the initial of the BEI chairman at the back of the same. As held, it is only when none of these marks appears extant that the ballot can be considered spurious and subject to rejection.

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The allegation in the Petition . . . which refers to anomalous conduct of the Chairman of the BEI of Precinct 598-A . . . in the person of Ben Silvosa was unsubstantiated. The court is convinced the alleged anomaly did not exist. (Words in bracket added).

In time, Tizon appealed to the COMELEC whereat his recourse was docketed as EAC No. 61-2003.

On March 31, 2004, the Second Division of the COMELEC issued a Resolution,[8] setting aside the appealed decision of the MTCC and declaring Tizon, as protestant-appellant thereat, “the duly elected Punong Barangay of Barangay 76-A, Bucana, Davao City in the July 15, 2002 barangay elections having obtained a total of 4,221 votes as against the protestee-appellee’s 4,196 or a margin of 25 votes”. The Second Division ratiocinated:

On the other hand, a cursory reading of the questioned decision of the court a quo reveals flaws and/or shortcomings that militate against the validity of the findings and conclusions contained in said decision. Predicated therefrom, we find it necessary to disabuse the minds of the parties anent their contentious allegations by examining and appreciating the ballots and all election documents the results hereunder discussed.

Petitioner Olanolan received a copy of the resolution on April 14, 2004. Two days thereafter, April 16, he filed, via registered mail, a Motion for Reconsideration.[9] For his part, private respondent Tizon sought, in an earlier motion,[10] the execution of the aforementioned March 31, 2004 Resolution of the COMELEC’s Second Division.

Pursuant to an Order of April 26, 2004,[11] the Second Division elevated Olanolan’s Motion for Reconsideration (MR), together with the case records, to the COMELEC en banc, noting that “only seven (7) sets of the said MR were filed and that no payment of the required motion fee was made by movant.” In the same Order, the Second Division likewise elevated to the en banc Tizon’s motion for execution pending appeal.

Barely a week after, or on May 4, 2004, petitioner Olanolan submitted a manifestation[12] enclosing therewith a postal money order in the amount of P500.00 to cover the required legal fees for his Motion for Reconsideration.

In the herein assailed Order dated September 8, 2004,[13] the COMELEC en banc denied the desired reconsideration on account of Olanolan's, as movant therein, failure to pay the motion fee and to submit the required number of copies of his motion for reconsideration. In the same Order, the COMELEC en banc directed the Second Division's commission clerk to immediately issue an Entry of Judgment and the Chief of the Judicial Records Division to remand to the MTCC the records of the case, stating in this regard the following:

Considering that there is no valid motion [for reconsideration] to speak of, the provision of Section 13 (c), Rule 18 of the COMELEC Rules of Procedure applies, to wit:

'Sec. 13. Finality of Decisions or Resolution. – xxx

(c) Unless a motion for reconsideration is seasonably filed, a decision or resolution of a Division shall become final and executory after the lapse of five (5) days in Special actions and Special cases and after fifteen (15) days in all other actions or proceedings, following its promulgation.'

hence, the Resolution promulgated by this Commission (Second Division) on March 31, 2004, copy of which was received by protestee-appellee's counsel on April 14, 2004, had become final and executory on April 15, 2004. (*Italics and underlining in the original*).

After the decreed issuance of Entry of Judgment, the COMELEC's Special Second Division, acting on Tizon's earlier motion to execute the questioned March 31, 2004 Resolution of the Division, directed, in its Order of September 16, 2004,[14] the issuance of the corresponding writ, which the division clerk did issue on even date.[15]

Hence, petitioner Olanolan's present recourse, claiming in gist, that the COMELEC en banc acted in grave abuse of discretion amounting to lack or in excess of jurisdiction in –

- denying his motion for reconsideration of the March 31, 2004 Resolution of the Second Division on grounds of non-payment of legal fees and non-submission of the required copies of the motion; and
- declaring the same Resolution as final and executory on April 15, 2004, or fifteen (15) from its promulgation on March 31, 2004, on the theory that his motion for reconsideration of such resolution is, for all intents and purposes, not filed.

Petitioner Olanolan also imputes grave abuse of discretion on the part of the Second Division in reversing the MTCC decision and in ordering the issuance of a writ of execution that eventually led to the implementation of its (Second Division's) March 31, 2004 Resolution.

In the Court's en banc Resolution of November 9, 2004, we directed the parties to observe the status quo prevailing before the issuance of the assailed resolution and order of the COMELEC.[16] In compliance with this injunction, the Department of the Interior and Local Government took the necessary measures which eventually enabled petitioner Olanolan to actually assume the office of punong barangay on December 6, 2004.

It is petitioner's posture in this recourse that the twin requirements on payment of fee for motion for reconsideration and the submission of the necessary number of copies of such motion are not jurisdictional caveat, but partake of the nature of mere technical rules which should not be made to prevail over the collective will of the voters of Barangay 76-A, Bucana, Davao City. It is, he adds, thus gravely abusive of discretion on the part of the COMELEC en banc to predicate its assailed denial action on non-compliance with such technical requirements.

We are not persuaded.

The term “grave abuse of discretion”, in its juridical sense, connotes, as *Litton Mills Inc. Inc. vs. Galleon Trader, Inc.*,<sup>[17]</sup> and a host of other cases teach, capricious, despotic, oppressive or whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse must be of such degree as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law, as where the power is exercised in an arbitrary and capricious manner by reason of passion and hostility.<sup>[18]</sup> The word “capricious”, usually used in tandem with the term “arbitrary”, conveys the notion of willful and unreasoning action. Thus, when seeking the corrective hand of certiorari, a clear showing of caprice and arbitrariness in the exercise of discretion is imperative.

