

**NORMA PATALINGHUG, EUGENE ESPEDIDO, REYNALDO BERDIN,
NORMAN CODILLA, BOBIE CUENCA, EFREN HERRERA, LORENZO
IGOT, JR., ALBERTINO MATA, JR., MICHAEL CZAR OUANO, RAMON
PATALLINGHUG, ...**

G.R. No. 178767. January 30, 2008

Ponente: NACHURA, J.

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NACHURA, J.:

For the resolution of the Court is a petition for certiorari under Rule 65 assailing (a) the May 25, 2007 Order[1] of the Commission on Elections (COMELEC) First Division in Ref. No. 07-028; (b) the June 4, 2007 Resolution[2] of the COMELEC First Division in SPC No. 07-011; and (c) the June 28, 2007 Resolution No. 8212[3] or the Omnibus Resolution on Pending Cases issued by the COMELEC en banc.

The factual antecedents of the case follow.

In the May 14, 2007 national and local elections, petitioners ran for the local positions (mayor, vice-mayor and councilor) in Lapu-Lapu City. At the start of and during the canvassing, petitioners questioned the composition of the Board of Canvassers (BOC), and objected to the inclusion of several election returns (ERs). As the BOC ruled against them, petitioners filed their notices of appeal,[4] and consequently, initiated with the COMELEC a Pre-Proclamation Petition[5] docketed as SPC No. 07-011, seeking the declaration of the composition and the proceedings of the BOC as illegal.[6]

Petitioners also filed an Appeal[7] docketed as SPC No. 07-180 with the COMELEC, praying for the non-inclusion in the canvass of 182 ERs on alleged grounds under Sections 243 (b), (c) and (d), and 214 of the Omnibus Election Code (OEC) or Batas Pambansa (B.P.) Blg. 881.[8]

On May 25, 2007, the COMELEC First Division issued in Ref. No. 07-028 the first assailed Order[9] directing the BOC to proclaim the winning candidates in the official canvass.[10] (As alleged in the petition, the petitioners received a copy of this Order on May 27, 2007.)[11]

On the following day, May 26, 2007, the BOC proclaimed private respondents as the duly elected officials of Lapu-Lapu City.[12] Dissatisfied, petitioners moved, in SPC No. 07-180, for the recall and/or nullification of the said proclamation on May 29, 2007.[13]

On June 4, 2007, the COMELEC First Division in SPC No. 07-011 rendered the second assailed Resolution[14] dismissing the said case. (Again, as alleged in the petition, petitioners received a copy of this resolution on June 15, 2007.)[15]

Aggrieved, petitioners on June 26, 2007 moved for the reconsideration of the said Resolution in SPC No. 07-011.

Consequently, on June 28, 2007, the COMELEC en banc issued the third assailed Resolution No. 8212 or the Omnibus Resolution on Pending Cases.[16] (Petitioners allege that they received a copy of this Resolution on July

12, 2007.)([17] In the said Resolution, petitioners' cases—SPC Nos. 07-11 and 07-180—were not included in the list of pre-proclamation cases that shall remain active after June 30, 2007 pursuant to Section 16 of Republic Act (R.A.) No. 7166.[18]

Discontented with the said COMELEC issuances, petitioners, on July 26, 2007,[19] instituted the instant petition for certiorari under Rule 65.[20]

Respondents in their Comment[21] countered, among others,[22] that COMELEC Resolution No. 8212 could not be questioned via a petition for certiorari because it was not issued in the COMELEC's exercise of quasi-judicial functions. It was rather issued in the exercise of its power to enforce and administer all laws relative to the conduct of elections as enunciated in Section 52 of the OEC. Furthermore, the petition was filed beyond the 30-day reglementary period for questioning via certiorari final orders and resolutions of the COMELEC.[23]

A crucial issue in the resolution of this case is the propriety of the instant certiorari petition to challenge COMELEC Resolution No. 8212. Of equal significance is the issue of whether petitioners have sufficiently shown that the COMELEC gravely abused its discretion in issuing the challenged resolutions.

