ESTRELITA “NENG” JULIANO, PETITIONER, VS. COMMISSION ON ELECTIONS AND MUSLIMIN SEMA, RESPONDENTS.

G.R. NO. 167033. April 12, 2006

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

This resolves the petition for certiorari, filed by Estrelita "Neng" Juliano (petitioner), seeking to set aside the Order of the Commission on Elections En Banc (COMELEC En Banc) dated February 10, 2005 which affirmed the Resolution dated October 13, 2004 of the COMELEC 2ND Division dismissing the pre-proclamation controversy filed by petitioner Estrelita "Neneng" Juliano.

A thorough scrutiny of the records reveals that the narration of the antecedent facts set forth in the COMELEC 2nd Division Resolution is undisputed; hence, portions thereof are reproduced hereunder:

> The factual allegations of both parties reveal that Cotabato City has a total of five hundred seventy-seven (577) clustered polling precincts distributed among thirty-seven (37) barangays; that the first City Board of Canvassers chaired by Atty. Yogie Martirizar convened on May 10, 2004 and conducted its proceedings until May 16, 2004; that on May 12, 2004, however, petitioner filed an ex parte petition to replace membership of the first CBOC and was granted by the Commission; that the second CBOC was chaired by Atty. Jubil Surmieda and conducted canvassing proceedings from May 16 to 22, 2004; that petitioner also sought the transfer of the canvassing from the Session Hall of the Sangguniang Panlungsod to the 6th ID camp, Awang, Maguindanao; that the Surmieda Board also failed to finish the canvassing and was replaced by another CBOC chaired by Atty. Lintang Bedol, which conducted the canvassing from May 24 to May 29, 2004; that this canvassing was interrupted by another petition filed by Juliano praying for the transfer of the canvassing from Awang, Maguindanao to the Comelec main office in Manila, which was again granted by the Commission; that the new venue of the canvassing was held at the Session Hall of the Comelec main office in Manila; that a notice was issued on May 29, 2004 by the Bedol Board stating that the resumption of canvassing in Manila will be on "Wednesday, June 2, 2004, at 2:00 o'clock in the afternoon'; that despite the notice, the Bedol Board resumed its canvassing on June 1, 2004 at 1:45 p.m. at the Comelec Session Hall, promulgated its rulings on all contested returns, denying all petitions for exclusion from canvass of the contested returns, canvassed the election returns, then entered and tallied into the statement of votes the figures and proclaimed the winning candidates; that the Bedol Board proclaimed respondent Sema as the duly elected Mayor of Cotabato City; that petitioner filed on June 2, 2004 a consolidated petition to nullify canvass proceedings and/or proclamation undertaken by the CBOC on June 1, 2004.
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> Petitioner raised the following issues as a ground to nullify respondent's proclamation, to wit:
>
> - Petitioner was never notified of the new and advanced schedule of the resumption of canvassing in the Comelec Main Office, Manila, hence, the proceedings was illegal;
>
> - There are 108 contested election returns which petitioner alleged to be spurious and manufactured, and will adversely affect the result of the election if the respective votes of the parties be deducted from the final tally;

> - In relation to issue number 2, CBOC should have suspended the proclamation as prescribed in Section 36, par. f of Resolution No. 6669 of the Commission;
>
> - There are 54 election returns included by the CBOC in the canvassing but which were not part of the inventory conducted by the Surmieda Board;[1] (Emphasis supplied)

The COMELEC 2nd Division issued its Resolution dated October 13, 2004 ruling that:

> x x x the allegations of the petitioner in relation to the 108 returns cannot be properly resolved in this pre-proclamation controversy as it would require the Commission to go beyond the face of the election returns, in order to find out that the same were really manufactured and spurious. Furthermore, upon perusal of the returns, We find the same to be in order. This finding is, however, without prejudice to the filing of the proper election protest in order that a thorough evaluation of the returns will be conducted, which may include the examination of the signatures of the Board of Election inspectors.' [2]

With regard to the alleged lack of notice to petitioner of the June 1, 2004 canvassing, the COMELEC 2nd Division held that petitioner should be deemed notified of the June 1, 2004 canvassing because during said proceedings, one of petitioner's counsel, Atty. Javines, was present along with petitioner's watchers.

