

**ARTURO F. PACIFICADOR AND JOVITO C. PLAMERAS, JR.,
PETITIONERS VS. COMMISSION ON ELECTIONS (FIRST DIVISION)
COMPRISED OF HON. COMMISSIONERS RESURRECION BORRA AND
ROMEO A. BRAWNE...**

G.R. No. 178259. March 13, 2009

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

The present petition, the Court gathers from its allegations, is one for Certiorari, [1] Prohibition and Injunction.

During the May 14, 2007 elections, Arturo F. Pacificador and Jovito C. Plameras, Jr. (petitioners), and Salvacion Z. Perez (private respondent), then the incumbent Governor of Antique, ran as candidates for the position of Governor.

Alleging violation of Section 261,[2] paragraphs O, V and W of the Omnibus Election Code, petitioners filed on April 23, 2007 with the Office of the Provincial Election Supervisor a case[3] for disqualification (disqualification case) against respondent and other members of the Nationalist People's Coalition-Antique ticket.

Petitioners claimed that on April 4, 2007, under private respondent's order, Provincial Engineer Vicente Dalumpines sent a letter to the chairmen of the different barangays of Sibalom, Antique inviting them to attend a program for the resumption of the construction of the Solong Bridge on April 10, 2007 at 10 o'clock in the morning at the project site; and that, accordingly, the chairmen of sixteen (16) barangays went to the project site on April 10, 2007 to attend the program which turned out to also serve as a proclamation program for private respondent's party, the Nationalist People's Coalition, as the program of activities given out to the attendees showed.

Petitioners thus concluded that what was supposed to be a simple program heralding the resumption of the Solong Bridge project turned out to be a political rally where private respondent's party-mates took turns in speaking and soliciting the attendees' support for their respective candidacies, and culminated in private respondent's distribution of checks to the chairmen of six (6) barangays of Sibalom town, drawn from the account of the Provincial Government.

Petitioners went on to allege that upon distributing the checks, private respondent instructed the recipients to direct their respective barangay treasurers to issue Official Receipts in favor of the Provincial Government, to be antedated to March 29, 2007 in order to circumvent COMELEC Resolution No. 7707 prohibiting disbursements or expenditures for public works, social services and development from March 30, 2007 to May 14, 2007.

Finally, petitioners alleged that after private respondent delivered her keynote speech, she, as the Nationalist People's Coalition candidate for governor, and the rest of the party's candidates for the position of Vice Governor down to the Sangguniang Bayan of Sibalom were presented and proclaimed.

The disqualification case remained unresolved even after the election.

After the elections on May 18, 2007, petitioners filed a petition for suspension of the canvassing of votes for the position of Governor and/or suspension of the proclamation of private respondent before the COMELEC which docketed it as EM07-041 (suspension case). They alleged that the canvassing of votes on May 15, 2007 by the Provincial Board of Canvassers (PBOC) composed of Atty. Gil Barcenal as Chairman, Prosecutor Napoleon Abiera as Vice-Chairman, and Corazon Brown as Member-Secretary (Barcenal PBOC) was attended by fraud because the election returns were prepared under duress and bore fraudulent entries.

By Resolution of May 21, 2007, the Barcenal PBOC ruled against petitioner Pacificador due to insufficiency of evidence, hence, he appealed to the COMELEC, which appeal was denominated as REF No. 07-066 (PBOC appeal).

Meanwhile, the COMELEC's Second Division, by Resolution of May 28, 2007,[4] ruled against petitioners on the suspension case, finding "no overwhelming need to suspend the canvassing of votes as well as the proclamation of the candidate who garners the most number of votes for the election for Governor of the province of Antique."

In the meantime, the COMELEC First Division, by Resolution[5] dated June 7, 2007, dismissed petitioners' PBOC appeal and created a new PBOC to be composed of Atty. Renato A. Mabutay as Chairman, Atty. Tomas Valera as Vice-Chairman, and Atty. Elizabeth Doronila as Member-Secretary (Mabutay PBOC). It noted that petitioners filed their Notice of Appeal on May 21, 2007, but that no appeal was filed within five days as required under Sec. 20 (f) of Republic Act No. 7166[6] and Sec. 9 of the COMELEC Rules of Procedure.[7]

