

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

G.R. No. 191084. March 25, 2010

Ponente: PEREZ, J.

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PEREZ, J.:

When the language of the law is clear and explicit, there is no room for interpretation, only application. And if statutory construction be necessary, the statute should be interpreted to assure its being in consonance with, rather than repugnant to, any constitutional command or prescription.[1] It is upon these basic principles that the petition must be granted.

The factual and procedural antecedents are not in dispute.

Petitioner Joselito R. Mendoza was proclaimed the winner of the 2007 gubernatorial election for the province of Bulacan, besting respondent Roberto M. Pagdanganan by a margin of 15,732 votes. On 1 June 2007, respondent filed the Election Protest which, anchored on the massive electoral fraud allegedly perpetrated by petitioner, was raffled to the Second Division of the Commission on Elections (COMELEC) as EPC No. 2007-44. With petitioner's filing of his Answer with Counter-Protest on 18 June 2007, the COMELEC proceeded to conduct the preliminary conference and to order a revision of the ballots from the contested precincts indicated in said pleadings.

Upon the evidence adduced and the memoranda subsequently filed by the parties, the COMELEC Second Division went on to render the 1 December 2009 Resolution, which annulled and set aside petitioner's proclamation as governor of Bulacan and proclaimed respondent duly elected to said position by a winning margin of 4,321 votes. Coupled with a directive to the Department of Interior and Local Government to implement the same, the resolution ordered petitioner to immediately vacate said office, to cease and desist from discharging the functions pertaining thereto and to cause a peaceful turn-over thereof to respondent.

Dissatisfied, petitioner filed a Motion for Reconsideration of the foregoing resolution with the COMELEC En Banc. Against respondent's Motion for Execution of Judgment Pending Motion for Reconsideration, petitioner also filed an Opposition to the Motion for Execution before the COMELEC Second Division. On 8 February 2010, however, the COMELEC En Banc issued a Resolution, effectively disposing of the foregoing motions/incidents in this wise:

WHEREFORE, in view of the foregoing, the Commission En Banc DENIES the Motion for Reconsideration for lack of merit. The Resolution of the Commission (Second Division) promulgated on December 1, 2009 ANNULING the proclamation of JOSELITO R. MENDOZA as the duly elected Governor of Bulacan and DECLARING ROBERTO M. PAGDANGANAN as duly elected to said Office is AFFIRMED with modification.

Considering the proximity of the end of the term of office involved, this Resolution is declared immediately executory.

ACCORDINGLY, the Commission En Banc hereby ISSUES a WRIT OF EXECUTION directing the Provincial Election Supervisor of Bulacan, in coordination with the DILG Provincial Operations Officer to implement the Resolution of the Commission (Second Division) dated December 1, 2009 and this Resolution of the Commission En Banc by ordering JOSELITO R. MENDOZA to CEASE and DESIST from performing the functions of Governor of the Province of Bulacan and to VACATE said office in favor of ROBERTO M. PAGDANGANAN.

Let a copy of this Resolution be furnished the Secretary of the Department of Interior and Local Government, the Provincial Election Supervisor of Bulacan, and the DILG Provincial Operations Officer of the Province of Bulacan. (Underscoring supplied)

On 11 February 2010, petitioner filed before the COMELEC an Urgent Motion to Recall the Resolution Promulgated on February 8, 2010 on the following grounds: (a) lack of concurrence of the majority of the members of the Commission pursuant to Section 5, Rule 3 of the COMELEC Rules of Procedure; (b) lack of re-hearing pursuant to Section 6, Rule 18 of the Rules; and (c) lack of notice for the promulgation of the resolution pursuant to Section 5, Rule 18 of said Rules. Invoking Section 13, Rule 18 of the same Rules, petitioner additionally argued that the resolution pertained to an ordinary action and, as such, can only become final and executory after 30 days from its promulgation.

On 12 February 2010, petitioner filed the instant Petition for Certiorari with an Urgent Prayer for the Issuance of a Temporary Restraining Order and/or a Status Quo Order and Writ of Preliminary Injunction. Directed against the 8 February 2010 Resolution of the COMELEC En Banc, the petition is noticeably anchored on the same grounds raised in petitioner's urgent motion to recall the same resolution before the COMELEC. In addition, the petitioner disputes the appreciation and result of the revision of the contested ballots.

