

JOSELITO R. MENDOZA, PETITIONER, VS. COMMISSION ON ELECTIONS AND ROBERTO M. PAGDANGANAN, RESPONDENTS.

G.R. No. 188308. October 15, 2009

Ponente: BRION, J.

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BRION, J.:

The present case involves a clash between the power under the Philippine Constitution of the respondent Commission on Elections (COMELEC) in the handling of a provincial election contest, and the claimed due process rights of a party to the contest. The petitioner Joselito R. Mendoza (the petitioner) essentially asserts in his petition for certiorari^[1] that the COMELEC conducted proceedings in the election contest for the gubernatorial position of the Province of Bulacan, between him and the respondent Roberto M. Pagdanganan (the respondent), without due regard to his fundamental due process rights. The COMELEC, on the other hand, claims that its decision-making deliberations are internal, confidential and do not require notice to and the participation of the contending parties.

THE ANTECEDENTS

The petitioner and the respondent vied for the position of Governor of the Province of Bulacan in the May 14, 2007 elections. The petitioner was proclaimed winning candidate and assumed the office of Governor.

The respondent seasonably filed an election protest with the COMELEC, which was raffled to the Second Division and docketed as EPC No. 2007-44. Revision of ballots involving the protested and counter-protested precincts in Angat, Bocaue, Calumpit, Doña Remedios Trinidad, Guiginto, Malolos, Meycauayan, Norzagaray, Pandi, Paombong, Plaridel, Pulilan, San Rafael and San Jose del Monte soon followed. The revision was conducted at the COMELEC's office in Intramuros. After revision, the parties presented their other evidence, leading to the parties' formal offer of their respective evidence.

The COMELEC approved the parties' formal offer of evidence and then required the parties to submit their respective memoranda. The parties complied with the COMELEC's order. The case was thereafter submitted for resolution.

On March 2, 2009 the COMELEC transferred the Bulacan ballot boxes, including those involved in the provincial election contest, to the Senate Electoral Tribunal (SET) in connection with the protest filed by Aquilino Pimentel III against Juan Miguel Zubiri. In light of this development, the petitioner moved to suspend further proceedings. .

The COMELEC's Second Division denied the petitioner's motion in its Order of April 29, 2009, ruling that the COMELEC has plenary powers to find alternative methods to facilitate the resolution of the election protest; thus, it concluded that it would continue the proceedings after proper coordination with the SET. The petitioner moved to reconsider this Order, but the COMELEC's Second Division denied the motion in its Order of May 26, 2009. These inter-related Resolutions led to the COMELEC's continued action - specifically, the appreciation of ballots - on the provincial election contest at the SET offices.

Allegedly alarmed by information on COMELEC action on the provincial election contest within the SET premises without notice to him and without his participation, the petitioner's counsel wrote the SET Secretary, Atty. Irene Guevarra, a letter dated June 10, 2009 to confirm the veracity of the reported conduct of proceedings.[2] The SET Secretary responded on June 17, 2009 as follows:

x x x please be informed that the conduct of proceedings in COMELEC EPC No. 2007-44 (Pagdanganan vs. Mendoza) within the Tribunal Premises was authorized by then Acting Chairman of the Tribunal, Justice Antonio T. Carpio, upon formal request of the Office of Commissioner Lucenito N. Tagle.

Basis of such grant is Section 3, Comelec Resolution No. 2812 dated 17 October 1995, stating that "(t)he Tribunals, the Commission and the Courts shall coordinate and make arrangement with each other so as not to delay or interrupt the revision of ballots being conducted. The synchronization of revision of ballots shall be such that the expeditious disposition of the respective protest case shall be the primary concern." While the said provision speaks only of revision, it has been the practice of the Tribunal to allow the conduct of other proceedings in local election protest cases within its premises as may be requested. [emphasis supplied][3]

THE PETITION

The SET Secretary's response triggered the filing of the present petition raising the following ISSUES -

- WHETHER OR NOT THE COMELEC VIOLATED DUE PROCESS BY CONDUCTING PROCEEDINGS WITHOUT GIVING DUE NOTICE TO THE PETITIONER.
- WHETHER OR NOT THE COMELEC GRAVELY ABUSED ITS DISCRETION TANTAMOUNT TO AN EXCESS OF JURISDICTION IN APPRECIATING BALLOTS WHICH ARE NOT IN ITS OFFICIAL CUSTODY AND ARE OUTSIDE ITS OWN PREMISES, AUTHORITY AND CONTROL.