In the interregnum, private respondent filed before the COMELEC an "Urgent Motion to Reconvene the New PBOC of Antique and Proclaim the Winning Candidate for the Position of Governor Down to the Position of Sangguniang Panlalawigan." [8] Acting on said Motion, the COMELEC First Division issued on June 22, 2007 a Resolution relieving the Mabutay PBOC and creating, in its stead, a still another PBOC composed of respondents Atty. Daisy Real, Atty. Jessie Suarez and Atty. Mavil Majarucon (Majarucon PBOC) as Chairman, Vice-Chairman and Member-Secretary, respectively, and ordering it to convene and proclaim the winning candidates. On even date, the Majarucon PBOC issued a Notice[9] to the parties announcing that it would convene on June 29, 2007 at 10:00 in the morning, at the Capitol Building in San Jose, Antique, to proclaim the winning candidates, prompting petitioners to file the present petition against the COMELEC and the Majarucon PBOC to enjoin the proclamation of private respondent and the enforcement of the June 22, 2007 Resolution.

Petitioners contend that the Majarucon PBOC is illegal, being violative of Sec. 2 of COMELEC Resolution No. 7859 promulgated on April 17, 2007 which provides that the relief of the Board of Canvassers (BOC) must be for cause, and Sec. 21 of Republic Act. No. 6646 (An Act Introducing Additional Reforms in the Electoral System and for other Purposes) which states that the substitute BOC must be composed of the therein named officials in their order of appearance, viz, the Provincial Auditor, the Register of Deeds, the Clerk of Court nominated by the Executive Judge of the Regional Trial Court, and any other available appointive provincial official.

Petitioners maintain that the COMELEC First Division, in creating the Majarucon PBOC solely for the purpose of proclaiming the winning candidates, had the intention of "railroading" the proceedings, despite the fact that the votes garnered by the candidates for the position of Governor were, at the time of the filing of the petition, not yet recorded in the official Certificates of Canvass; that several actions were still pending before the COMELEC in Manila; and that they had not even received a copy of the June 22, 2007 Resolution.

Finally, petitioners claim that the June 22, 2007 Resolution is void ab initio as it was issued only by a Division, in contravention of Secs. 5 and 6, Rule 19 of the COMELEC Rules of Procedure[10] which provide that any Motion

for Reconsideration filed before the COMELEC pertaining to any resolution, order or ruling of a Division shall be heard by the COMELEC en banc.

In its Comment[11] which was adopted by private respondent, the COMELEC First Division, through the Office of the Solicitor General, seeks the dismissal of the petition on the ground that the certified true copy of the assailed June 22, 2007 Resolution was not attached thereto, as required under Sec. 5, Rule 64 of the 1997 Rules of Procedure. And it posits that a petition for prohibition, such as the one at bar, will not lie to challenge a final and executory resolution of the COMELEC, following Sec. 3, Art. IX-C of the Constitution[12] vis a vis Sec. 13, Rule 18 of the COMELEC Rules of Procedure;[13] and that since petitioners did not move for the reconsideration of the June 22, 2007 Resolution before the COMELEC en banc prior to their direct resort to this Court, then the questioned resolution is deemed to have attained finality.

The COMELEC further posits that petitioners' prayer for a writ of preliminary injunction has become moot. It points out that what petitioners are questioning is the legality of the composition of the Majarucon PBOC which, under Sec. 241 of the Omnibus Election Code, is a pre-proclamation controversy. Hence, so it argues, private respondent's proclamation on June 29, 2007 as the winner of the gubernatorial elections has rendered the petition moot and academic. It adds that the proper remedy of petitioners should have been to institute an electoral protest.

Finally, the COMELEC emphasizes that under Sec. 277 of the Omnibus Election Code,[14] it has the power of direct control and supervision over BOCs, hence, its act of relieving the Mabutay PBOC, through its June 22, 2007 Resolution, due to the filing of indirect contempt and insubordination cases against its members, was valid.

In their Reply,[15] petitioners argue that they are not disputing the COMELEC's authority to change the PBOC's composition, but that the COMELEC's choice of substituting officials is restricted by Sec. 21 of Republic Act. No. 6646, hence, its choice of COMELEC officials Attys. Real, Suarez and Majarucon was tainted with grave abuse of discretion. The June 22, 2007 Resolution being null and void, petitioners concluded that all acts of the Marajucon PBOC, including private respondent's proclamation, is also null and void.

The petition is bereft of merit.