In the meantime, it appears that the COMELEC En Banc issued a 10 February 2010 Order, scheduling the case for re-hearing on 15 February 2010, on the ground that "there was no majority vote of the members obtained in the Resolution of the Commission En Banc promulgated on February 8, 2010." At said scheduled re-hearing, it further appears that the parties agreed to submit the matter for resolution by the COMELEC En Banc upon submission of their respective memoranda, without further argument. As it turned out, the deliberations which ensued again failed to muster the required majority vote since, with three (3) Commissioners not taking part in the voting, and only one dissent therefrom, the assailed 1 December 2009 Resolution of the COMELEC Second Division only garnered three concurrences.

In their respective Comments thereto, both respondent and the Office of the Solicitor General argue that, in addition to its premature filing, the petition at bench violated the rule against forum shopping. Claiming that he received the 10 February 2010 Order of the COMELEC En Banc late in the morning of 12 February 2010 or when the filing of the petition was already underway, petitioner argued that: (a) he apprised the Court of the pendency of his Urgent Motion to Recall the Resolution Promulgated on 8 February 2010; and, (b) that the writ of execution ensconced in said resolution compelled him to resort to the petition for certiorari before us.

On 4 March 2010, the COMELEC En Banc issued an Order for the issuance of a Writ of Execution directing the implementation of the 1 December 2009 Resolution of the COMELEC Second Division. While the COMELEC Electoral Contests Adjudication Department (ECAD) issued the corresponding Writ of Execution on 5 March 2010, the record shows that COMELEC En Banc issued an Order on the same date, directing the ECAD to deliver said 4 March 2010 Order and 5 March 2010 Writ of Execution by personal service to the parties. Aggrieved, petitioner filed the following motions with the COMELEC En Banc on 5 March 2010, viz.: (a) Urgent Motion to Declare Null and Void and Recall Latest En Banc Resolution Dated March 4, 2010; and, (b) Urgent Motion to Set Aside 4 March 2010 En Banc Resolution Granting Protestant's Motion for Execution Pending Motion for

Reconsideration.

On 8 March 2010, petitioner filed before us a Supplement to the Petition with a Most Urgent Reiterating Motion for the Issuance of a Temporary Restraining Order or a Status Quo Order. Contending that respondent's protest should have been dismissed when no majority vote was obtained after the re-hearing in the case, petitioner argues that: (a) the 4 March 2010 Order and 5 March 2010 Writ of Execution are null and void; (b) no valid decision can be rendered by the COMELEC En Banc without the appreciation of the original ballots; (c) the COMELEC ignored the Court's ruling in the recent case of *Corral v. Commission on Elections*;^[2] and (d) the foregoing circumstances are indicative of the irregularities which attended the adjudication of the case before the Division and En Banc levels of the COMELEC.

Despite receipt of respondent's Most Respectful Urgent Manifestation which once again called attention to petitioner's supposed forum shopping, the Court issued a Resolution dated 9 March 2010 granting the Status Quo Ante Order sought in the petition. With respondent's filing of a Manifestation and Comment to said supplemental pleading on 10 March 2010, petitioner filed a Manifestation with Motion to Appreciate Ballots Invalidated as Written by One Person and Marked Ballot on 12 March 2010.

The submissions, as measured by the election rules, dictate that we grant the petition, set aside and nullify the assailed resolutions and orders, and order the dismissal of respondent's election protest.

The Preliminaries

More than the justifications petitioner proffers for the filing of the petition at bench, the public interest involved in the case militates against the dismissal of the pleading on technical grounds like forum shopping. On the other hand, to rule that petitioner should have filed a new petition to challenge the 4 March 2010 Order of the COMELEC En Banc is to disregard the liberality traditionally accorded amended and supplemental pleadings and the very purpose for which supplemental pleadings are allowed under Section 6, Rule 10 of the 1997 Rules of Civil Procedure.^[3] More importantly, such a course of action would clearly be violative of the injunction against multiplicity of suits enunciated in a long catena of decisions handed down by this Court.