Thus, the dispositive portion, to wit:

> WHEREFORE, premises considered, the present pre-proclamation controversy praying for the nullification of the proclamation of respondent Muslimin Sema is hereby DISMISSED for lack of merit, without prejudice, however, to the filing of the proper election protest.[3]

On October 23, 2004, petitioner filed a motion for reconsideration. On January 17, 2005, she filed her own Affidavit of Disavowal, stating that she never engaged the legal services of Atty. Ronald Javines (Annex "H")[4] and the Affidavit of Atty. Ronald Javines, corroborating petitioner's statement in her affidavit (Annex "I").[5]

Petitioner's motion for reconsideration was elevated to the COMELEC En Banc and Commissioner Rufino S.B. Javier was assigned as ponente. A Resolution under the ponencia of said Commissioner was issued on February 10, 2005, the dispositive portion of which reads as follows:

> WHEREFORE, premises considered, the Motion for Reconsideration is hereby GRANTED. The Resolution of the Commission (Second Division) promulgated last October 13, 2004 is REVERSED and SET ASIDE. The proclamation of Respondent Muslimin Sema is ANNULLED as the proceedings attendant thereto is illegal. The Election Records and Statistics Division is hereby directed to conduct an examination whether or not the one hundred eight (108) election returns involved in this case are, as claimed by the petitioner, written by one. The examination must be done within ten (10) days from receipt hereof and the ERSD should submit its report to the Commission en banc on the matter within ten (10) days from termination of the examination. Thereafter, the Commission en banc shall immediately evaluate the report and set the case for hearing if there is a need therefore. Forthwith, we shall issue a Resolution on the issue of exclusion of the contested election returns. In the meantime, the vice-mayor shall temporarily assume the position of Mayor of Cotabato City.[6]

However, only three members[7] of the COMELEC En Banc voted in favor of granting the Motion for Reconsideration, three members[8] dissented, and one[9] member took no part.

Section 6, Rule 18 of the Comelec Rules of Procedure provides:

> Sec. 6. Procedure if Opinion is Equally Divided. - When the Commission en banc is equally divided in opinion, or the necessary majority cannot be had, the case shall be reheard, and if on rehearing no decision is reached, the action or proceeding shall be dismissed if originally commenced in the Commission; in appealed cases, the judgment or order appealed from shall stand affirmed; and in all incidental matters, the petition or motion shall be denied.

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After "re-consultation", the members chose to maintain their votes. Upon failing to obtain a majority vote on the Resolution dated February 10, 2005, the COMELEC En Banc issued the Order also dated February 10, 2005, the dispositive portion of which reads as follows:

> PREMISES CONSIDERED, after due re-consultation of the results of the en banc voting which remains to be 3:3:1, pursuant to Sec. 6, Rule 18 of the Comelec Rules of Procedure, the resolution of the Second Division subject of the Motion for Reconsideration is hereby AFFIRMED.
>
> **SO ORDERED.[10]**

Hence, petitioner filed the present petition for certiorari raising the following issues:

> WHETHER OR NOT THE LACK OF NOTICE BY THE BEDOL BOARD TO PETITIONER AND/OR PETITIONER'S COUNSEL ON THE RESUMPTION OF CANVASS ON JUNE 1, 2004 TO THE TRANSFERRED VENUE AT THE SESSION HALL OF THE MAIN OFFICE OF PUBLIC RESPONDENT IN INTRAMUROS, MANILA WAS CURED BY THE PRESENCE OF PETITIONER'S WATCHER AND ATTY. RONALD B. JAVINES, WHO APPEARED AS COUNSEL FOR KNP/PMP CONGRESSIONAL CANDIDATE BAI ZENY G. DILANGALEN AND KNP/PNP [sic] SENATORIAL CANDIDATE DIDAGEN P. DILANGALEN; and
>
> WHETHER OR NOT PUBLIC RESPONDENT HAS THE POWER TO (i) DETERMINE AUTHENTICITY OF ELECTION RETURNS; (ii) INVESTIGATE BEYOND THE RETURNS; AND (iii) ADOPT MEANS AND METHODS TO ASCERTAIN AUTHENTICITY OF ELECTION RETURNS.