While petitioners correctly filed the instant certiorari petition to question COMELEC Resolution No. 8212, they failed to sufficiently show grave abuse of discretion on the part of the COMELEC in its issuance of the said Resolution.

To elucidate, the COMELEC en banc, on June 28, 2007, issued Resolution No. 8212 or the Omnibus Resolution on Pending Cases, which excluded SPC Nos. 07-011 and 07-180 from the list of pre-proclamation cases that shall remain active after June 30, 2007. The exclusion of petitioners' cases is, in effect, a denial by the COMELEC en banc of petitioners' pending motion for reconsideration in SPC No. 07-011, and a dismissal of SPC No. 07-180. The Court notes that, at the time Resolution No. 8212 was issued, the COMELEC First Division had not yet made a definitive ruling in SPC No. 07-180 (as opposed to what it did in SPC No. 07-11) and the COMELEC en banc had not yet resolved the motion for reconsideration in SPC No. 07-11.

Necessarily, as the cases were already excluded from the aforesaid list, petitioners no longer had any reason to expect a favorable ruling by the division in SPC No. 07-180 and by the banc in SPC No. 07-11. It would have been futile then for petitioners to still adhere to the procedure mandated by Section 3 of Article IX-C of the 1987 Constitution,[24] await the decision of the COMELEC in the main cases, and then challenge the same on certiorari before this Court.[25]

Accordingly, the appropriate recourse was for petitioners to timely assail COMELEC Resolution No. 8212 before this Court, which they, in fact, did, via the special civil action of certiorari, following Rules 64 and 65 of the Rules of Court.[26]

We clarify, at this point, that COMELEC Resolution No. 8212 is an issuance in the exercise of the COMELEC's adjudicatory or quasi-judicial function. The same was issued pursuant to the second paragraph of Section 16 of R.A. No. 7166, which states that -

[a]ll pre-proclamation cases pending before the Commission shall be deemed terminated at the beginning of the term of the office involved and the rulings of the boards of canvassers concerned shall be deemed affirmed, without prejudice to the filing of a regular election protest by the aggrieved party. However, proceedings may continue when on the basis of the evidence thus far presented, the Commission determines that the petition appears meritorious and accordingly issues an order for the proceeding to continue or when an appropriate order has been issued by the Supreme Court in a petition for certiorari. (Italics supplied)[27]

The determination by the COMELEC of the merits of a pre-proclamation case definitely involves the exercise of

adjudicatory powers. The COMELEC examines and weighs the parties' pieces of evidence vis-à-vis their respective arguments, and considers whether, on the basis of the evidence thus far presented, the case appears to have merit. Where a power rests in judgment or discretion, so that it is of judicial nature or character, but does not involve the exercise of functions of a judge, or is conferred upon an officer other than a judicial officer, it is deemed quasi-judicial.[28]

The Court, in this case, therefore finds the instant petition to be the correct remedy in challenging COMELEC Resolution No. 8212.

Noticeable in the petition, however, is that petitioners, instead of denominating their petition as one under Rules 64 and 65 of the Rules, merely captioned it as one under Rule 65, and further erroneously invoked the 60-day reglementary period in the said Rule[29] rather than the 30-day period in Rule 64.[30] But respondents also erred in their counter-arguments that the petition is the wrong recourse and is belatedly filed.

The Court is disinclined to dismiss the petition based only on petitioners' alleged errors because, in reality, they filed a Rule 64 cum Rule 65 petition within the 30-day reglementary period.

We merely mentioned the said mistakes to emphasize the perplexity among many candidates and election law practitioners brought about by the issuance of COMELEC resolutions pursuant to Section 16, R.A. No. 7166. In the instant case, several factors further contributed to the confusion—the absence of a definitive ruling by the COMELEC division in SPC No. 07-180; the absence of a final ruling by the COMELEC en banc on petitioners' motion for reconsideration in SPC No. 07-011; and the issuance of the said COMELEC Resolution No. 8212 excluding petitioners' cases from the list of active cases without, as aforesaid, any definite resolution of the issues raised.