The petitioner argues that the election protest involves his election as Governor; thus, its subject matter involves him and the people of the Province of Bulacan who elected him. On this basis, he claims entitlement to notice and participation in all matters that involve or are related to the election protest. He further asserts that he had the legitimate expectation that no further proceedings would be held or conducted in the case after its submission for decision.

Citing the commentaries of Father Joaquin Bernas,[4] the petitioner argues that the proceedings before the COMELEC in election protests are judicial in nature and character. Thus, the strictures of judicial due process - specifically, (a) opportunity to be heard and (b) that judgment be rendered only after lawful hearing - apply. Notices in judicial dispute, he claims, are not really just a matter of courtesy; they are elementary fundamental element of due process, they are part and parcel of a right of a party to be heard. He further cites Justice Isagani A. Cruz,[5] who wrote:

x x x Every litigant is entitled to his day in court. He has a right to be notified of every incident of the proceeding and to be present at every stage thereof so that he may be heard by himself and counsel for the protection of his interest.

The petitioner claims that without notice to him of the proceedings, the due process element of the right to have judgment only after lawful hearing is absent. There is no way, he claims, that a judicial proceeding held without notice to the parties could be described as a lawful hearing, especially a proceeding which has as its subject matter the sovereign will of an entire province.

He was therefore denied his day in court, he claims, when the COMELEC conducted the examination and appreciation of ballots. The proceedings should be stopped and declared null and void; its future results, too, should be nullified, as nothing derived from the anomalous and unconstitutional clandestine and unilateral

proceedings should ever be part of any decision that the COMELEC may subsequently render. The poisonous fruits (derived from the proceedings) should have no part and should not be admitted for any purpose and/or in any judicial proceeding.

Other than his due process concern, the petitioner takes issue with the COMELEC's appreciation of ballots even when the ballots and other election materials were no longer in its official custody and were outside its premises, authority and control. He asserts that an important element of due process is that the judicial body should have jurisdiction over the property that is the subject matter of the proceedings. In this case, the COMELEC has transferred possession, custody and jurisdiction over the ballots to the SET, a tribunal separate and independent from the COMELEC and over which the COMELEC exercises no authority or jurisdiction. For the COMELEC to still conduct proceedings on property, materials and evidence no longer in its custody violates the principle of separation of powers.

The petitioner also points out that the COMELEC's unilateral appreciation of the ballots in the SET premises deviates from the Commission's usual and time honored practice and procedure of conducting proceedings within its premises and while it has custody over the ballots. There is no precedent, according to the petitioner, for this deviation, nor is there any compelling reason to make the present case an exception. Citing *Cabagnot v. Commission on Elections* (G.R. No. 124383, August 9, 1996) which involves a transfer or change of venue of the revision of ballots, the petitioner alleges that this Court has been very emphatic in denouncing the COMELEC for its departure from its own rules and usual practice; while *Cabagnot* involves the issue of change of venue, the petitioner finds parallel applicability in the present case which also involves a deviation from COMELEC rules and usual practice. The petitioner adds that the act of the Second Division is effectively an arrogation of the authority to promulgate rules of procedure - a power that solely belongs to the COMELEC en banc.

After a preliminary finding of a genuine due process issue, we issued a Status Quo Order on July 14, 2009.

THE RESPONDENTS' COMMENTS

In his Comment to the Petition with Extremely Urgent Motion to Lift/Dissolve Status Quo Ante Order, the private respondent asserts that the petition contains deliberate falsehoods and misleading allegations that led the Court to grant the injunctive relief the petitioner had asked. He asserts that the "proceeding" the petitioner stated in his petition was actually the COMELEC's decision-making process, i.e., the appreciation of ballots, which is a procedure internal to the Members of the Second Division of the COMELEC and their staff members; no revision of ballots took place as revision had long been finished. What was therefore undertaken within the SET's premises was unilateral COMELEC action that is exclusive to the COMELEC and an internal matter that is confidential in nature. In this light, no due process violation ever arose.

The private respondent also asserts that the petitioner cannot claim that he was not notified of and denied participation in the revision proceedings, as the petitioner himself is fully aware that the revision of the ballots was completed as early as July 28, 2008 and the petitioner was present and actively participated in the entire proceedings, all the way to the filing of the required memoranda. Thus, the petitioner's right to due process was duly satisfied.