The Main Matter

Acting on petitioner's motion for reconsideration of the 1 December 2009 Resolution issued by the COMELEC Second Division, the COMELEC En Banc, as stated, initially issued the Resolution dated 8 February 2010, denying the motion for lack of merit and declaring the same resolution immediately executory. However, even before petitioner's filing of his Urgent Motion to Recall the Resolution Promulgated on 8 February 2010 and the instant Petition for Certiorari with an Urgent Prayer for the Issuance of a Temporary Restraining Order and/or a Status Quo Order and Writ of Preliminary Injunction, the record shows that the COMELEC En Banc issued the 10 February 2010 Resolution, ordering the re-hearing of the case on the ground that "there was no majority vote of the members obtained in the Resolution of the Commission En Banc promulgated on February 8, 2010." Having conceded one of the grounds subsequently raised in petitioner's Urgent Motion to Recall the Resolution Promulgated on February 8, 2010, the COMELEC En Banc significantly failed to obtain the votes required under Section 5(a), Rule 3 of its own Rules of Procedure^[4] for a second time.

The failure of the COMELEC En Banc to muster the required majority vote even after the 15 February 2010 re-hearing should have caused the dismissal of respondent's Election Protest. Promulgated on 15 February 1993 pursuant to Section 6, Article IX-A and Section 3, Article IX-C of the Constitution, the COMELEC Rules of Procedure is clear on this matter. Without any trace of ambiguity, Section 6, Rule 18 of said Rule categorically provides as follows:

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.

The propriety of applying the foregoing provision according to its literal tenor cannot be gainsaid. As one pertaining to the election of the provincial governor of Bulacan, respondent's Election Protest was originally commenced in the COMELEC, pursuant to its exclusive original jurisdiction over the case. Although initially raffled to the COMELEC Second Division, the elevation of said election protest on motion for reconsideration before the Commission En Banc cannot, by any stretch of the imagination, be considered an appeal. Tersely put, there is no appeal within the COMELEC itself. As aptly observed in the lone dissent penned by COMELEC Commissioner Rene V. Sarmiento, respondent's Election Protest was filed with the Commission "at the first instance" and should be, accordingly, considered an action or proceeding "originally commenced in the Commission."

The dissent reads Section 6 of COMELEC Rule 18 to mean exactly the opposite of what it expressly states. Thus was made the conclusion to the effect that since no decision was reached by the COMELEC En Banc, then the decision of the Second Division should stand, which is squarely in the face of the Rule that when the Commission En Banc is equally divided in opinion, or the necessary majority cannot be had, the case shall be re-heard, and if on re-hearing, no decision is reached, the action or proceeding shall be dismissed if originally commenced in the Commission. The reliance is on Section 3, Article IX(C) of the Constitution which provides:

Section 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.

The dissent reasons that it would be absurd that for a lack of the necessary majority in the motion for reconsideration before the COMELEC En Banc, the original protest action should be dismissed as this would render nugatory the constitutional mandate to authorize and empower a division of the COMELEC to decide election cases.

We cannot, in this case, get out of the square cover of Section 6, Rule 18 of the COMELEC Rules. The provision is not violative of the Constitution.

The Rule, in fact, was promulgated obviously pursuant to the Constitutional mandate in the first sentence of Section 3 of Article IX(C). Clearly too, the Rule was issued "in order to expedite disposition of election cases" such that even the absence of a majority in a Commission En Banc opinion on a case under reconsideration does not result in a non-decision. Either the judgment or order appealed from "shall stand affirmed" or the action originally commenced in the Commission "shall be dismissed."

It is easily evident in the second sentence of Section 3 of Article IX(C) that all election cases before the COMELEC are passed upon in one integrated procedure that consists of a hearing and a decision "in division" and when necessitated by a motion for reconsideration, a decision "by the Commission En Banc."

What is included in the phrase "all such election cases" may be seen in Section 2(2) of Article IX(C) of the Constitution which states:

Section 2. The Commission on Elections shall exercise the following powers and functions:

XXXX

(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 of officials decided by trial courts of general jurisdiction, or involving elective barangay officials decided by trial courts of limited jurisdiction.

