EDDIE T. PANLILIO, PETITIONER, VS. COMMISSION ON ELECTIONS AND LILIA G. PINEDA, RESPONDENTS.

G.R. No. 181478. July 15, 2009

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

Before us is a Petition for Certiorari under Rule 65, in relation to Rule 64 of the Rules of Court, seeking the nullification of the following issuances of the COMELEC:

> (1) COMELEC Second Division Order[1] dated July 23, 2007 giving due course to respondent Lilia G. Pineda's election protest and, inter alia, directing the revision of ballots of the protested precincts of the Province of Pampanga;
>
> (2) COMELEC Second Division Order[2] dated August 1, 2007 denying petitioner Governor Eddie T. Panlilio's motion for reconsideration of the aforesaid order; and
>
> (3) COMELEC En Banc Order[3] dated February 6, 2008 denying petitioner's omnibus motion to (a) certify his said motion for reconsideration to the COMELEC En Banc; and (b) stay Order dated August 7, 2007 directing the collection of ballot boxes in the contested precincts.

The parties herein were two of the contending gubernatorial candidates in the province of Pampanga during the May 14, 2007 national and local elections. On May 18, 2007, the Provincial Board of Canvassers of Pampanga proclaimed petitioner as the duly elected governor of Pampanga having garnered the highest number of votes of Two Hundred Nineteen Thousand Seven Hundred Six (219,706) votes[4] with a winning margin of One Thousand One Hundred Forty-Seven (1,147) votes over the 218,559 votes of private respondent.

On May 25, 2007, private respondent filed an election protest[5] against petitioner based on the following grounds:

> a). Votes in the ballots lawfully and validly cast in favor of protestant were deliberately misread and/or mis-appreciated by the various chairmen of the different boards of election inspectors;
>
> b). Thousands of votes of protestant such as "NANAY BABY", her registered nickname were intentionally and/or erroneously not counted or tallied in the election returns as votes validly cast for the protestant;
>
> c). Valid votes legally cast in favor of protestant were considered stray;
>
> d). Ballots containing valid votes for protestant were intentionally and erroneously mis-appreciated or considered as marked and declared as null and void;
>
> e). Ballots with blank spaces in the line for governor were just the same read and counted in favor of protestee;
>
> f). Ballots prepared by persons other than the voters themselves and fake or unofficial ballots wherein the name of protestee was written illegally, read and counted in favor of the latter;

> g). Groups of ballots prepared by one (1) person and/or individual ballots prepared by two (2) persons were purposely considered as valid ballots and counted in favor of protestee;
>
> h). Votes that are void because the ballots containing them were pasted with stickers or because of pattern markings appearing in them or because of other fraud and election anomalies, were unlawfully read and counted in favor of the protestee; and,
>
> i). Votes reported in numerous election returns were unlawfully increased in favor of the protestee, while votes in said election returns for the protestant were unlawfully decreased ("dagdag-bawas"), such that the protestee appeared to have obtained more votes than those actually cast in his favor, while the protestant appeared to have obtained less votes than the actually cast in her (protestant's) favor; and,
>
> j). Moreover, buying of votes and other forms of vote-buying were resorted to by protestee in order to pressure voters to vote for him or not to cast their votes for the protestant herein.[6]

On June 12, 2007, petitioner filed his answer with counter-protest and counterclaims.

On July 23, 2007, the COMELEC, Second Division, issued the first assailed order giving due course to private respondent's election protest and directed among others, the revision of ballots pertaining to the protested precincts of the Province of Pampanga.

Petitioner filed a motion for reconsideration of the aforesaid order but the same was denied by the same Division, in the second challenged Order dated August 1, 2007.

On August 1, 2007, private respondent filed her compliance stating that she deposited with the COMELEC Four Million Eight Hundred Eighty Six pesos (P4,000,886.00) pursuant to the July 23, 2007 Order.