To avoid similar instances of confusion and for the guidance of the bench and the bar, the Court takes this opportunity to lay down the following guidelines on the appropriate recourse to assail COMELEC resolutions issued pursuant to Section 16 of R.A. No. 7166.

First, if a pre-proclamation case is excluded from the list of those (annexed to the Omnibus Resolution on Pending Cases) that shall continue after the beginning of the term of the office involved, the remedy of the aggrieved party is to timely file a certiorari petition assailing the Omnibus Resolution before the Court under Rules 64 and 65, regardless of whether a COMELEC division is yet to issue a definitive ruling in the main case or the COMELEC en banc is yet to act on a motion for reconsideration filed if there is any.

It follows that if the resolution on the motion for reconsideration by the banc precedes the exclusion of the said case from the list, what should be brought before the Court on certiorari is the decision resolving the motion.

Second, if a pre-proclamation case is dismissed by a COMELEC division and, on the same date of dismissal or within the period to file a motion for reconsideration, the COMELEC en banc excluded the said case from the list annexed to the Omnibus Resolution, the remedy of the aggrieved party is also to timely file a certiorari petition assailing the Omnibus Resolution before the Court under Rules 64 and 65. The aggrieved party need no longer file a motion for reconsideration of the division ruling.

The rationale for this is that the exclusion by the COMELEC en banc of a pre-proclamation case from the list of those that shall continue is already deemed a final dismissal of that case not only by the division but also by the COMELEC en banc. As already explained earlier, the aggrieved party can no longer expect any favorable ruling from the COMELEC.

And third, if a pre-proclamation case is dismissed by a COMELEC division but, on the same date of dismissal or

within the period to file a motion for reconsideration, the COMELEC en banc included the case in the list annexed to the Omnibus Resolution, the remedy of the aggrieved party is to timely file a motion for reconsideration with the COMELEC en banc. The reason for this is that the challenge to the ruling of the COMELEC division will have to be resolved definitively by the entire body.

In laying down the said guidelines, the Court is not unaware of its ruling in *Santos v. Commission on Elections*,^[31] that the filing of a motion for reconsideration with the COMELEC en banc of a division's dismissal of a pre-proclamation case, and the simultaneous filing of a certiorari petition before this Court questioning the Omnibus Resolution/list constitutes forum shopping. The *Santos* doctrine shall continue to apply to every case with a similar or parallel factual setting.

Viewed in light of these guidelines, the instant petition is timely filed and is still the proper recourse to question COMELEC Resolution No. 8212.

However, the Court resolves to dismiss the petition.

For an action for certiorari to prosper, there must be a showing that the COMELEC acted with "grave abuse of discretion," which means such capricious and whimsical exercise of judgment equivalent to lack of jurisdiction or excess thereof.^[32] The abuse of discretion must be patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility.^[33]

In the present case, petitioners have not sufficiently shown that the COMELEC gravely abused its discretion in excluding their cases from the list of those that shall continue. Apart from petitioners' bare allegations, the record is bereft of any evidence to prove that petitioners' pre-proclamation cases appear meritorious. Let it be stressed that under Section 16 of Article 7166, the proceedings may continue when "on the basis of the evidence thus far presented," the COMELEC determines that the pre-proclamation petition appears meritorious.

Finally, the Court notes that with the proclamation of the winning candidates for the positions contested, the question of whether the petition raised issues proper for a pre-proclamation controversy is already of no consequence, since the well-entrenched rule in such situation is that a pre-proclamation case before the COMELEC is no longer viable, the more appropriate remedy being a regular election protest or a petition for quo warranto.^[34]

WHEREFORE, premises considered, the petition for certiorari is DISMISSED.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Azcuna, Tinga, Reyes, and Leonardo-De Castro, JJ., concur.
Chico-Nazario, and Velasco, Jr., JJ., on official leave.

[1] Rollo, pp. 40-42.

[2] *Id.* at 34-39.

[3] *Id.* at 43-60.