Section 2(2) read in relation to Section 3 shows that however the jurisdiction of the COMELEC is involved, either in the exercise of "exclusive original jurisdiction" or an "appellate jurisdiction," the COMELEC will act on the case in one whole and single process: to repeat, in division, and if impelled by a motion for reconsideration, en banc.

There is a difference in the result of the exercise of jurisdiction by the COMELEC over election contests. The difference inheres in the kind of jurisdiction invoked, which in turn, is determined by the case brought before the COMELEC. When a decision of a trial court is brought before the COMELEC for it to exercise appellate jurisdiction, the division decides the appeal but, if there is a motion for reconsideration, the appeal proceeds to the banc where a majority is needed for a decision. If the process ends without the required majority at the banc, the appealed decision stands affirmed. Upon the other hand, and this is what happened in the instant case, if what is brought before the COMELEC is an original protest invoking the original jurisdiction of the Commission, the protest, as one whole process, is first decided by the division, which process is continued in the banc if there is a motion for reconsideration of the division ruling. If no majority decision is reached in the banc, the protest, which is an original action, shall be dismissed. There is no first instance decision that can be deemed affirmed.

It is easy to understand the reason for the difference in the result of the two protests, one as original action and the other as an appeal, if and when the protest process reaches the COMELEC En Banc. In a protest originally brought before the COMELEC, no completed process comes to the banc. It is the banc which will complete the process. If, at that completion, no conclusive result in the form of a majority vote is reached, the COMELEC has no other choice except to dismiss the protest. In a protest placed before the Commission as an appeal, there has been a completed proceeding that has resulted in a decision. So that when the COMELEC, as an appellate body, and after the appellate process is completed, reaches an inconclusive result, the appeal is in effect dismissed and resultingly, the decision appealed from is affirmed.

To repeat, Rule 18, Section 6 of the COMELEC Rules of Procedure follows, is in conformity with, and is in implementation of Section 3 of Article IX(C) of the Constitution.

Indeed, the grave abuse of discretion of the COMELEC is patent in the fact that despite the existence in its books of the clearly worded Section 6 of Rule 18, which incidentally has been acknowledged by this Court in the recent case of *Marcoleta v. COMELEC*,^[5] it completely ignored and disregarded its very own decree and proceeded with the questioned Resolution of 8 February 2010 and Order of 4 March 2010, in all, annulling the proclamation of petitioner Joselito R. Mendoza as the duly elected governor of Bulacan, declaring respondent Roberto M. Pagdanganan as the duly elected governor, and ordering petitioner Joselito R. Mendoza to cease and desist from performing the functions of the Governor of Bulacan and to vacate said office in favor of respondent Roberto M. Pagdanganan.

The grave abuse of discretion of the COMELEC is underscored by the fact that the protest that petitioner Pagdanganan filed on 1 June 2007 overstayed with the COMELEC until the present election year when the end of the term of the contested office is at hand and there was hardly enough time for the re-hearing that was conducted only on 15 February 2010. As the hearing time at the division had run out, and the re-hearing time at the banc was fast running out, the unwanted result came about: incomplete appreciation of ballots; invalidation of ballots on

general and unspecific grounds; un rebutted presumption of validity of ballots.

WHEREFORE, the petition is GRANTED. The questioned Resolution of the COMELEC promulgated on 8 February 2010 in EPC No. 2007-44 entitled "Roberto M. Pagdanganan v. Joselito R. Mendoza," the Order issued on 4 March 2010, and the consequent Writ of Execution dated 5 March 2010 are NULLIFIED and SET ASIDE. The election protest of respondent Roberto M. Pagdanganan is hereby DISMISSED.

SO ORDERED.

Peralta, Bersamin, Del Castillo, and Villarama, Jr., JJ., concur.

Puno,[*] C.J., certify that C.J. Puno voted to concur in the result of the ponencia of Justice Perez.

Carpio,** J., in the result, see separate opinion.

Corona, and Mendoza, JJ., no part.

Carpio Morales, J., concur in the result, please see separate opinion.

Velasco, Jr., J., please see concurring opinion.

Nachura, J., join the dissent of J. De Castro.

Leonardo-De Castro, and Abad, JJ., pls. see dissenting opinion.

Brion, J., join the dissenting opinion of J. T. De Castro.

* On official leave.