On August 8, 2007, petitioner filed an Omnibus Motion (1) to certify his earlier motion for reconsideration at the COMELEC En Banc; and (2) to stay the COMELEC's order directing the collection of ballot boxes. Thereafter, on August 16, 2007, petitioner filed an urgent motion to hold in abeyance the retrieval and collection of ballot boxes.

On February 6, 2008, the COMELEC En Banc issued the third assailed Order, the dispositive portion of which reads:

> WHEREFORE, premises considered, protestee Eddie Panlilio's Omnibus Motion dated August 7, 2007 is hereby DENIED for lack of merit. Consequently, the Order of the Commission (Second Division) dated August 16, 2007 ordering the Provincial Election Supervisor (PES) of Pampanga to defer the inventory, sealing and transmittal of the contested ballot boxes involved in this case is hereby LIFTED and SET ASIDE.
>
> SO ORDERED.

In arriving at such a disposition, the COMELEC En Banc ratiocinated that the assailed orders of the COMELEC Second Division were interlocutory orders, which are not one of the orders required by Section 5 (C) Rule 3 and Section 5 Rule 19 of the COMELEC Rules of Procedure to be certified to the Commission en banc for resolution.

Aggrieved, petitioner filed the instant petition for certiorari contending that the COMELEC acted with grave abuse of discretion amounting to lack or excess of jurisdiction in denying his omnibus motion and in failing to dismiss the alleged sham election protest filed by private respondent against him:

> I
>
> PUBLIC RESPONDENT COMELEC (EN BANC) COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DENYING PETITIONER'S OMNIBUS

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MOTION ON THE BASIS OF SECTION 5 (C), RULE 3 IN RELATION TO SECTION 5, RULE 19 OF THE COMELEC RULES OF PROCEDURE

II

PUBLIC RESPONDENT COMELEC (EN BANC) COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DENYING PETITIONER'S OMNIBUS MOTION DESPITE THE SERIOUS IRREGULARITIES WHICH ATTENDED THE ISSUANCE OF PUBLIC RESPONDENT COMELEC (SECOND DIVISION) OF THE ASSAILED ORDER DATED 1 AUGUST 2007, DENYING HIS MOTION FOR RECONSIDERATION, AND WHICH RENDERED DOUBTFUL THE PROPRIETY OF SUCH DENIAL

III

PUBLIC RESPONDENT COMELEC (EN BANC) COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DENYING PETITIONER'S OMNIBUS MOTION AND REFUSING TO RULE ON PETITIONER'S MOTION FOR RECONSIDERATION ON THE BASIS THAT SUCH WILL BE TANTAMOUNT TO SANCTIONING A SECOND MOTION FOR RECONSIDERATION

IV

PUBLIC RESPONDENT COMELEC (EN BANC) AND SECOND DIVISION) COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN FAILING TO DISMISS OUTRIGHT PRIVATE RESPONDENT'S SHAM PROTEST BELOW

The petition is without merit.

Petitioner insists that the COMELEC En Banc gravely abused its discretion when it denied his omnibus motion to certify his earlier motion for reconsideration and to stay the order directing the collection of ballot boxes of the contested precincts in the province of Pampanga. He argues that Section 5, Rule 19 of the COMELEC Rules of Procedure, on which the omnibus motion was anchored, clearly mandates the Presiding Commissioner of the Division of the COMELEC to certify the case to the COMELEC En Banc once a motion for reconsideration is filed, regardless of whether the order or resolution sought to be reconsidered is an interlocutory order or a final one.

This issue has been squarely addressed in Repol v. COMELEC,[7] where the Court has declared that the remedy to assail an interlocutory order of the COMELEC in Division, which allegedly was issued with grave abuse of discretion or without or in excess of jurisdiction, is provided in Section 5(c), Rule 3 of the 1993 COMELEC Rules of Procedure, which pertinently reads:

> Section 5. Quorum; Votes Required. -
> (a) x x x.
> (b) x x x.
> (c) Any motion to reconsider a decision, resolution, order or ruling of a Division shall be resolved by the Commission en banc except motions on interlocutory orders of the Division, which shall be resolved by the Division which issued the order.