The private respondent implores us to commence contempt proceedings against the petitioner who, the respondent claims, has not been forthright in his submissions and was not guided by the highest standards of truthfulness, fair play and nobility in his conduct as a party and in his relations with the opposing party, the other counsel and the Court.

Lastly, the private respondent posits that the present petition was filed out of time - i.e., beyond the reglementary

period provided under Rule 64. All these reasons, the petitioner argues, constitute sufficient basis for the lifting of the status quo order and the dismissal of the petition.

Public respondent COMELEC, for its part, claims that the petition is without basis in fact and in law and ought to be dismissed outright. Given the possibility of simultaneous election contests involving national and local officials, it has institutionalized an order of preference in the custody and revision of ballots in contested ballot boxes. The established order of preference is not without exception, as the expeditious disposition of protest cases is a primary concern. Additionally, the order of preference does not prevent the COMELEC from proceeding with pending protest cases, particularly those already submitted for decision. It claims that it has wide latitude to employ means to effectively perform its duty in safeguarding the sanctity of the elections and the integrity of the ballot.

The COMELEC further argues that in the absence of a specific rule on whether it can conduct appreciation of ballots outside its premises or official custody, the issue boils down to one of discretion - the authority of the COMELEC to control as it deems fit the processes or incidents of a pending election protest. Under Section 4 of the COMELEC Rules of Procedure, the COMELEC may use all auxiliary writs, processes and other means to carry into effect its powers or jurisdiction; if the procedure to be followed in the exercise of such power or jurisdiction is not specifically provided for by law or the Rules of Procedure, any suitable process or proceeding not prohibited by law or by its rules may be adopted.

The COMELEC lastly submits that while due process requires giving the parties an opportunity to intervene in all stages of the proceedings, the COMELEC in the present case is not actually conducting further proceedings requiring notice to the parties; there is no revision or correction of the ballots, as the election protest had already been submitted for resolution. When the COMELEC coordinated with the SET, it was simply for purposes of resolving the submitted provincial election contest before it; the parties do not take part in this aspect of the case which necessarily requires utmost secrecy. On the whole, the petitioner was afforded every opportunity to present his case. To now hold the election protest hostage until the conclusion of the protest pending before the SET defeats the COMELEC's mandate of ensuring free, orderly and honest election.

THE COURT'S RULING

We review the present petition on the basis of the combined application of Rules 64 and 65 of the Rules of Court. While COMELEC jurisdiction over the Bulacan election contest is not disputed, the legality of subsequent COMELEC action is assailed for having been undertaken with grave abuse of discretion amounting to lack or excess of jurisdiction. Thus, our standard of review is "grave abuse of discretion," a term that defies exact definition, but generally refers to "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. 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." [6] Mere abuse of discretion is not enough; the abuse must be grave to merit our positive action. [7]

After due consideration, we find the petition devoid of merit.

The petition is anchored on the alleged conduct of proceedings in the election protest - following the completed revision of ballots - at the SET premises without notice to and without the participation of the petitioner. Significantly, "the conduct of proceedings" is confirmed by the SET Secretary in the letter we quoted above. [8] As the issues raised show - the petitioner's focus is not really on the COMELEC Orders denying the suspension of proceedings when the ballot boxes and other election materials pertinent to the election contest were transferred to the SET; the focus is on what the COMELEC did after to the issuance of the Resolutions. We read the petition in

this context as these COMELEC Orders are now unassailable as the period to challenge them has long passed.[9]

The substantive issue we are primarily called upon to resolve is whether there were proceedings within the SET premises, entitling the petitioner to notice and participation, which were denied to him; in other words, the issue is whether the petitioner's right to due process has been violated. A finding of due process violation, because of the inherent arbitrariness it carries, necessarily amounts to grave abuse of discretion.

As a preliminary matter, we note that the petitioner has claimed that COMELEC exercises judicial power in its action over provincial election contests and has argued its due process position from this view. We take this opportunity to clarify that judicial power in our country is "vested in one Supreme Court and in such lower courts as may be established by law." [10] This exclusive grant of authority to the Judiciary is reinforced under the second paragraph of Section 1, Article VIII of the Constitution which further states that "Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable.. .," thus constitutionally locating the situs of the exercise of judicial power in the courts.

In contrast with the above definitions, Section 2, Article IX(C) of the Constitution lists the COMELEC's powers and functions, among others, as follows:

(1) Enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall.

(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 by trial courts of limited jurisdiction.

Decisions, final orders, or rulings of the Commission on election contests involving elective municipal and barangay officials shall be final, executory, and not appealable.