** Per Special Order No. 826, Senior Associate Justice Antonio T. Carpio is designated as Acting Chief Justice from March 17-30, 2010.

[1] Mutuc v. COMELEC, 146 Phil. 798, 805 (1970), citing cases.

[2] G.R. No. 190156, 12 February 2010.

[3] Sec. 6. Supplemental pleadings. - Upon motion of a party, the court may, upon reasonable notice and upon such terms as are just, permit him to serve a supplemental pleading setting forth transactions, occurrences or events which have happened since the date of the pleading sought to be supplemented. The adverse party may plead thereto within ten (10) days from notice of the order admitting the supplemental pleading.

[4] 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.

[5] G.R. No. 181377, 24 April 2009.

SEPARATE CONCURRING OPINION

CARPIO, Acting C.J.:

This case involves the election protest filed with the Commission on Elections (COMELEC) against Joselito R. Mendoza (Mendoza), who was proclaimed elected Governor of Bulacan in the 14 May 2007 elections. Mendoza garnered 364,566 votes while private respondent Roberto M. Pagdanganan (Pagdanganan) got 348,834 votes, giving Mendoza a winning margin of 15,732 votes.

After the appreciation of the contested ballots, the COMELEC Second Division deducted a total of 20,236 votes from Mendoza and 616 votes from Pagdanganan. As regards the claimed ballots, Mendoza was awarded 587

ballots compared to Pagdanganan's 586 ballots. Thus, the result of the revision proceedings showed that Pagdanganan obtained 342,295 votes, which is more than Mendoza's 337,974 votes. In its Resolution dated 1 December 2009 (Division Resolution), the COMELEC Second Division annulled the proclamation of Mendoza and proclaimed Pagdanganan as the duly elected Governor of Bulacan with a winning margin of 4,321 votes.

The COMELEC En Banc affirmed the Division Resolution on 8 February 2010. On 4 March 2010, the COMELEC En Banc issued an Order denying Mendoza's Motion for Reconsideration and granting Pagdanganan's Motion for Execution of the Division Resolution. Hence, this petition for certiorari.

I vote to grant the petition solely on the ground of the incomplete appreciation of the contested ballots, and not on the ground that the decision of the COMELEC Second Division was abandoned, resulting in the dismissal of the election protest, when the COMELEC En Banc failed to reach a majority decision.

The fundamental reason for granting the petition is the incomplete appreciation of the contested ballots. Section 211 of Batas Pambansa Blg. 881 (BP 881), otherwise known as the Omnibus Election Code of the Philippines, states that "[i]n the reading and appreciation of ballots, every ballot shall be presumed to be valid unless there is a clear and good reason to justify its rejection." It is therefore imperative that extreme caution be exercised before any ballot is invalidated, and in the appreciation of ballots, doubts should be resolved in favor of their validity.[1] For after all, the primary objective in the appreciation of ballots is to discover and give effect to the intention of the voter[2] and, thus, preserve the sanctity of the electoral process.

In this case, the COMELEC invalidated the contested ballots in favor of Mendoza mainly on the grounds of written by one person (WBO) and marked ballots (MB). However, as pointed out by Commissioner Sarmiento, only the general objections were mentioned in the ballots invalidated on the ground of WBO, without clearly and distinctly indicating the specifics or details of the WBO objections. Such generalization falls short of the mandate provided under Section 1, Rule 18 of the COMELEC Rules of Procedure which states that "[e]very decision shall express therein clearly and distinctly the facts and the law on which it is based."

Section 2(d) of Rule 14,[3] which should apply by analogy to this case, provides:

(d) On Pair or Group of Ballots Written by One or Individual Ballots Written By Two - When ballots are invalidated on the ground of written by one person, the court must clearly and distinctly specify why the pair or group of ballots has been written by only one person. The specific strokes, figures or letters indicating that the ballots have been written by one person must be specified. A simple ruling that a pair or group of ballots has been written by one person would not suffice. The same is true when ballots are excluded on the ground of having been written by two persons. The court must likewise take into consideration the entries of the Minutes of Voting and Counting relative to illiterate or disabled voters, if any, who cast their votes through assistants, in determining the validity of the ballots found to be written by one person, whether the ballots are in pairs or in groups;" (Emphasis supplied)

The ruling of the COMELEC fails to specify the "strokes, figures or letters indicating that the ballots were written by one person." The COMELEC merely made this omnibus ruling: "These ballots are void for being written by one person. The similarity in the handwriting style/strokes is more real than apparent. The dents and slants used in writing the names of the candidates prove that these pairs of ballots were written by one person." Such a ruling is clearly insufficient.