Respondent, on the other hand, argues that the petition should be dismissed outright because petitioner failed to allege grave abuse of discretion committed by the COMELEC En Banc and its 2[nd] Division.

Indeed, it is well settled that "unless the COMELEC is shown to have committed grave abuse of discretion, its decision will not be interfered with by this Court."[11] Considering, though, that the Resolution of COMELEC 2nd Division dated October 13, 2004 was affirmed merely because the voting of the COMELEC En Banc on the Resolution dated February 10, 2005 penned by Commissioner Rufino S.B. Javier (which reversed and set aside the Resolution dated October 13, 2004), was equally divided, this Court is compelled to look deeper into this case.

Section 6, Rule 18 of the Comelec Rules of Procedure specifically states that if the opinion of the Comelec En Banc is equally divided, the case shall be reheard. The Court notes, however, that the Order of the Comelec En Banc dated February 10, 2005 clearly stated that what was conducted was a mere "re-consultation."

A "re-consultation" is definitely not the same as a "rehearing".

A consultation is a "deliberation of persons on some subject;"[12] hence, a re-consultation means a second deliberation of persons on some subject.

Rehearing is defined as a "second consideration of cause for purpose of calling to court's or administrative board's attention any error, omission, or oversight in first consideration. A retrial of issues presumes notice to parties entitled thereto and opportunity for them to be heard"[13] (Emphasis supplied). But as held in Samalio v. Court Of Appeals,[14]

> A formal or trial-type hearing is not at all times and in all instances essential. The requirements are satisfied where the parties are afforded fair and reasonable opportunity to explain their side of the controversy at hand.

Thus, a rehearing clearly presupposes the participation of the opposing parties for the purpose of presenting additional evidence, if any, and further clarifying and amplifying their arguments; whereas, a re-consultation involves a re-evaluation of the issues and arguments already on hand only by the members of the tribunal, without

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the participation of the parties.

In Belac v. Comelec,[15] when the voting of the Comelec En Banc on therein petitioner's motion for reconsideration was equally divided, the Comelec En Banc first issued an order setting the case for hearing and allowed the parties to submit their respective memoranda before voting anew on therein petitioner's motion for reconsideration. This should have been the proper way for the Comelec En Banc to act on herein petitioner's motion for reconsideration when the first voting was equally divided. Its own Rules of Procedure calls for a rehearing where the parties would have the opportunity to strengthen their respective positions or arguments and convince the members of the Comelec En Banc of the merit of their case. Thus, when the Comelec En Banc failed to give petitioner the rehearing required by the Comelec Rules of Procedure, said body acted with grave abuse of discretion.

IN VIEW OF THE FOREGOING, the petition is GRANTED. The case is REMANDED to the COMELEC En Banc. The COMELEC En Banc is ORDERED to conduct forthwith the rehearing required under the COMELEC Rules of Procedure and render the appropriate decision thereon.

SO ORDERED.

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

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[1] Resolution dated October 13, 2004, Rollo, pp. 68-69

[2] Id., p. 70.

[3] Id., pp. 71-72.

[4] Rollo, pp. 136-142.

[5] Rollo, p. 143.

[6] Rollo, pp. 78-79.

[7] Chairman Benjamin S. Abalos, Sr. and Commissioners Rufino S.B. Javier and Resurreccion Z. Borra.

[8]Commissioners Mehol K. Sadain, Florentino A. Tuason, Jr. and Manuel A. Barcelona, Jr.

[9] Commissioner Virgilio O. Garcillano.

[10] Rollo, p. 91.

[11] Sarangani vs. Commission on Elections, G.R. Nos. 155560-62, November 11, 2003, 415 SCRA 614, 623.

[12] Black's Law Dictionary, p. 286, 5th Ed. (1979)

[13] Black's Law Dictionary, p. 1157, 5[th] Ed. (1979), citing Yee v. State Board of Equalization of California, 16 Cal. App. 2[nd] 417, 60 P. 2d 322, 323.

[14] G.R. No. 140079, March 31, 2005, 454 SCRA 462, 472.

[15] G.R. No. 145802, April 4, 2001, 356 SCRA 394.

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