(3) Decide, except those involving the right to vote, all questions affecting elections, including determination of the number and location of polling places, appointment of election officials and inspectors, and registration of voters.

Under these terms, the COMELEC under our governmental structure is a constitutional administrative agency and its powers are essentially executive in nature (i.e., to enforce and administer election laws), [11] quasi-judicial (to exercise original jurisdiction over election contests of regional, provincial and city officials and appellate jurisdiction over election contests of other lower ranking officials), and quasi-legislative (rulemaking on all questions affecting elections and the promulgation of its rules of procedure).

Historically, the COMELEC has always been an administrative agency whose powers have been increased from the 1935 Constitution to the present one, to reflect the country's awareness of the need to provide greater regulation and protection to our electoral processes to ensure their integrity. In the 1935 Constitution, the powers and functions of the COMELEC were defined as follows:

SECTION 2. The Commission on Elections shall have exclusive charge of the enforcement and administration of all laws relative to the conduct of elections and shall exercise all other functions which may be conferred upon it by law. It shall decide, save those involving the right to vote, all administrative questions affecting elections, including the determination of the number and location of polling places, and the appointment of election inspectors and of other election officials. All law enforcement agencies and instrumentalities of the Government, when so required by the Commission, shall act as its deputies for the purpose of insuring free, orderly, and honest election. The decisions, orders, and rulings of the Commission shall be subject to review by the Supreme Court. [emphasis supplied]

These evolved into the following powers and functions under the 1973 Constitution:

- (1) Enforce and administer all laws relative to the conduct of elections.
- (2) Be the sole judge of all contests relating to the elections, returns, and qualifications of all members of the National Assembly and elective provincial and city officials.
- (3) Decide, save those involving the right to vote, administrative questions affecting elections, including the determination of the number and location of polling places, the appointment of election officials and inspectors, and the registration of voters.

These powers have been enhanced in scope and details under the 1987 Constitution, but retained all the while the character of an administrative agency.

The COMELEC's adjudicative function is quasi-judicial since it is a constitutional body, other than a court, vested with authority to decide election contests, and in the course of the exercise of its jurisdiction, to hold hearings and exercise discretion of a judicial nature;^[12] it receives evidence, ascertain the facts from these submissions, determine the law and the legal rights of the parties, and on the basis of all these decides on the merits of the case and renders judgment.^[13] Despite the exercise of discretion that is essentially judicial in character, particularly with respect to election contests, COMELEC is not a tribunal within the judicial branch of government and is not a court exercising judicial power in the constitutional sense;^[14] hence, its adjudicative function, exercised as it is in the course of administration and enforcement, is quasi-judicial.

As will be seen on close examination, the 1973 Constitution used the unique wording that the COMELEC shall "be the sole judge of all contests," thus giving the appearance that judicial power had been conferred. This phraseology, however, was changed in the 1987 Constitution to give the COMELEC "exclusive jurisdiction over all contests," thus removing any vestige of exercising its adjudicatory power as a court and correctly aligning it with what it is - a quasi-judicial body.^[15] Consistent with the characterization of its adjudicatory power as quasi-judicial, the judicial review of COMELEC en banc decisions (together with the review of Civil Service Commission decisions) is via the prerogative writ of certiorari, not through an appeal, as the traditional mode of review of quasi-judicial decisions of administrative tribunals in the exercise the Court's supervisory authority. This means that the Court will not supplant the decision of the COMELEC as a quasi-judicial body except where a grave abuse of discretion or any other jurisdictional error exists.

The appropriate due process standards that apply to the COMELEC, as an administrative or quasi-judicial tribunal, are those outlined in the seminal case of *Ang Tibay v. Court of Industrial Relations*,^[16] quoted below:

- (1) The first of these rights is the right to a hearing, which includes the right of the party interested or affected to present his own case and submit evidence in support thereof. xxx
- (2) Not only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts but the tribunal must consider the evidence presented.
- (3) While the duty to deliberate does not impose the obligation to decide right, it does imply a necessity which cannot be disregarded, namely, that of having something to support its decision. A decision with absolutely nothing to support it is a nullity, a place when directly attached.
- (4) Not only must there be some evidence to support a finding or conclusion, but the evidence must be "substantial." "Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."
- (5) The decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected.

(6) The Court of Industrial Relations or any of its judges, therefore, must act on its or his own independent consideration of the law and facts of the controversy, and not simply accept the views of a subordinate in arriving at a decision.