Furthermore, the ballots were invalidated without consulting the Minutes of Voting to determine the existence of incapacitated and illiterate voters in the voting precincts. The presence of illiterate and incapacitated voters would likely account for some ballots to appear as written by one person due to assisted voting, which is authorized under Section 196 of BP 881, thus:

SEC. 196. Preparation of ballots for illiterate and disabled persons. - A voter who is illiterate or physically unable to prepare the ballot by himself may be assisted in the preparation of his ballot by a relative, by affinity or consanguinity within the fourth civil degree or if he has none, by any person of his confidence who belong to the same household or any member of the board of election inspectors, except the two party member: Provided, That no voter shall be allowed to vote as illiterate or physically disabled unless it is so indicated in his registration record: provided, further, That in no case shall an assistor assist more than three times except the non-party member of the board of election inspectors. The person thus chosen shall prepare the ballot for the illiterate or disabled voter inside the voting booth. The person assisting shall bind himself in a formal document under oath to fill out the ballot strictly in accordance with the instructions of the voter and not to reveal the contents of the ballot prepared by him. Violation of this provision shall constitute an election offense.

In *Delos Reyes v. Commission on Elections*,^[4] the Court ruled that in the evaluation of ballots contested on the ground of WBO, the COMELEC must first verify from the Minutes of Voting or the Computerized Voters' List for the presence of assisted voters in the contested precincts and take this fact into account; otherwise, the appreciation of ballots is incomplete. The Court held:

Indeed, even if it is patent on the face of the ballots that these were written by only one person, that fact alone cannot invalidate said ballots for it may very well be that, under the system of assisted voting, the latter was duly authorized to act as an assistor and prepare all said ballots. To hinder disenfranchisement of assisted voters, it is imperative that, in the evaluation of ballots contested on the ground of having been prepared by one person, the COMELEC first verify from the Minutes of Voting or the Computerized Voters' List for the presence of assisted voters in the contested precincts and take this fact into account when it evaluates ballots bearing similar handwritings. Omission of this verification process will render its reading and appreciation of ballots incomplete.

In the present case, COMELEC'S appreciation of the 44 contested ballots was deficient for it referred exclusively to said ballots without consulting the Minutes of Voting or the Computerized Voters' List to verify the presence of assisted in the contested precincts.

Thus, COMELEC acted with grave abuse of discretion in overturning the presumption of validity of the 44 ballots and declaring them invalid based on an incomplete appreciation of said ballots.^[5]

Likewise, in *De Guzman v. Commission on Elections*,^[6] the Court held:

As regards the 7 ballots cast in favor of De Guzman which were rejected as written-by-one in Precinct 27A Mabini, the COMELEC should have considered the data reflected in the Minutes of Voting Precinct 27A Mabini. It shows the existence of 24 illiterate or physically disabled voters which necessitated voting by assistors pursuant to Section 196 of B.P. Blg. 881 which does not allow an assistor to assist more that three times except the non-party members of the board of election inspectors. There is no showing that the 7 rejected ballots is the same as that appearing in the Minutes of Voting. All of the 7 assailed ballots were cast in favor of De Guzman. Consequently, four ballots should be appreciated in his favor it being reasonably presumed that the identically written ballots were prepared by the assistor, not only for three illiterate or physically disabled voters but also for himself. Hence, added to the 38 votes, De Guzman won the election by 42 votes.^[7]

In this case, not just seven (7) or forty-four (44) ballots were invalidated, but thousands^[8] of ballots were invalidated on the ground of WBO without taking into account the existence of illiterate and incapacitated voters in the affected voting precincts as may be shown in the Minutes of Voting or the Computerized Voters' List. Surely, such patent omission is so grave as would put into doubt the reliability of the findings and the conclusion based thereon by the COMELEC.