As it were, the COMELEC en banc, in issuing its assailed Order dated September 8, 2004,<sup>[19]</sup> did no more than follow its own rules issued pursuant to no less than to its constitutional mandate to promulgate “its rules of procedure to expedite disposition of election cases”<sup>[20]</sup> as well as to issue “its own rules concerning pleadings and practice before it or before any of its offices . . . .”<sup>[21]</sup> The rules on payment of legal fees and submission of pleadings are embodied in the COMELEC Rules of Procedure, specifically Section 7(f) of Rule 40 and Section 1, Rule 7, thereof, pertinently providing, respectively, as follows:

Rule 40, Section 7(f):

“Sec. 7. Legal Fees. – The following legal fees shall be charged and collected.

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(f) For filing of a motion for reconsideration on a decision, order or resolution . . . . .  
. P500.00 (as amended)

Rule 7, Section 1:

“Sec. 1. Filing of Pleadings. – Every pleading, motion and other papers must be filed in ten (10) legible copies.  
xxx,”.

Complementing the aforequoted Section 7(f) of Rule 40 is the succeeding Section 18 of the same Rule, prescribing the COMELEC’s option in case of non-payment of prescribed fees, thus:

“Sec. 18. Non-payment of prescribed fees. – If the fees above prescribed are not paid, the Commission may refuse to take action until they are paid and may dismiss the action or proceeding.”

Petitioner’s lament that what the COMELEC en banc did was improvidential as it could have merely refused to act on his motion for reconsideration until the required fees were paid, while understandable, is untenable. *Rodillas vs. Commission on Elections*<sup>[22]</sup> succinctly explains why:

Petitioner cannot invoke to his aid the provision of Section 18, Rule 40 of the COMELEC Rules of Procedure for the simple reason that under said Rule, the COMELEC is precisely given the discretion, in a case where the prescribed fees are not paid, to either refuse to take action on the case until the fees are paid, or to dismiss the action or proceeding. The COMELEC, unfortunately for petitioner, chose to exercise the second option.

The COMELEC, therefore, did not commit an abuse of discretion in dismissing the appeal.

Consequent to the COMELEC’s en banc Order declaring its Second Division’s Resolution of March 31, 2004 final and executory, the assailed issuance by the latter of the corresponding writ of execution to implement said resolution can be sustained as correct and doubtless within its jurisdiction. Accordingly, petitioner is not entitled to a writ of certiorari, certiorari being limited to resolving only errors of jurisdiction; it is not a remedy to correct errors of judgment,<sup>[23]</sup> if such be the case.

In all, this Court finds that the COMELEC en banc committed no error in denying, for reasons stated in its assailed Order dated September 8, 2004, petitioner's motion for reconsideration of the Second Division's Resolution of March 31, 2004.

Given the foregoing premises, there is hardly any need to delve into the question of whether grave abuse of discretion attended the issuance by the COMELEC of an Entry of Judgment on the assailed Second Division's March 31, 2004 Resolution that led to the issuance of the corresponding writ of execution. Such issue has been rendered moot and academic by this disposition. An issue becomes moot and academic when it ceases to present a justifiable controversy so that a determination thereof would be without practical use and value.[24] In such cases, there is no actual substantial relief to which a petitioner would be entitled to and which would be negated by the dismissal of the petition.[25]

WHEREFORE, the petition is DISMISSED. Accordingly, the status quo ante order issued by this Court on November 9, 2004 is hereby RECALLED.

**SO ORDERED.**

Davide, Jr., C.J., Puno, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., Azcuna, Tinga, and Chico-Nazario, JJ., concur.

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[1] Annex "C", Petition; Rollo, pp. 135-137.

[2] Annex "A", Petition; Rollo, pp. 99-105.

[3] Annex "G", Petition; Rollo, pp. 144-149.

[4] Annex "I", Petition; Rollo, pp. 158-167.

[5] Rollo, p. 163.

[6] TSN, November 13, 2002, p. 37.

[7] Annex "J", Petition; Rollo, pp. 168-174.

[8] See Note 2, supra; Rollo, pp. 99-105.

[9] Annex "B", Petition; Rollo, pp. 107-133.

[10] Annex "N", Petition; Rollo, pp. 239-241.

[11] Annex "S", Petition; Rollo, p. 265.

[12] Annex "Q", Petition; Rollo, pp. 257-259.

[13] See Note 1, supra; Rollo, pp. 135-137.

[14] Annex "W", Petition; Rollo, p. 278.

[15] Annex "X", Petition; Rollo, pp. 279-280.

[16] Rollo, p. 594.

**[17] 163 SCRA 489 [1988].**

[18] Butuan Bay Export Corp. vs. Court of Appeals, 97 SCRA 297 [1980]; Garcia vs. HRET, 312 SCRA 353 [1999].

[19] See Note 1, *supra*.

[20] Art. IX (C), Sec. 3, 1987 Constitution.

[21] Art. IX (A), Sec. 6, *ibid*.

**[22] 245 SCRA 702 [1995].**

[23] People vs. Court of Appeals, 308 SCRA 687 [1999]

[24] Philippine Airlines vs. Pascua, 409 SCRA 195 [2003].

[25] Vda. de Davao vs. Court of Appeals, 426 SCRA 91 [2004].

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