[4] *Id.* at 8-10.

[5] *Id.* at 61-64.

[6] Id. at 34-36. In their petition, they averred, among others, that the BOC chair, respondent Lamban, was biased and partial in favor of the other mayoralty candidate—Lamban unilaterally denied the petition to declare the composition and the proceedings of the board illegal; she was seen having lunch with the department heads of the incumbent, the other candidate for mayor; she drove out petitioners' watchers from the COMELEC field office where the uncanvassed ERs were stored; she attempted to carry out documents from the canvassing area; she used a cutter rather than the keys to forcibly open the padlocks of the ballot boxes containing the uncanvassed ERs; she allowed the detail of armed policemen in the vicinity of the canvassing area; and she did not issue summons to the concerned Board of Election Inspectors (BEI) to produce the missing returns; instead, she ordered the canvassing of the COMELEC copy of the missing returns.

Petitioners later amended the said petition to additionally assail the inclusion in the canvass of ERs that were allegedly incomplete, tampered with, falsified, manufactured, fraudulent and not authentic, and contained material discrepancies.

[7] Id. at 75-104.

[8] Id. at 80-89.

[9] Id. at 40-42.

[10] Id. at 41-42. The COMELEC found that petitioners failed to perfect their appeals, thus, it ordered the proclamation of the winning candidates.

[11] Id. at 5.

[12] Id. at 107.

[13] Id. at 108-120.

[14] Id. at 34-39. Invoking our ruling in *Navarro v. Commission on Elections*, 444 Phil. 710 (2003), the COMELEC ruled that the non-compliance by the board with the prescribed canvassing procedure was not an illegal proceeding. Neither was there an illegal composition of the board. The pre-proclamation petition was bereft of any allegation that the board was not constituted in accordance with law, or that it was not composed of those enumerated by the law, or that one of its members was disqualified. The COMELEC also found that petitioners committed a fatal procedural error when they amended their petition to include their objection to the inclusion of several ERs. They raised their concerns on the preparation, transmission, receipt, custody and appreciation of the ERs only for the first time before the Commission, not as an appeal from the rulings of the BOC.

[15] Id. at 5.

[16] Id. at 43-60.

[17] Id. at 5.

[18] Section 16 of R.A. No. 7166 reads:

SECTION 16. Pre-proclamation Cases Involving Provincial, City and Municipal Offices. — Pre-proclamation cases involving provincial, city and municipal offices shall be allowed and shall be governed by Sections 17, 18, 19, 20, 21 and 22 hereof.

All pre-proclamation cases pending before the Commission shall be deemed terminated at the beginning of the term of the office involved and the rulings of the boards of canvassers concerned shall be deemed affirmed,

without prejudice to the filing of a regular election protest by the aggrieved party. However, proceedings may continue when on the basis of the evidence thus far presented, the Commission determines that the petition appears meritorious and accordingly issues an order for the proceeding to continue or when an appropriate order has been issued by the Supreme Court in a petition for certiorari. (*Italics supplied*)

[19] Rollo, pp. 1, 3.

[20] The petitioners are raising the following grounds to support their certiorari petition:

I.

THE RESPONDENT COMELEC COMMITTED SERIOUS AND REVERSIBLE ERROR AND GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DISMISSING FOR LACK OF MERIT THE APPEAL OF HEREIN PETITIONERS IN A PRE-PROCLAMATION CONTROVERSY AGAINST PRIVATE RESPONDENTS IN SPECIAL CASE NO. 07-011.

II.

THE RESPONDENT COMELEC COMMITTED SERIOUS AND REVERSIBLE ERROR AND GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ISSUING THE ORDER DATED MAY 25, 2007 RULING THAT NORMA PATALINGHUG FAILED TO PERFECT HER TWO (2) APPEALS IN REF. 07-028.

III.