At the outset, the Court notes that petitioners failed to attach a copy of the assailed June 22, 2007 Resolution of the COMELEC, in violation of Sec. 5, Rule 64 of the Rules of Civil Procedure which provides:

Sec. 5. Form and contents of petition. -

x x x x

The petition shall be accompanied by a clearly legible duplicate original or certified true copy of the judgment, final order or resolution subject thereof, together with certified true copies of such material portions of the record as referred to therein and other documents relevant and pertinent thereto. The requisite number of copies of the petition shall contain plain copies of all documents attached to the original copy of said petition.

x x x x

The failure of petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition. (Emphasis supplied)

The Court has repeatedly held that the right to appeal is merely a statutory privilege that can be exercised only in the manner and in accordance with the provisions of law. Thus, save for the most persuasive of reasons, strict compliance with procedural rules is enjoined to facilitate the orderly administration of justice, and one who seeks to avail oneself of the right to appeal must comply with the requirements of the Rules. Failure to do so often leads to the loss of the right to appeal.[16]

Even if the Court relaxes the Rules to allow the present petition, however, just the same it fails, there being no grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the COMELEC when it rendered the assailed June 22, 2007 Resolution.

x x x The office of prohibition is to prevent the unlawful and oppressive exercise of authority and is directed against proceedings that are done without or in excess of jurisdiction, or with grave abuse of discretion, there being no appeal or other plain, speedy, and adequate remedy in the ordinary course of law. Stated differently, prohibition is the remedy to prevent inferior courts, corporations, boards, or persons from usurping or exercising a jurisdiction or power with which they have not been vested by law.[17] (Emphasis supplied)

Under Sec. 2, Article IV-C of the 1987 Constitution, the COMELEC exercises original jurisdiction over all contests, relating to the election, returns, and qualifications of all elective regional, provincial, and city officials, and appellate jurisdiction over election contests involving elective municipal and barangay officials, and has supervision and control over the board of canvassers. The COMELEC sitting en banc, however, does not have the authority to hear and decide election cases, including pre-proclamation controversies in the first instance, as the COMELEC in division has such authority. The COMELEC en banc can exercise jurisdiction only on motions for reconsideration of the resolution or decision of the COMELEC in division.[18]

In issuing the June 22, 2007 Resolution relieving the Mabutay PBOC and creating the Marajucon PBOC, the COMELEC First Division was merely exercising its mandate under Sec. 227 of the Omnibus Election Code which reads:

Sec. 227. Supervision and control over board of canvassers. - The Commission shall have direct control and supervision over the board of canvassers.

Any member of the board of canvassers may, at any time, be relieved for cause and substituted motu proprio by the Commission. (Emphasis supplied)

Petitioners' contention that the COMELEC's choice of officials to substitute the members of the BOC is limited only to those enumerated under Sec. 21 of Republic Act. No. 6646 is untenable. The said provision provides:

Sec. 21. Substitution of Chairman and Members of the Board of Canvassers. - In case of non-availability, absence, disqualification due to relationship, or incapacity for any cause of the chairman, the Commission shall appoint as substitute, a ranking lawyer of the Commission. With respect to the other members of the board, the Commission shall appoint as substitute the following in the order named: the Provincial Auditor, the Registrar of Deeds, the Clerk of Court nominated by the Executive Judge of the Regional Trial Court, and any other available appointive provincial official in the case of the provincial board of canvassers; the officials in the city corresponding to those enumerated, in the case of the city board of canvassers; and the Municipal Administrator, the Municipal Assessor, the Clerk of Court nominated by the Executive Judge of the Municipal Trial Court, or any other available appointive municipal officials, in the case of the municipal board of canvassers. (Emphasis supplied)

Contrary to petitioners' assertion, the enumeration above is not exclusive. Members of BOCs can be filled up by the COMELEC not only from those expressly mentioned in the above-quoted provision, but from others outside if the former are not available.[19]

It bears noting that pursuant to Rule 18 of the Omnibus Election Code, decisions and resolutions of any division of the COMELEC in special cases become final and executory after the lapse of five days, unless a timely motion for reconsideration is lodged with the COMELEC en banc. The pertinent provision reads:

Sec. 13. Finality of Decisions or Resolutions. - (a) In ordinary actions, special proceedings, provisional remedies and special reliefs a decision or resolution of the Commission en banc shall become final and

executory after thirty (30) days from its promulgation.

(b) In Special Actions and Special Cases a decision or resolution of the Commission en banc shall become final and executory after five (5) days from its promulgation unless restrained by the Supreme Court.

