

RODANTE MARCOLETA, SERGIO MANZANA, RENATO CABLING AND MIGUELITO BAJAS, PETITIONERS, VS. COMMISSION ON ELECTIONS AND DIOGENES OSABEL, RESPONDENTS.

G.R. No. 181377. April 24, 2009

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

When the party-list group Alagad first won a seat in the House of Representatives in 1998, Diogenes S. Osabel (Osabel) sat as the party's representative in Congress. In 2004, when the party again won one seat, Rodante D. Marcoleta (Marcoleta) sat as Alagad's representative.

Due to infighting within Alagad's ranks, however, Osabel and Marcoleta parted ways, each one claiming to represent the party's constituency. For the 2007 National and Local Elections, the warring factions of Osabel and Marcoleta each filed a separate list of nominees for Alagad at the Commission on Elections (Comelec).

With Alagad again winning a part-list seat in the House of Representatives, the Marcoleta and Osabel blocs contested the right to represent the party in the 14th Congress.[1] Osabel, purportedly the bona fide president of Alagad, sought the cancellation of the certificates of nomination of the Marcoleta group.[2]

By Omnibus Resolution[3] of July 18, 2007, the Comelec's First Division, then composed of Commissioners Resurreccion Borra and Romeo Brawner, resolved the dispute in favor of Osabel, disposing as follows:

WHEREFORE, in view of the foregoing, the Commission (First Division) GRANTS the Petition in SPA No. 07-020 finding it imbued with merit. The Certificate of Nomination filed by ALAGAD represented by ALBERTO M. MALVAR on January 15, 2007 and subject of SPA No. 07-020 is hereby SET ASIDE. The Manifestation of Intent to Participate in the Party-List System of Representation submitted by ALAGAD represented by its legitimate president DIOGENES S. OSABEL on January 25, 2007, and subject of SPP No. 07-023 is hereby ADMITTED. The Manifestation of Intent to Participate in the Party-List System of Representation submitted by ALAGAD represented by ALBERTO M. MALVAR on January 15, 2007 and subject of SPP No. 07-003 is DENIED DUE COURSE. (Emphasis in the original)

The controversy was then elevated by the Marcoleta group to the Comelec En Banc which, by Resolution[4] of November 6, 2007, reversed the First Division's Omnibus Resolution and reinstated the certificates of nomination of the Marcoleta group. In the voting, however, there were only two (2) commissioners who concurred in the Resolution while three (3) commissioners dissented.[5]

For thus failing to muster the required majority voting, the Comelec En Banc ordered a rehearing of the controversy on November 20, 2007.[6]

From the records,[7] it appears that what was taken up during the scheduled November 20, 2007 hearing was the issue of "whether the [Comelec] could hear these cases on the rehearing aspect." [8]

The First Division's Omnibus Resolution in favor of Osabel was eventually affirmed by the Comelec En Banc by

Resolution of February 5, 2008, viz:[9]

During said rehearing, both parties agreed to file their simultaneous memoranda and thereafter to submit these cases for resolution.

The Commission received their respective memoranda on December 3, 2007. (Emphasis and underscoring supplied)

x x x x.

It appearing that the votes of the members of the Commission are still the same, or the necessary majority cannot be had, pursuant to Sec. 6, Rule 18, Comelec Rules of Procedure which reads:

x x x x.

the Resolution of the First Division is hereby AFFIRMED.[10] (Emphasis in the original; underscoring supplied)

On February 12, 2008, Marcoleta filed an ex parte motion to rectify[11] the Comelec En Banc February 5, 2008 Resolution, contending that it inadvertently therein mentioned that there was a rehearing undertaken on November 20, 2007 when in fact there was none as the matter taken up on said date actually delved on the propriety of a rehearing; and that no memorandum from either of the parties was submitted on December 3, 2007.

By Order of February 12, 2008,[12] Commissioner Romeo Brawner, acting in his capacity as acting chairman of the Comelec, suspended until further orders the implementation of the Comelec First Division February 5, 2008 Omnibus Resolution.

Subsequently, by Order of February 26, 2008,[13] the Comelec En Banc acknowledged that no rehearing had yet been undertaken and reiterated the earlier order of suspension of the February 5, 2009 First Division Omnibus Resolution. The Comelec En Banc, also therein resolving the prejudicial question raised by Osabel on whether there was a necessity of a rehearing, held in the affirmative, reasoning that:

x x x x. The voting in the resolution disposing of the motion for reconsideration on the July 18, 2007 resolution of the First Division which yielded the 2-3 voting resulted in the failure to obtain the required number of votes for the pronouncement of a decision. Hence, a rehearing should be conducted x x x x.

A rehearing of the controversy between the parties was thereupon calendared for March 4, 2008. From the records, it appears that the scheduled rehearing did not push through in view of the filing in the interim of the present petitions by the contending parties.