THE RESPONDENT COMELEC COMMITTED SERIOUS AND REVERSIBLE ERROR AND GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ISSUING RESOLUTION NO. 8212 (Omnibus dismissal of pending case for being arbitrary and for want of factual and legal basis in dismissing all pre-proclamation cases, including Petitioners' two (2) appeals, bearing SPC No. 07-180, Motion to Nullify Proclamation of private respondents in Ref. No. 07-028 and Appeal under SPC 07-011 respectively. Annex "C" hereof). (*Id.* at 15-16.)

[21] Rollo, pp. 170-185.

[22] Respondents also contended that the COMELEC correctly dismissed SPC No. 07-011 for the BOC was properly composed of the City Election Registrar, the City Prosecutor and the City Superintendent of Schools. Not one of them was related within the fourth civil degree of consanguinity or affinity to any of the candidates. As regards petitioners' allegation of illegal proceedings, respondents contended that no ground was ever advanced to show any irregularity or illegality in the proceedings. The cited seven instances allegedly showing the illegality of the proceedings were not raised in the first instance before the BOC. They were brought up for the first time before the COMELEC.

Furthermore, the alleged luncheon of the BOC Chair and the city's department heads was preposterous. At that time, respondent Radaza was under preventive suspension and the sitting mayor was petitioner Patalinghug. It follows therefore that it was petitioners' department heads who had lunch with the BOC Chair. The BOC Chair was also justified in driving out petitioners' watchers from the canvassing area because they were rowdy and unruly. As can likewise be gleaned from the supporting affidavits, petitioners' allegation of irregularity in the custody of elections returns and other documents were based on unfounded and unconfirmed presumptions. With respect to the cutting of the locks of the ballot boxes instead of using the keys, all the representatives of the candidates agreed thereto. All the decisions of the BOC were also reached in consultation with the other members.

Anent the seeking of police assistance inside the canvassing area, this was done when the proceedings were interrupted by a supporter of the petitioner who screamed at the BOC Chair. As to the missing election return, the BEI concerned was duly summoned and asked to explain in the presence of all. (Id. at 171-180.)

[23] Id. at 180-181.

[24] The constitutional provision reads:

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 elections 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)

[25] See *Milla v. Balmores-Laxa*, 454 Phil. 453, 462 (2003); see also *Jaramilla v. Commission on Elections*, 460 Phil. 507, 513 (2003), in which the Court stated that the procedural rule applies only in cases where the COMELEC exercises its adjudicatory or quasi-judicial powers, and not when it merely exercises purely administrative ones.

[26] See *Ambil, Jr. v. Commission on Elections*, 398 Phil. 257, 275 (2000); *Macabago v. Commission on Elections*, 440 Phil. 683, 690-691 (2002).

[27] We have explained in *Peñaflorida v. Commission on Elections*, 346 Phil. 924, 930 (1997), that "[t]his provision reflects the nation's deep concern that pre-proclamation disputes be not abused. For just as unscrupulous candidates can grab the proclamations and prolong election contest, thus leading the lawmaking authority to provide for the pre-proclamation cases, so can equally unscrupulous candidates prejudice those who won by the indiscriminate filing of pre-proclamation controversies in order to prevent the proclamation of winners. In the end it is the expression of popular will which is frustrated. Hence the provision of §16 of R.A. No. 7166 was enacted to balance Art. XX of the Omnibus Election Code (B.P. No. 881)."

[28] *Cipriano v. Commission on Elections*, G.R. No. 158830, August 10, 2004, 436 SCRA 45, 56; *Sandoval v. Commission on Elections*, 380 Phil. 375, 395 (2000).

[29] *Rollo*, pp. 4-5.

[30] RULES OF COURT, Rule 64, Sec. 3.

[31] G.R. No. 164439, January 23, 2006, 479 SCRA 487, 493-495.

[32] *Guerrero v. Commission on Elections*, 391 Phil. 344, 352 (2000).

[33] *Defensor-Santiago v. Guingona*, 359 Phil. 276, 304 (1998).

[34] *Sison v. Commission on Elections*, 363 Phil. 510, 519 (1999); see *Peñaflorida v. Commission on Elections*, *supra* note 27, at 931.

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