(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. (Emphasis supplied)

Rule 37 of the COMELEC Rules of Procedure also provides:

Sec. 3. Decisions Final After Five Days. - Decisions in pre-proclamation cases and petitions to deny due course to or cancel certificates of candidacy, to declare a candidate as nuisance candidate or to disqualify a candidate, and to postpone or suspend elections shall become final and executory after the lapse of five (5) days from their promulgation, unless restrained by the Supreme Court.

Clearly, not only does prohibition not lie against the COMELEC First Division which has the mandate and power to hear and decide pre-proclamation controversies; the assailed Resolution has also become final and executory in view of the failure of petitioners to file a timely motion for reconsideration of said Resolution in accordance with the COMELEC Rules of Procedure and the Rules of Court.

In another vein, instead of filing a timely motion for reconsideration of the June 22, 2007 Resolution with the COMELEC en banc, petitioners filed the present action directly with the Court on June 26, 2007, without, it bears reiteration, attaching thereto a copy of the assailed Resolution, and of proof of service of a copy thereof on the COMELEC and the adverse party, as required under Sec. 5 of Rule 64 of the Rules of Court. Such fatal defect precludes petitioners from now invoking the Court's intervention to nullify the COMELEC June 22, 2007 Resolution and invalidate the acts of the Marajucon PBOC.

Private respondent having been proclaimed as Governor, discussion of the issues raised in the disqualification case is rendered unnecessary.

WHEREFORE, the petition is DENIED.

SO ORDERED.

Quisumbing, Acting C.J., Ynares-Santiago, Carpio, Austria-Martinez, Corona, Tinga, Chico-Nazario, Velasco, Jr., Nachura, Leonardo-De Castro, Brion and Peralta, JJ., concur.

Puno, C.J., On official leave.

[1] Since the instant petition is grounded on grave abuse of discretion on the part of the Comelec, the same is considered as a Petition for Certiorari under Rule 65 of the Rules of Court pursuant to Section 2 of Rule 64.

[2] Sec. 261.

x x x x

(o) Use of Public funds, money deposited in trust, equipment, facilities owned or controlled by the government for an election campaign. - Any person who uses under any guise whatsoever, directly or indirectly, (1) public funds or money deposited with, or held in trust by, public financing institutions or by government offices, banks or agencies; (2) any printing press, radio, or television station or audio-visual equipment operated by the Government or by its divisions, sub-divisions, agencies or instrumentalities, including government-owned or controlled corporations, or by the Armed Forces of the Philippines; or (3) any equipment, vehicle, facility,

apparatus, or paraphernalia owned by the government or by its political subdivisions, agencies including government-owned or controlled corporations, or by the Armed Forces of the Philippines for any election campaign or for any partisan political activity.

x x x x

(v) Prohibition against release, disbursement or expenditure of public funds. - Any public official or employee including barangay officials and those of government-owned or controlled corporations and their subsidiaries, who during forty-five days before a regular election and thirty days before a special election, releases, disburses or expends any public funds for:

(1) Any and all kinds of public works, except the following:

(a) Maintenance of existing and/or completed public works project: Provided, That not more than the average number of laborers or employees already employed therein during the six-month period immediately prior to the beginning of the forty-five day period before election day shall be permitted to work during such time: Provided, further, That no additional laborers shall be employed for maintenance work within the said period of forty-five days;

(b) Work undertaken by contract through public bidding held, or by negotiated contract awarded, before the forty-five day period before election: Provided, That work for the purpose of this section undertaken under the so-called "takay" or "paquiao" system shall not be considered as work by contract;

(c) Payment for the usual cost of preparation for working drawings, specifications, bills of materials, estimates, and other procedures preparatory to actual construction including the purchase of materials and equipment, and all incidental expenses for wages of watchmen and other laborers employed for such work in the central office and field storehouses before the beginning of such period: Provided, That the number of such laborers shall not be increased over the number hired when the project or projects were commenced; and

(d) Emergency work necessitated by the occurrence of a public calamity, but such work shall be limited to the restoration of the damaged facility.

No payment shall be made within five days before the date of election to laborers who have rendered services in projects or works except those falling under subparagraphs (a), (b), (c), and (d), of this paragraph.

This prohibition shall not apply to ongoing public works projects commenced before the campaign period or similar projects under foreign agreements. For purposes of this provision, it shall be the duty of the government officials or agencies concerned to report to the Commission the list of all such projects being undertaken by them.