In Repol, the Court held that since the COMELEC's Division issued the interlocutory Order, the same COMELEC Division should resolve the motion for reconsideration of the Order. The remedy of the aggrieved party is neither to file a motion for reconsideration for certification to the COMELEC En Banc nor to elevate the issue to this Court via a petition for certiorari under Rule 65 of the Rules of Civil Procedure. In the same case the Court added that:

> Section 5, Rule 19 of the 1993 COMELEC Rules of Procedure governs motions for reconsideration of decisions of a COMELEC Division, as follows:
>
> 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.

In Gementiza v. Commission on Elections, the Court explained the import of this rule in this wise:

Under the above-quoted rule, the acts of a Division that are subject of a motion for reconsideration must have a character of finality before the same can be elevated to the COMELEC en banc. The elementary rule is that an order is final in nature if it completely disposes of the entire case. But if there is something more to be done in the case after its issuance, that order is interlocutory.

Only final orders of the COMELEC in Division may be raised before the COMELEC en banc. Section 3, Article IX-C of the 1987 Constitution mandates that only motions for reconsideration of final decisions shall be decided by the COMELEC en banc, thus:

> 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 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.

It is clear from the foregoing constitutional provision that the COMELEC En Banc shall decide motions for reconsideration only of "decisions" of a Division, meaning those acts having a final character. Here, the assailed Second Division order did not completely dispose of the case, as there was something more to be done, which was to decide the election protest. Being interlocutory, the assailed Second Division orders may not be resolved by the COMELEC En Banc.

Furthermore, the present controversy does not fall under any of the instances of which the COMELEC En Banc can take cognizance. Section 2, Rule 3 of the 1993 COMELEC Rules of Procedure provides:

> SEC. 2. The Commission En Banc. - The Commission shall sit en banc in cases hereinafter specifically provided, or in pre-proclamation cases upon a vote of a majority of the members of the Commission, or in all other cases where a division is not authorized to act, or where, upon a unanimous vote of all the Members of a Division, an interlocutory matter or issue relative to an action or proceeding before it is decided to be referred to the Commission en banc.

This case is not among those specifically provided under the COMELEC Rules of Procedure in which the COMELEC may sit en banc. Neither is it one where a Division is not authorized to act nor one where the members of the Second Division have unanimously voted to refer the issue to the COMELEC En Banc. Thus, the COMELEC En Banc is not the proper forum where petitioner may bring the assailed interlocutory Orders for resolution.

The July 23, 2007 Second Division Order was not a final disposition of the case. It was an interlocutory order, which resolved an incidental matter and which did not put a complete end to the controversy. Accordingly, petitioner's motion for reconsideration of the said order was correctly resolved by the COMELEC Second Division, which issued the assailed order. Hence the COMELEC En Banc cannot be faulted for issuing its February 6, 2008 Order denying petitioner's Omnibus Motion to certify his motion for reconsideration to the COMELEC En Banc and to stay the order for the collection of ballot boxes.

Petitioner would next argue that the August 21, 2007 COMELEC Second Division's Order denying his motion for reconsideration was attended by serious irregularities, warranting a closer review by the COMELEC En Banc. According to petitioner, despite his thirty-nine page motion for reconsideration filed on July 31, 2007, the COMELEC Second Division sweepingly disposed of the same motion and issued an order denying the subject motion the following day, or on August 1, 2007, an order that was signed by the Presiding Commissioner only.

A cursory reading of the motion for reconsideration[8] shows that the grounds raised therein were a mere rehash of the ground raised in his Answer,[9] which prayed for the dismissal of the election protest. There was no point in reiterating and discussing anew the issues previously resolved. Instead of assailing the COMELEC Second Division for immediately resolving petitioner's motion for reconsideration, it should be commended for doing so.