(7) The Court of Industrial Relations should, in all controversial questions, render its decision in such a manner that the parties to the proceeding can know the various issues involved, and the reasons for the decisions rendered. The performance of this duty is inseparable from the authority conferred upon it.

These are now commonly referred to as cardinal primary rights in administrative proceedings.

The first of the enumerated rights pertain to the substantive rights of a party at hearing stage of the proceedings. The essence of this aspect of due process, we have consistently held, is simply the opportunity to be heard, or as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling complained of.[17] A formal or trial-type hearing is not at all times and in all instances essential; in the case of COMELEC, Rule 17 of its Rules of Procedure defines the requirements for a hearing and these serve as the standards in the determination of the presence or denial of due process.

The second, third, fourth, fifth, and sixth aspects of the Ang Tibay requirements are reinforcements of the right to a hearing and are the inviolable rights applicable at the deliberative stage, as the decision-maker decides on the evidence presented during the hearing. These standards set forth the guiding considerations in deliberating on the case and are the material and substantial components of decision-making. Briefly, the tribunal must consider the totality of the evidence presented which must all be found in the records of the case (i.e., those presented or submitted by the parties); the conclusion, reached by the decision-maker himself and not by a subordinate, must be based on substantial evidence.[18]

Finally, the last requirement, relating to the form and substance of the decision of a quasi-judicial body, further complements the hearing and decision-making due process rights and is similar in substance to the constitutional requirement that a decision of a court must state distinctly the facts and the law upon which it is based.[19] As a component of the rule of fairness that underlies due process, this is the "duty to give reason" to enable the affected person to understand how the rule of fairness has been administered in his case, to expose the reason to public scrutiny and criticism, and to ensure that the decision will be thought through by the decision-maker.

In the present case, the petitioner invokes both the due process component rights at the hearing and deliberative stages and alleges that these component rights have all been violated. We discuss all these allegations below.

The Right to Notice and to be Heard.

a. At the Hearing and Revision of Ballots.

Based on the pleadings filed, we see no factual and legal basis for the petitioner to complain of denial of his hearing stage rights. In the first place, he does not dispute that he fully participated in the proceedings of the election protest until the case was deemed submitted for resolution; he had representation at the revision of the ballots, duly presented his evidence, and summed up his case through a memorandum. These various phases of the proceedings constitute the hearing proper of the election contest and the COMELEC has more than satisfied the opportunity to be heard that the Ang Tibay hearing stage rights require. In these proceedings, the petitioner stood head-to-head with the respondent in an adversarial contest where both sides were given their respective rights to speak, make their presentations, and controvert each other's submission, subject only to established COMELEC rules of procedures. Under these undisputed facts, both parties had their day in court, so to speak, and neither one can complain of any denial of notice or of the right to be heard.

b. At the "Proceedings" at the SET.

A critical question to be answered in passing upon due process questions at this stage of the election contest is the nature of the so-called "proceedings" after the ballots and other materials pertinent to the provincial election contest were transferred to the SET.

In the petition, the petitioner alleged that there were "strange proceedings"[20] which were "unilateral, clandestine and surreptitious" within the premises of the SET, on "documents, ballots and election materials whose possession and custody have been transferred" to the SET, and the "petitioner was NEVER OFFICIALLY NOTIFIED of the strange on-goings" at the SET.[21] Attached to the petition was the letter of the Secretary of the SET confirming the "conduct of proceedings" in the provincial election contest, and citing as basis the authority of Acting SET Chairman, Justice Antonio T. Carpio, upon the formal request of the Office of Commissioner Lucenito N. Tagle, and citing Section 3, COMELEC Resolution No. 2812 dated 17 October 1995 on the coordination envisioned among the COMELEC, the SET and the courts "so as not to delay or interrupt the revision of ballots being conducted." While the SET letter made the reservation that "While the said provision speaks only of revision, it has been the practice of the Tribunal to allow the conduct of other proceedings in local election protest cases within its premises as may be requested," no mention whatsoever was made of the kind of proceedings taking place.

It was at this point that this Court intervened, in response to the petitioner's prayer for the issuance of temporary injunctive relief, through the issuance of a Status Quo Order with a non-extendible directive for the respondents to file their comments on the petition; for indeed, any further revision of ballots or other adversarial proceedings after the case has been submitted for resolution, would not only be strange and unusual but would indicate a gross violation of due process rights.