(2) The Ministry of Social Services and Development and any other office in other ministries of the government performing functions similar to said ministry, except for salaries of personnel, and for such other routine and normal expenses, and for such other expenses as the Commission may authorize after due notice and hearing. Should a calamity or disaster occur, all releases normally or usually coursed through the said ministries and offices of other ministries shall be turned over to, and administered and disbursed by, the Philippine National Red Cross, subject to the supervision of the Commission on Audit or its representatives, and no candidate or his or her spouse or member of his family within the second civil degree of affinity or consanguinity shall participate, directly or indirectly, in the distribution of any relief or other goods to the victims of the calamity or disaster; and

(3) The Ministry of Human Settlements and any other office in any other ministry of the government performing functions similar to said ministry, except for salaries of personnel and for such other necessary administrative or other expenses as the Commission may authorize after due notice and hearing.

(w) Prohibition against construction of public works, delivery of materials for public works and issuance of treasury warrants and similar devices. - During the period of forty-five days preceding a regular election and thirty days before a special election, any person who (a) undertakes the construction of any public works, except for projects or works exempted in the preceding paragraph; or (b) issues, uses or avails of treasury warrants or any device undertaking future delivery of money, goods or other things of value chargeable against public funds.

[3] Annex "A" of the Petition, rollo, pp. 26-33.

[4] Annex "D" of Petition, rollo, pp. 60-62. Penned by Commissioner Nicodemo T. Ferrer and concurred in by Presiding Commissioner Florentino A. Tuason, Jr. and Commissioner Rene V. Sarmiento.

[5] Rollo, pp. 135-139. Penned by Presiding Commissioner Resurreccion Z. Borra and concurred in by Commissioner Romeo A. Brawner.

[6] Sec. 20. Procedure in Disposition of Contested Election returns. - x x x

(f) After all the uncontested returns have been canvassed and the contested return ruled upon by it, the board shall suspend the canvass. Within forty-eight hours, therefrom, any party adversely affected by the ruling may file with the board a written and verified notice of appeal; and within an unextendible period of five (5) days thereafter an appeal may be taken to the Commission.

[7] Sec. 9. Procedure Before Board of Canvassers When Inclusion or Exclusion of Election Returns are Contested. - x x x x

(g) After all the uncontested returns have been canvassed and the contested returns ruled upon by it, the Board shall suspend the canvass. Within forty-eight hours therefrom, any party adversely affected by the ruling may file with the Board a written and verified Notice of Appeal; and within an inextendible period of five (5) days thereafter, an appeal may be taken to the Commission.

[8] Annex "K" of the Petition, rollo, pp. 97-116.

[9] Annex "M" of Petition, rollo, p. 130.

[10] Sec. 5. How Motion for Reconsideration Disposed Of. - Upon the filing of a motion to reconsider a decision, resolution, order or ruling of a Division, the Clerk of Court concerned shall, within twenty-four (24) hours from the filing thereof, notify the Presiding Commissioner. The latter shall within two (2) days thereafter certify the case to the Commission en banc.

Sec. 6. Duty of Clerk of Court of Commission to Calendar Motion for Resolution. - The Clerk of Court concerned shall calendar the motion for reconsideration for the resolution of the Commission en banc within ten (10) days from the certification thereof.

[11] Rollo, pp. 181-198.

[12] Sec. 3. The Commission on Elections may sit en banc or in two divisions, and shall promulgate 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)

[13] Sec. 13. Finality of Decisions or Resolutions. -

x x x x

(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 Action and Special Cases and after fifteen (15) days in all other actions or proceedings, following its promulgation. (Emphasis supplied)

[14] Sec. 277. Supervision and control over board of canvassers. - The Commission shall have direct control and supervision over the board of canvassers. Any member of the board of canvassers, may at any time, be relieved for cause and substituted motu proprio by the Commission.

[15] Rollo, pp. 204-207.

[16] Vide Gabriel et al v. Jamias, G.R. No. 156482, September 17, 2008.

[17] Gonzales, et al., v. Abaya, G.R. No. 164007, August 10, 2006, 498 SCRA 445, 475-476.

[18] Vide Sarmiento v. COMELEC, G.R. No. 105628, August 6, 1992, 212 SCRA 307, 313-314. .

[19] Vide Agpalo, Comments on the Omnibus Election Code, Rev. Ed., 2004, p.121, citing Aquino v. COMELEC, 22 SCRA 388.

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