This Court has emphasized that in this species of controversy involving the determination of the true will of the electorate, time is indeed of paramount importance - second to none, perhaps, except the genuine will of the majority. To be sure, an election controversy, which by its very nature touches upon the ascertainment of the people's choice as gleaned from the medium of the ballot, should be resolved with utmost dispatch, precedence and regard to due process.[10] The considerations that dictate early on the expeditious disposition of election protests hold true today. The term of an elective office is short. There is the contestant's personal stake which generates feuds and discords. Above all is the public interest. A title to public elective office must not be left long under a cloud. The efficiency of public administration should not be impaired. It is thus understandable why pitfalls that may retard the determination of election contests should be avoided. Courts should heed the imperative need for dispatch. Obstacles and technicalities that fetter the people's will should not stand in the way of a prompt termination of election contests.[11] For the same reason, COMELEC's rules of procedure for the verification of protests and certifications of non-forum shopping should be liberally construed, and COMELEC's interpretation of such rules in accordance with its constitutional mandate should carry great weight.

Quintos v. Commission on Elections[12] ruled as follows:

> We agree with the Solicitor General that the alleged lack of verification of private respondents's Manifestation and motion for Partial Reconsideration is merely a technicality that should not defeat the will of the electorate. The COMELEC may liberally construe or even suspend its rules of procedure on the interest of justice, including obtaining a speedy disposition of all matters pending before the COMELEC.

We also see no irregularity in the fact that the Order dated August 1, 2007 was signed only by the Presiding Commissioner of the Second Division. He acted within the authority vested in him by Section 6, Rule 2 of the COMELEC Rules of Procedure, which provides:

> SECTION 6. Powers and Duties of the Presiding Commissioner. - The powers and duties of the Presiding Commissioner of a Division when discharging its functions in cases pending before the Division shall be as follows:
>
> (a) To issue calls for the sessions of the Division;
> (b) To preside over the sessions of the Divisions;
> (c) To preserve order and decorum during the sessions of the Division;
> (d) To sign interlocutory resolutions, orders or ruling and temporary restraining orders in cases already assigned to the Division;
> (e) To decide all questions or order, subject to appeal to the full Division; and
> (f) To take such other measures as he may deem proper upon consultation with the other members of the Division.

Petitioner's claim - that the COMELEC Second Division's Order dated August 1, 2007 denying his motion for reconsideration is defective because the order does not contain the facts and the law on which it is based -

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deserves scant consideration. The issuance of a minute order/ resolution has long been sanctioned in this jurisdiction. The minute Order of August 1, 2007, which denied petitioner's motion for reconsideration, reiterated the COMELEC Second Division's earlier Order dated July 23, 2007, which sufficiently stated the facts and the law on which it was based.

Petitioner likewise imputes grave abuse of discretion on the part of the COMELEC in giving due course to private respondent's election protest. Petitioner insists that the election protest is a sham and is insufficient in form and substance.

In Miguel v. COMELEC,[13] the Court belittled the petitioner's argument that the protestant had no cause of action, as the allegations of fraud and irregularities, which were couched in general terms, were not sufficient to order the opening of ballot boxes and counting of ballots. The Court states the rules in election protests cognizable by the COMELEC and courts of general jurisdiction, as follows:

> The rule in this jurisdiction is clear and jurisprudence is even clearer. In a string of categorical pronouncements, we have consistently ruled that when there is an allegation in an election protest that would require the perusal, examination or counting of ballots as evidence, it is the ministerial duty of the trial court to order the opening of the ballot boxes and the examination and counting of ballots deposited therein.

In a kindred case, Homer Saquilayan v. COMELEC,[14] the Court considered the allegations in an election protest, similar to those in this case, as sufficient in form and substance.