After consideration of the respondents' Comments and the petitioner's petition and Reply, we hold that the contested proceedings at the SET ("contested proceedings") are no longer part of the adversarial aspects of the election contest that would require notice of hearing and the participation of the parties. As the COMELEC stated in its Comment and without any contrary or disputing claim in the petitioner's Reply:[22]

"However, contrary to the claim of petitioner, public respondent in the appreciation of the contested ballots in EPC No. 2007-44 simultaneously with the SET in SET Case No. 001-07 is not conducting "further proceedings" requiring notice to the parties. There is no revision or correction of the ballots because EPC No. 2007-04 was already submitted for resolution. Public respondent, in coordinating with the SET, is simply resolving the submitted protest case before it. The parties necessarily take no part in said deliberation, which require utmost secrecy. Needless to state, the actual decision-making process is supposed to be conducted only by the designated members of the Second Division of the public respondent in strict confidentiality."

In other words, what took place at the SET were the internal deliberations of the COMELEC, as a quasi-judicial body, in the course of appreciating the evidence presented and deciding the provincial election contest on the merits. These deliberations are no different from judicial deliberations which are considered confidential and privileged.[23] We find it significant that the private respondent's Comment fully supported the COMELEC's position and disavowed any participation in the contested proceeding the petitioner complained about. The petitioner, on the other hand, has not shown that the private respondent was ever present in any proceeding at the SET relating to the provincial election contest.

To conclude, the rights to notice and to be heard are not material considerations in the COMELEC's handling of the Bulacan provincial election contest after the transfer of the ballot boxes to the SET; no proceedings at the instance of one party or of COMELEC has been conducted at the SET that would require notice and hearing because of the possibility of prejudice to the other party. The COMELEC is under no legal obligation to notify either party of the steps it is taking in the course of deliberating on the merits of the provincial election contest. In

the context of our standard of review for the petition, we see no grave abuse of discretion amounting to lack or excess of jurisdiction committed by the COMELEC in its deliberation on the Bulacan election contest and the appreciation of ballots this deliberation entailed.

Alleged Violations of Deliberation Stage Rights.

On the basis of the above conclusion, we see no point in discussing any alleged violation of the deliberative stage rights. First, no illegal proceeding ever took place that would bear the "poisonous fruits" that the petitioner fears. Secondly, in the absence of the results of the COMELEC deliberations through its decision on the election protest, no basis exists to apply the Ang Tibay deliberative stage rights; there is nothing for us to test under the standards of the due process deliberative stages rights before the COMELEC renders its decision. Expressed in terms of our standard of review, we have as yet no basis to determine the existence of any grave abuse of discretion.

Conduct of COMELEC Deliberations at the SET Premises

We turn to the issue of the propriety of the COMELEC's consideration of the provincial election contest (specifically its appreciation of the contested ballots) at the SET premises and while the same ballots are also under consideration by the SET for another election contest legitimately within the SET's own jurisdiction.

We state at the outset that the COMELEC did not lose jurisdiction over the provincial election contest, as the petitioner seems to imply, because of the transmittal of the provincial ballot boxes and other election materials to the SET. The Constitution conferred upon the COMELEC jurisdiction over election protests involving provincial officials. The COMELEC in this case has lawfully acquired jurisdiction over the subject matter, i.e., the provincial election contest, as well as over the parties. After its jurisdiction attached, this jurisdiction cannot be ousted by subsequent events such as the temporary transfer of evidence and material records of the proceedings to another tribunal exercising its own jurisdiction over another election contest pursuant to the Constitution. This is the rule of adherence of jurisdiction.[24]

Thus, the jurisdiction of the COMELEC over provincial election contest exists side by side with the jurisdiction of the Senate Electoral Tribunal, with each tribunal being supreme in their respective areas of concern (the Senate election contests for the SET, and the regional, provincial and city election contests for the COMELEC), and with neither one being higher than the other in terms of precedence so that the jurisdiction of one must yield to the other.

But while no precedence in jurisdiction exists, the COMELEC, vowing to the reality that only a single ballot exists in an election for national and local officials, saw it fit to lay down the rule on the "order of preference in the custody and revision of ballots and other documents contained in the ballot boxes." The order, in terms of the adjudicatory tribunal and as provided in COMELEC Resolution No. 2812, runs:

- Presidential Electoral Tribunal;
- Senate Electoral Tribunal;
- House of Representatives Electoral Tribunal;
- Commission on Elections; and
- Regional Trial Courts.

