ARTEMIO PEDRAGOZA, PETITIONER, VS. COMMISSION ON ELECTIONS AND FRANCISCO SUMULONG, JR., RESPONDENTS.

G.R. NO. 169885. July 25, 2006

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This is a petition for certiorari[1] of the Resolution dated 30 September 2005 of the Commission on Elections ("COMELEC") En Banc affirming the ruling of the COMELEC First Division ("First Division") in an election protest case involving the office of Punong Barangay of De La Paz, Antipolo City.

The Facts

Petitioner Artemio Pedragoza ("petitioner") and respondent Francisco Sumulong, Jr. ("respondent") were among the candidates for Punong Barangay of De La Paz, Antipolo City in the 15 July 2002 Sangguniang Kabataan and Barangay elections. Petitioner was proclaimed winner by a margin of 39 votes.[2] Claiming that irregularities marred the elections, respondent filed an election protest in the Municipal Trial Court in Cities, Antipolo City ("trial court"). Respondent sought a recount of ballots from 25 out of De La Paz's 103 precincts.

In his Answer, petitioner denied respondent's claim and filed a counter-protest, contending that he was the one prejudiced by election irregularities.

The trial court revised the contested ballots.

The Ruling of the Trial Court

On 20 January 2003, the trial court rendered judgment dismissing the election protest and counter-protest. The trial court noted that petitioner and respondent raised substantially identical objections[3] to the contested ballots and other election paraphernalia. After going over these grounds, the trial court ruled that the objections did not suffice to change the election results.

Respondent appealed to the COMELEC. The appeal, docketed as EAC No. 42-2003, was raffled to the First Division.

The Ruling of the COMELEC

In its Resolution of 18 May 2005, the First Division granted respondent's appeal, reversed the trial court's Decision, annulled petitioner's proclamation, declared respondent as the duly elected Punong Barangay, and ordered petitioner to vacate the contested office and to desist from performing the functions of that office. The First Division found respondent to have won the election by 19 votes.

The First Division noted that the parties invoked the following grounds for the revision of ballots: (1) the assailed ballots are marked because unnecessary words or figures, identifying markings, erasures, and retracing of letters

were manifest on the ballots or that distinctive circles, lines, or crosses were written on the ballots; (2) pairs or sets of ballots were written by one person or that two or more persons participated in filling-up one ballot; and (3) certain ballots are invalid because they were not signed at the back by the Chairman of the Board of Election Tellers. Applying pertinent rules of ballot appreciation, the First Division deducted 75 invalid votes from, and added five valid votes to, petitioner's tally, leaving a total of 2,189 votes. On the other hand, the First Division deducted 12 invalid votes from respondent's tally, leaving a total of 2,208 votes. Thus the 19-vote margin in respondent's favor.

Petitioner sought reconsideration with the COMELEC En Banc, listing the ballots he wanted re-examined. However, in the per curiam Resolution of 30 September 2005, the COMELEC En Banc denied petitioner's motion and affirmed the First Division's findings. All the five incumbent COMELEC Commissioners, namely, Benjamin S. Abalos, Rufino S.B. Javier, Resurreccion Z. Borra, Mehol K. Sadain, and Florentino A. Tuason, Jr. signed the Resolution. Commissioners Sadain and Tuason took no part, without, however, indicating the reasons for their inhibition.

Petitioner raises two contentions in this petition: (1) that the Court should invalidate the Resolution of 30 September 2005 for having been promulgated without a quorum because of the failure of Commissioners Sadain and Tuason to indicate the reasons for their taking no part in the case and, alternatively, (2) that the COMELEC En Banc committed grave abuse of discretion in affirming the findings of the First Division.

The Issues

The petition raises the following issues:

> 1) Whether the failure of Commissioners Sadain and Tuason to indicate their reasons for taking no part in the case annuls the Resolution of 30 September 2005 and, if in the negative,
>
> 2) Whether the COMELEC En Banc committed grave abuse of discretion in affirming the First Division's findings.

The Ruling of the Court

The petition has no merit. We hold that the Resolution of 30 September 2005 is valid and that the COMELEC En Banc did not commit grave abuse of discretion in issuing that ruling.

The Failure of Commissioners Sadain and Tuasonto State their Reasons for Taking No Part inthe Resolution of 30 September 2005does not Annul that Ruling

Under Section 1, Rule 18 of the COMELEC Rules of Procedure[4] ("COMELEC Rules"), a COMELEC member who takes no part in a decision or resolution must state the reason for his inhibition. The provision states:

> Procedure in Making Decisions. - The conclusions of the Commission in any case submitted to it for decision en banc or in Division shall be reached in consultation before the case is assigned by raffle to a Member for the writing of the opinion of the Commission or the Division and a certification to this effect signed by the Chairman or the Presiding Commissioner, as the case may be, shall be incorporated in the decision. Any Member who took no part, or dissented, or abstained from a decision or resolution must state the reason therefor. (Emphasis supplied)

Section 13, Article VIII of the 1987 Constitution imposes an identical requirement on the members of this Court and all lower collegiate courts.[5] By intent of the Constitution's framers, as reflected in the language of the text, this requirement is mandatory.[6] Owing to the exact identity of the two provisions' phrasing of the requirement in question, Section 1, Rule 18 (which, in all probability, was lifted from Section 13, Article VIII), must be of

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mandatory nature itself.