In the above-captioned G.R. No. 181377 (the petition filed by the Marcoleta group on February 7, 2008), petitioners fault the Comelec En Banc as follows:

- The COMELEC en banc committed grave abuse of discretion amounting to lack or excess of jurisdiction when it issued the February 5, 2008 Order without the benefit of a rehearing, in violation of Section 6, Rule 18 of the COMELEC Rules of Procedure;
- The COMELEC en banc committed grave abuse of discretion amounting to lack or excess of jurisdiction when it affirmed the ruling of its First Division that Private Respondent Osabel did not resign his post as President of Alagad;
- The COMELEC en banc committed grave abuse of discretion amounting to lack or excess of jurisdiction when it gave credence to the Minutes submitted by the Private Respondent, even though it was not approved by the Secretary-General of the Party;

- The COMELEC en banc committed grave abuse of discretion amounting to lack or excess of jurisdiction when it did not consider the provision in the Party's Constitution and By-Laws that limits the tenure of officers and members of the Executive Committee to three (3) years.[14]

Meanwhile, G.R. No. 181726 filed on March 4, 2008 by Alagad, represented by Osabel, assails the suspension of the effects of the Comelec First Division February 5, 2008 Resolution as well as the February 26, 2008 Order that called for a rehearing.[15]

Alagad asserts that the Comelec should not have suspended the effects of the February 5, 2008 Resolution when, on its face, the ex parte motion to rectify filed by Marcoleta suffered from lack of proof of service on the adverse party and the requisite notice of hearing; instead, an order to comment on the motion should have been the proper recourse of the Comelec.[16]

In further arguing against the rehearing order of the Comelec, petitioner Alagad invites the Court's attention to the earlier mentioned En Banc Resolution of November 6, 2007 (reinstating the certificates of nomination of the Marcoleta group) where it appears that the Osabel group "secured a majority vote of the quorum: three (3) against two (2) in a quorum of five commissioners, in spite the fact that Osabel is not the movant, and hence, not the party required to secure a majority to reverse the First Division Omnibus Resolution." [17]

By Resolution of March 11, 2008, the Court consolidated both petitions.[18]

G.R. No. 181377 was filed on February 7, 2008 by the Marcoleta group before it filed on February 12, 2008 before the Comelec the ex parte motion to rectify. In light of the filing of said motion as well as the positive action of the Comelec in its Order of February 26, 2008 for a rehearing of the controversy, the petition had been rendered moot and academic. More importantly, the extraordinary writ of certiorari, cannot be invoked when there is a plain, adequate and speedy remedy in the ordinary course of law,[19] as shown by petitioner's recourse.

The Court now proceeds to resolve G.R. No. 181726 filed by Alagad. The twin issues to be determined are whether the Comelec En Banc committed grave abuse of discretion in ordering a rehearing of the controversy; and in suspending the implementation of the Order of February 5, 2008 for lack of rehearing.

The petition fails.

While at first impression, the November 6, 2007 Resolution of the Comelec En Banc seems to have affirmed the First Division's ruling, the said Resolution merely reflected the manner of voting of the Comelec members.

From the 2-3 voting, it is readily discerned that the Comelec En Banc cannot overturn the First Division on mere two assenting votes. On the other hand, the same situation obtains in the case of the dissenters, there being a shortage of one vote to sustain the First Division's findings.

To break this legal stalemate, Section 6, Rule 18 of the Comelec Rules of Procedure provides that:

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. (Emphasis, italics and underscoring supplied)

Majority, in this case, means a vote of four members of the Comelec. The Court in *Estrella v. Comelec*[20] pronounced that Section 5 (a)[21] of Rule 3 of the Comelec Rules of Procedure and Section 7 of Article IX-A[22] of the Constitution require that a majority vote of all the members of the Comelec, and not only those who participated and took part in the deliberations, is necessary for the pronouncement of a decision, resolution, order

or ruling.

Alagad's reasoning that a rehearing is unnecessary since it garnered "a majority vote of the quorum" does not thus impress.

The Comelec, despite the obvious inclination of three commissioners to affirm the Resolution of the First Division, cannot do away with a rehearing since its Rules clearly provide for such a proceeding for the body to have a solicitous review of the controversy before it. 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.[23]

To reiterate, neither the assenters nor dissenters can claim a majority in the En Banc Resolution of November 6, 2007. The Resolution served no more than a record of votes, lacking in legal effect despite its pronouncement of reversal of the First Division Resolution. Accordingly, the Comelec did not commit any grave abuse of discretion in ordering a rehearing.

The propriety of a rehearing now resolved, the issue of whether the Comelec committed grave abuse of discretion in suspending the effects of its En Banc Order of February 5, 2008 for lack of a rehearing comes to the fore.