Again, in Dayo v. COMELEC,[15] the Court declared that allegations of fraud and irregularities are sufficient grounds for opening the ballot boxes and examining the questioned ballots. The pronouncement is in accordance with Section 255 of the Omnibus Election Code, which reads:

> Judicial counting of votes in election contest. - Where allegations in a protest or counter-protest so warrant, or whenever in the opinion of the court in the interests of justice so require, it shall immediately order the book of voters, ballot boxes and their keys, ballots and other documents used in the election be brought before it and that the ballots be examined and the votes recounted.

In this case, the COMELEC Second Division found that the allegations in the protest and counter-protest warranted the opening of the contested ballot boxes and the examination of their contents to settle at once the conflicting claims of petitioner and private respondent.

In an election case, the election tribunal has an imperative duty to ascertain, by all means within its command, who is the real candidate elected by the electorate. Indeed, the Court frowns upon any interpretation of the law or the rules that would hinder in any way not only the free and intelligent casting of votes in an election, but also the correct ascertainment of the results.[16]

Lastly, petitioner argues that the COMELEC acted with grave abuse of discretion amounting to lack or excess of jurisdiction in giving due course to the election protest, notwithstanding that private respondent failed to raise her objections first before the Board of Election Inspectors.

The filing of a protest before the Board of Election Inspectors is not a condition sine qua non before the COMELEC acquires jurisdiction over the present election protest. Jurisdiction is conferred only by law and cannot be acquired through, or waived by, any act or omission of the parties.

Section 2(2), Article IX-C of the 1987 Constitution, reads:

> Section 2. The Commission on Elections shall exercise the following powers and functions:
>
> (2) Exercise exclusive original jurisdiction over all contests relating to the elections, returns, and qualifications

> of all elective regional, provincial, and city officials, and appellate jurisdiction over all contests involving elective municipal officials decided by trial courts of general jurisdiction, or involving elective barangay officials decided by trial courts of limited jurisdiction.

The COMELEC exercises exclusive original jurisdiction over all contests relating to the elections of all elective regional, provincial, and city officials. Since the COMELEC has jurisdiction over petitioner's election protest, it has the authority to issue the assailed Orders.[17]

We quote with approval the COMELEC's ratiocination on this matter:

> As to the assertion of Protestee that objections should have been first raised before the Board of Election Inspectors, the same holds no water. Such failure is not fatal to her instant protest case as the same is not a requirement precedent to the acquisition by the Commission of jurisdiction over the case.

Grave abuse of discretion means such capricious and whimsical exercise of judgment as is equivalent to an excess or lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of a 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. We find none in this case.

WHEREFORE, premises considered, the instant petition for certiorari is hereby DISMISSED, and the status quo ante order issued by this Court on February 19, 2008 is lifted.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Corona, Carpio Morales, Chico-Nazario, Velasco, Jr., Nachura, Brion, Peralta, and Bersamin, JJ., concur.

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[1] Rollo, pp. 116-121.

[2] Id. at 122.

[3] Id. at 123-127.

[4] Id. at 176.

[5] Id. at 130-162.

[6] Id. at 158 - 159.

[7] G.R. No. 161418, April 28, 2004, 428 SCRA 321.

[8] Rollo, pp. 322-360.

[9] Id. at 205-261.

[10] Miguel v. Commision on Elections, G.R. No. 136966, July 5, 2000, 335 SCRA 172, 180.

[11] Estrada v. Sto. Domingo, No. L-30570, July 29, 1969, 28 SCRA 890, 904.

[12] G.R. 149800, November 21, 2002, 392 SCRA 489, 503.

[13] Supra note 10, pp. 177- 178.

[14] G.R. No. 157249, November 28, 2003,416 SCRA 658, 660.

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[15] G.R. No. 94681, July 18, 1991, 199 SCRA 449,453.

[16] Benito v. Commission on Elections, G.R. No. 106053, August 17, 1994, 235 SCRA 436, 442.

[17] Quintos v. COMELEC, G.R. No. 149800, November 21, 2002, 392 SCRA 489, 505.

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