There is no dispute here that two COMELEC Commissioners took no part in the 30 September 2005 Resolution without stating the reasons for their inhibition. Petitioner is of the view that this omission annuls the 30 September 2005 Resolution for lack of quorum, with the two non-participating Commissioners' votes becoming "inexistent."[7]

We cannot sustain this view.

To begin with, even if the votes of Commissioners Sadain and Tuason are disregarded (for whatever reason), a quorum still remains, with three of the then five[8] COMELEC Commissioners voting to deny petitioner's motion for reconsideration. The more important question is whether, despite such quorum, the 30 September 2005 Resolution should be invalidated for failure of the two Commissioners to state the reasons for their inhibition.

While there is no extant record of the COMELEC's proceedings in adopting Section 1, Rule 18 of the COMELEC Rules, the parallel deliberations of the framers of the 1987 Constitution on Section 13, Article VIII shed light on the purpose of the rule requiring a member of this Court and all lower collegiate courts to state his reason for taking no part in a case. Because of the exact identity of the rule in question as stated in Section 1, Rule 18 and Section 13, Article VIII, these deliberations apply here by analogy.

In discussing the purpose of the rule in question, which was absent in the 1935 and 1973 Constitutions,[9] Constitutional Commissioner and former Chief Justice Roberto Concepcion explained that it was meant to "[see] to it that all justices participate [in the promulgation of decisions] x x x," thus:

> MR. RAMA. Madam President, I ask that Commissioner Suarez be recognized on Section 11.
>
> THE PRESIDENT. Commissioner Suarez is recognized.
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> MR. SUAREZ. Thank you, madam President.
>
> As proposed to be amended, Section 11 would read: "x x x x ANY MEMBER WHO TOOK NO PART OR DISSENTED, OR ABSTAINED FROM A DECISION OR RESOLUTION MUST STATE THE REASON THEREFOR. THE SAME REQUIREMENTS SHALL BE OBSERVED BY ALL LOWER COLLEGIATE COURTS."
>
> The proposed amendment seeks the deletion of the phrase "dissenting or abstaining," and in lieu thereof, the substituted phrase "WHO TOOK NO PART, OR DISSENTED, OR ABSTAINED FROM A DECISION OR RESOLUTION" and then the word "THEREFOR," Madam President.
>
> THE PRESIDENT. Are there any comments? Commissioner Guingona is recognized.
>
> MR. GUINGONA. Madam President, may I just inquire where the reason is supposed to be indicated. Does the reason refer to the certification, madam President?
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> MR. CONCEPCION. No. In the decision itself.
>
> MR. GUINGONA. That is it. I am referring now to the first instance where a Member takes no part, where, for example, he takes no part because he is abroad or is hospitalized. I was wondering whether this need not be a personal statement.
>
> x x x x
>
> MR. CONCEPCION. Generally, the Chief Justice certifies. But as to reasons for an abstention, it is a personalized matter that only the judge concerned may explain it.

> MR. GUINGONA. This was an addition, Madam President. Originally, it was only referring to "abstentions," it was only referring to instances when the justice dissented.
>
> Thank you.
>
> MR. CONCEPCION. It is also one way of seeing to it that all justices participate, because something must be done by the judge who did not take part and the reason for his failure to participate should be stated. It may be rather awkward for a judge to say that he is abroad. We feel that judges would, in general, prefer to avoid such explanations to appear in many cases. The explanation was required before in case of dissent. Now a judge must state why he took no part, or dissented, or abstained. (Emphasis supplied)[10]

Being a devise to dissuade members of this Court and all lower collegiate courts (or in this case, the members of the COMELEC) from not taking part in the deliberation of cases, the requirement has nothing to do with the ruling involved but concerns the judge himself. Thus, non-compliance with the rule does not annul the ruling in which a judge takes no part but may be basis for holding him responsible for the omission.

Indeed, the omission involved here is akin to the failure of the head of a collegiate court to issue the certification under Section 13, Article VIII that "The conclusions of the x x x Court in any case submitted to it for decision en banc or in division [was] reached in consultation before the case [was] assigned to a Member for the writing of the opinion of the Court," a requirement also imposed on the Chairman or the Presiding Commissioner of the COMELEC, as the case may be, under Section 1, Rule 18. We held in Consing v. Court of Appeals that such omission does not invalidate the questioned ruling but "may be basis for holding the official responsible for the omission to account therefor," thus:

> The certification requirement, x x x, is a new provision introduced by the framers of the 1987 Constitution. Its purpose is to ensure the implementation of the constitutional requirement that decisions of the Supreme Court and lower collegiate courts, such as the Court of Appeals, Sandiganbayan and Court of Tax Appeals, are reached after consultation with the members of the court sitting en banc or in a division before the case is assigned to a member thereof for decision-writing. The decision is thus rendered by the court as a body and not merely by a member thereof [I Record of the Constitutional Commission 498-500]. This is in keeping with the very nature of a collegial body which arrives at its decisions only after deliberation, the exchange of views and ideas, and the concurrence of the required majority vote.
>
> The absence, however, of the certification would not necessarily mean that the case submitted for decision had not been reached in consultation before being assigned to one member for the writing of the opinion of the Court since the regular performance of official duty is presumed [Sec. 5 (m) of Rule 131, Rules of Court]. The lack of certification at the end of the decision would only serve as evidence of failure to observe the certification requirement and may be basis for holding the official responsible for the omission to account therefor [See I Record of the Constitutional Commission 460]. Such absence of certification would not have the effect of invalidating the decision.[11] (Emphasis supplied)

Accordingly, we hold that the failure of Commissioners Sadain and Tuason to state the reasons for their inhibition from the 30 September 2005 Resolution does not affect the validity of that ruling.

The COMELEC did not Commit Grave Abuse of Discretion

On petitioner's alternative contention that the COMELEC En Banc committed grave abuse of discretion in affirming the findings of the First Division, we find no merit to this claim. In his petition, petitioner contented himself with making the sweeping charge that the COMELEC En Banc's ruling is contrary to "law, x x x evidence and existing jurisprudence" without substantiating his claim. Perhaps realizing this, petitioner, in his Reply to respondent's Comment, reproduced the grounds he raised in his motion for reconsideration with the COMELEC En Banc. This does not suffice to sustain his claim of grave abuse of discretion. The office of a petition for

certiorari is not to correct simple errors of judgment but "capricious and whimsical exercise of judgment amounting to lack of jurisdiction, or arbitrary and despotic exercise of power because of passion or personal hostility."[12] We have gone over the grounds petitioner raised in his motion for reconsideration with the COMELEC En Banc and we find no such grave error tainting the Resolution of 30 September 2005.

WHEREFORE, we DISMISS the petition.

SO ORDERED.

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

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[1] Under Rule 64 of the 1997 Rules of Civil Procedure.

[2] Petitioner obtained 2,259 votes over respondent's 2,220.

[3] The trial court noted:

> [B]oth [protestant and protestee] claimed that majority of the recounted ballots [sic] were written by one hand, x x x, there were deliberate erasures, unnecessary markings on the ballots, some ballots [were] written by two persons, no water mark in one ballot, no signature of the Chairman at the back of the ballot, [the] name of the candidate was not written in its proper space and other minor irregularities in the writing of the names of the candidates [sic] x x x.
>
> There were also Comments on the Election returns/tally sheets wherein the total number of votes were not properly indicated. Some portions of the minutes were left blank. There was also no thumb mark in one tally sheet and in two occasions there was no time [sic] when the counting of ballots started and when it was finished. Some of the ballot stubs were found inside the ballot boxes which were not supposed to be there. (Rollo, pp. 62-63)

[4] Dated 15 February 1993.

[5] This provision states: "The conclusions of the Supreme Court in any case submitted to it for decision en banc or in division shall be reached in consultation before the case is assigned to a Member for the writing of the opinion of the Court. A certification to this effect signed by the Chief Justice shall be issued and a copy thereof attached to the record of the case and served upon the parties. Any Member who took no part, or dissented, or abstained from a decision or resolution must state the reason therefor. The same requirements shall be observed by all lower collegiate courts." (Emphasis supplied)

[6] I Record of the CONSTITUTIONAL COMMISSION ("record") 501. See J. Bernas, the Constitution of the REPUBLIC OF THE PHILIPPINES: A Commentary 993 (2003 ed.).

[7] Petitioner then posits that what the COMELEC should have done next was request the Presiding Justice of the Court of Appeals to appoint a Justice from that court to sit in the case and participate in rendering another ruling following Section 2, Rule 4 of the COMELEC Rules which provides: "Disqualification Resulting in Lack of Quorum. " If the disqualification or inhibition of a Member should result in a lack of quorum in the Commission sitting en banc, the presiding Justice of the Court of Appeals, upon request of the Commission, shall designate a Justice of said Court to sit in said case for the purpose of hearing and rendering a decision thereon." (Rollo, pp. 12-14).

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[8] President Gloria Macapagal-Arroyo subsequently appointed former Court of Appeals' Presiding Justice Romeo Brawner as the sixth Commissioner.

[9] The 1935 and 1973 Constitutions imposed the requirement only on any member of the Supreme Court who dissents from a ruling. The 1973 Constitution expanded the rule's coverage to "all inferior collegiate courts."

[10] V RECORD 642.

[11] G.R. No. 78272, 29 August 1989, 177 SCRA 14, 21-22.

[12] Navarosa v. Commission on Elections, G.R. No. 157957, 18 September 2003, 411 SCRA 369, 386.

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