From the records as well as the admission of inadvertence on the part of the Comelec, there is likewise nothing gravely abusive of the Comelec's assailed action.

A certification[24] from the Office of the Clerk of the Commission itself bolsters the assertion that the Comelec committed an evident oversight, thus:

x x x [T]here is no calendar of hearing with respect to these particular cases between November 21, 2007 and February 5, 2008.

For the most part, the Comelec was well within its authority to order a re-hearing, it having the inherent power to amend or control its processes and orders before these become final and executory.[25] It can even proceed to issue an order *motu proprio* to reconsider, recall or set aside an earlier resolution which is still under its control.[26]

The Comelec's own Rules of Procedure authorize the body to "amend and control its processes and orders so as to make them conformable to law and justice,"[27] and even to suspend said Rules or any portion thereof "in the interest of justice and in order to obtain speedy disposition of all matters pending before the Commission." [28]

Thus, the supposed lack of proof of service on the adverse party and lack of notice of hearing of Marcoleta's *ex parte* motion to rectify deserve little consideration in invalidating the Order of February 12, 2008. Moreover, that Alagad even moved to execute the Comelec's February 5, 2008 Order on the same day the *ex parte* motion to rectify was filed (February 12, 2008)[29] all the more justified the Comelec's action.

The Comelec, confronted with a glaring procedural lapse, lost no time in rectifying its action by suspending the effects of an earlier resolution and scheduling a mandatory rehearing. To be sure, this negates any indication of grave abuse of discretion on its part in order to correct a lapse.

WHEREFORE, G.R. No. 181377 is DISMISSED for being moot. G.R. No. 181726 is likewise DISMISSED for lack of merit.

Let the case be REMANDED to the Comelec En Banc for it to proceed with utmost dispatch with its intended rehearing and render the appropriate decision on the case at the earliest opportunity.

No costs.

SO ORDERED.

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

[1] Both factions filed separate Manifestations of Intent to Participate in the Party-list System of Representation (SPP No. 07-003 and SPP No. 07-023).

[2] In SPA No. 07-020.

[3] Rollo (G.R. No. 181377) at pp. 31-50.

[4] Rollo (G.R. No. 181726) at pp. 52-66.

[5] Commissioners Resurreccion Borra (Borra), Romeo Brawner (Brawner) and Rene Sarmiento (Sarmiento) dissented while Commissioners Florentino A. Tuason Jr. (Tuason) and Nicodemo T. Ferrer (Ferrer) concurred. Then Comelec chairman, Benjamin S. Abalos Sr., had resigned at the time.

[6] Rollo (G.R. No. 181377), pp. 85-86.

[7] Id. at 125-158.

[8] Id. at 126.

[9] Id. at 258-261.

[10] The voting in this resolution had Commissioners Brawner and Sarmiento maintaining their dissent while Commissioner Ferrer retained his concurrence. Commissioners Borra and Tuason had retired by then. The new commissioner at the time, Moslemen Macarambon, took no part.

[11] Rollo (G.R. No. 181377), pp. 262-263.

[12] Rollo (G.R. No. 181726), pp. 22-23.

[13] Id. at 48-51.

[14] Rollo (G.R. No. 181377), p 196.

[15] Rollo (G.R. No. 181726), p. 10.

[16] Id. at 10-12.

[17] Id. at 12-13.

[18] Id. at 90.

[19] Section 1 of Rule 65 of the 1997 Rules of Civil Procedure.

[20] G.R. No. 160465, May 27, 2004, 429 SCRA 789.

[21] Sec. 5. Quorum, Votes Required.--(a) When sitting en banc, four (4) Members of the Commission shall constitute a quorum for the purpose of transacting business. The concurrence of a majority of the Members of the Commission shall be necessary for the pronouncement of a decision, resolution, order or ruling. (Underscoring supplied)

[22] SECTION 7. Each Commission shall decide by a majority vote of all its members any case or matter brought

before it within sixty days from the date of its submission for decision or resolution. x x x x. (Underscoring supplied)

[23] *Juliano v. Comelec*, G.R. No. 1676033, April 12, 2006, 487 SCRA 263, 271.

[24] *Rollo* (G.R. No. 181377), pp. 211-212.

[25] *Sahali v. Comelec*, G.R. No. 134169, February 2, 2000, 324 SCRA 510, 519.

[26] *Vide: Jaafar v. Comelec*, G.R. No. 134188, March 15, 1999, 304 SCRA 672.

[27] Section 3 (g), Rule 2 of the Comelec Rules of Procedure.

[28] Section 4, Rule 1 of the Comelec Rules of Procedure.

[29] *Rollo* (G.R. No. 181726), pp. 76-78.

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