This order of preference dictated that the ballot boxes and other election materials in Bulacan's provincial election

contest, had to be transferred to the SET when the latter needed these materials for its revision of ballots. The transfer to the SET, however, did not mean that the Bulacan provincial election contest - at that time already submitted for decision - had to be suspended as the COMELEC held in its Orders of 29 April 2009 and 26 May 2009 in EPC No. 2007-44.[25] This is particularly true in Bulacan's case as no revision had to be undertaken, the revision having been already terminated.

With the COMELEC retaining its jurisdiction over the Bulacan provincial election contest, the legal effect of the physical transfer of the ballots and other election materials to the SET for purposes of its own revision becomes a non-issue, given the arrangement between the COMELEC and the SET, pursuant to COMELEC Resolution No. 2812, to "coordinate and make arrangements with each other so as not to delay or interrupt the revision of ballots being conducted," all for the purpose of the expeditious disposition of their respective protest cases. The SET itself honored this arrangement as shown by the letter of the SET Secretary that the COMELEC could "conduct proceedings" within the Tribunal premises as authorized by the Acting Chairman of the Tribunal, Justice Antonio T. Carpio.[26] This arrangement recognized the COMELEC's effective authority over the Bulacan ballots and other election materials, although these were temporarily located at the SET premises. This arrangement, too, together with the side by side and non-conflicting existence of the COMELEC and SET jurisdictions, negate the validity of the petitioner's argument that the COMELEC transgressed the rule on separation of powers when it acted on the Bulacan provincial election contest while the ballot boxes were at the SET premises. Rather than negate, this arrangement reinforced the separate but co-existing nature of these tribunals' respective jurisdictions.

As the petitioner argues and the COMELEC candidly admits, "there is no specific rule which allows the COMELEC to conduct an appreciation of ballots outside its premises and of those which are outside its own custody." [27] But while this is true, there is likewise nothing to prohibit the COMELEC from undertaking the appreciation of ballot side by side with the SET's own revision of ballots for the senatorial votes, in light especially of the COMELEC's general authority to adopt means to effect its powers and jurisdiction under its Rules of Procedure. Section 4 of these Rules states:

Sec. 4. Means to Effect Jurisdiction. - All auxiliary writs, processes and other means necessary to carry into effect its powers or jurisdiction may be employed by the Commission; and if the procedure to be followed in the exercise of such power or jurisdiction is not specifically provided for by law or these rules, any suitable process or proceeding may be adopted.

This rule is by no means unusual and unique to the COMELEC as the courts have the benefit of this same type of rule under Section 6, Rule 136 of the Rules of Court. The courts' own rule provides:

Means to Carry Jurisdiction into Effect. When by law jurisdiction is conferred on a court or judicial officer, all auxiliary writs, writs, processes and other means necessary to carry it into effect may be employed by such court or officer; and if the procedure to be followed in the exercise of such jurisdiction is not specifically pointed out by law or by these rules, any suitable process or mode of proceeding may be adopted which appears conformable to the spirit of said law or rules.

Incidentally, the COMELEC authority to promulgate the above rule enjoys constitutional moorings; in the grant to the COMELEC of its jurisdiction, the Constitution provided it with the accompanying authority to promulgate its own rules concerning pleadings and practice before it or before any of its offices, provided that these rules shall not diminish, increase or modify substantive rights.[28] The Constitution additionally requires that the rules of procedure that the COMELEC will promulgate must expedite the disposition of election cases, including pre-proclamation controversies.[29] This constitutional standard is authority, no less, that the COMELEC can cite in defending its action. For ultimately, the appreciation of the Bulacan ballots that the COMELEC undertook side by side with the SET's own revision of ballots, constitutes an exercise of discretion made under the authority of

the above-cited COMELEC rule of procedure.

On the basis of the standards set by Section 4 of the COMELEC Rules of Procedure, and of the Constitution itself in the handling of election cases, we rule that the COMELEC action is a valid exercise of discretion as it is a suitable and reasonable process within the exercise of its jurisdiction over provincial election contests, aimed at expediting the disposition of this case, and with no adverse, prejudicial or discriminatory effects on the parties to the contest that would render the rule unreasonable.

Since the COMELEC action, taken by its Second Division, is authorized under the COMELEC Rules of Procedure, the Second Division cannot in any sense be said to be intruding into the COMELEC en banc rule-making prerogative when the Second Division chose to undertake ballot appreciation within the SET premises side by side with the SET revision of ballots. To be exact, the Second Division never laid down any new rule; it merely acted pursuant to a rule that the COMELEC en banc itself had previously enacted.

In light of these conclusions, we need not discuss the other issues raised.

WHEREFORE, premises considered, we DISMISS the petition for certiorari for lack of merit. We accordingly LIFT the STATUS QUO ORDER we issued, effective immediately.

SO ORDERED.

Quisumbing,[**] Acting C.J., Carpio, Corona, Carpio Morales, Chico-Nazario, Nachura, Leonardo-De Castro, Peralta, Bersamin, and Abad, JJ., concur.

Puno, C.J., Velasco, Jr., and Del Castillo, JJ., on official leave.

[**] Acting Chief Justice from October 12 to 16, 2009 per Special Order No. 721 dated October 5, 2009.

[1] Filed under Rule 64, in relation to Rule 65, of the Rules of Court.

[2] See Petition, p. 12.

[3] Rollo, p. 45.

[4] J. Bernas, Constitutional Structure and Powers of Government, 2005, pp. 718-719.

[5] I. Cruz, Constitutional Law, 2003, p. 14.

[6] Quintos v. Commission on Elections, G.R. No. 149800, November 21, 2002, 392 SCRA 489.

[7] Suliguin v. Commission on Elections, G.R. No. 166046, March 23, 2006, 485 SCRA 219.

[8] Supra note 3.

[9] See Section 3, Rule 64 of the Rules of Court. The petitioner received the COMELEC Resolution denying his motion for reconsideration on June 1, 2009. Thirty (30) days later or on July 1, 2009, he filed a motion for extension of time to file the petition. The petition cannot but be late because of the remainder rule under Section 3, Rule 64.

[10] Section 1 (first paragraph), Article VIII, 1987 Constitution.

[11] Ututalum v. Commission on Elections, G.R. No. L-25349, December 3, 1965, 15 SCRA 465.

[12] See: Presidential Anti-Dollar Salting Task Force v. Court of Appeals, G.R. No. 83578, March 16, 1989, 171 SCRA 348; Midland Insurance Corporation v. IAC, No. L-71905, August 13, 1986, 143 SCRA 458.

[13] See: *Cariño v. Commission on Human Rights*, G.R. No. 96681, December 2, 1991, 204 SCRA 483, on the activities encompassed by the exercise of quasi-judicial power.

[14] See: *Cipriano v. COMELEC*, G.R. No. 158830, August 10, 2004, 436 SCRA 45, citing *Sandoval v. COMELEC*, 323 SCRA 403 [2000].

[15] The Senate and House of Representatives Electoral Tribunals, as provided in the Constitution are still the "sole judge" of their respective election contests, but like the COMELEC, they are quasi-judicial bodies and do not exercise judicial power under the Constitution. For its part, the Presidential Electoral Tribunal, wholly composed of the Justices of the Supreme Court, is not a quasi-judicial body because adjudicative power is given to the Supreme Court, as a court sitting en banc.

[16] 69 Phil. 635 (1940).

[17] *Bautista v. Comelec*, G.R. Nos. 154796-97, October 23, 2003, 414 SCRA 299.

[18] *Supra* note 17.

[19] CONSTITUTION, Article VIII, Section 14; See *Solid Homes, Inc. v. Laserna*, G.R. No. 166051, April 8, 2008, 550 SCRA 613.

[20] *Rollo*, p. 12.

[21] *Id.*, p. 13.

[22] COMELEC Comment; *rollo*, pp. 72-S and 72-T.

[23] See *Chavez v. Public Estates Authority*, G.R. No. 133250, July 9, 2002, 384 SCRA 152.

[24] See: *Ramos v. Central Bank of the Philippines*, No. L-29352, October 4, 1971, 41 SCRA 565; *Bengzon v. Inciong*, Nos. L-48706-07, June 29, 1979, 91 SCRA 248; *Baltazar v. CA*, 104 SCRA 619 [1981]; *Ramos v. Our Lady of Peace School*, No. L-55950, December 26, 1984, 133 SCRA 741; *Lee v. Presiding Judge, MTC - Legazpi City*, No. L-68789, November 10, 1986, 145 SCRA 408.

[25] *Rollo*, pp. 29-34.

[26] *Supra* note 3.

[27] *Petition*, pp. 13-14; *rollo*, pp. 18-19; COMELEC Reply; *rollo*, pp. 72-R - 72-S.

[28] CONSTITUTION, Article IX-A, Section 6.

[29] CONSTITUTION, Article IX-C, Section 3.

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