The COMELEC likewise did not specifically indicate the reasons for the invalidation of the contested ballots on

the ground of marked ballots (MB). Most of the rulings in the Division Resolution in invalidating on the ground of MB merely states that "distinctive markings on each ballot which serves no other purpose but to identify the ballot and or the voter himself." Such general statement, which does not indicate the distinctive markings found on the ballots, is not sufficient considering that there are marks that cannot be considered as signs to identify a ballot which would warrant its invalidation. Thus, pertinent provisions of Section 211 of BP 881 state:

SEC. 211. Rules for the appreciation of ballots. - In the reading and appreciation of ballots, every ballot shall be presumed to be valid unless there is clear and good reason to justify its rejection. The board of election inspectors shall observe the following rules, bearing in mind that the object of the election is to obtain the expression of the voter's will:

x x x x

21. Circles, crosses or lines put on the spaces on which the voter has not voted shall be considered as signs to indicate his desistance from voting and shall not invalidate the ballot.

22. Unless it should clearly appear that they have been deliberately put by the voter to serve as identification marks, commas, dots, lines, or hyphens between the first name and surname of a candidate or in other parts of the ballot, traces of the letter "T", "J", and other similar ones, the first letters or syllables of names which the voter does not continue, the use of two or more kinds of writing and unintentional or accidental flourishes, strokes, or strains, shall not invalidate the ballot. (Emphasis supplied)

Indeed, no ballot should be discarded as marked ballot unless clear and sufficient reasons justify that action and any doubt must be resolved in favor of the validity of the ballot. As held by the Court in *Farin v. Gonzales*:^[9]

We must re-affirm the rule that no ballot shall be discarded as marked unless its character as such is unmistakable. Distinction should be made between marks that were accidentally, carelessly or innocently made, and those designedly placed thereon by the voter with a view to possible identification of the ballot, which, therefore, invalidates it. In the absence of any circumstance showing that the intention of the voter to mark the ballot is unmistakable, or of any evidence aliunde to show that the words were deliberately written to identify the ballot, the ballot should not be discarded.^[10] (Emphasis supplied)

Thus, in order for a ballot to be considered marked, it must clearly appear that the marks or words found on the ballot were deliberately placed thereon to serve as identification marks which therefore invalidate it.^[11]

However, I disagree with the ponencia's ruling that the decision of the COMELEC Second Division was abandoned, resulting in the dismissal of the election protest, when the COMELEC En Banc failed to reach a majority decision. The COMELEC Second Division had jurisdiction to decide this election contest under Section 3, Article IX-C of the Constitution.^[12] The failure of the COMELEC En Banc to reach a majority decision on the motion for reconsideration operated to affirm the decision of the COMELEC Second Division.

Accordingly, I vote to GRANT the petition on the sole ground that the COMELEC En Banc committed grave abuse of discretion when the En Banc, just like the COMELEC Second Division, failed to make a complete appreciation of the contested ballots.

[1] *Dojillo v. Commission on Elections*, G.R. No. 166542, 25 July 2006, 496 SCRA 482; *Silverio v. Clamor*, 125 Phil. 917 (1967).

[2] *Velasco v. Commission on Elections*, G.R. No. 166931, 22 February 2007, 516 SCRA 447; *De Guzman v. Commission on Elections*, G.R. No. 159713, 31 March 2004, 426 SCRA 698; *Torres v. House of Representatives Electoral Tribunal*, 404 Phil. 125 (2001).

[3] Rules of Procedure in Election Contests Before the Courts Involving Municipal and Barangay Officials.

[4] G.R. No. 170070, 28 February 2007, 517 SCRA 137.

[5] Id. at 150-151.

[6] G.R. No. 159713, 31 March 2004, 426 SCRA 698.

[7] Id. at 711-712.

[8] In his petition, Mendoza alleged that 9,160 ballots in his favor were invalidated as written by one person.

[9] 152 Phil. 598 (1973).

[10] Id. at 603-604.

[11] *Cordia v. Monforte*, G.R. No. 174620, 4 March 2009, 580 SCRA 588; *Cundangan v. Commission on Elections*, G.R. No. 174392, 28 August 2007, 531 SCRA 542; *Perman v. Commission on Elections*, G.R. No. 174010, 8 February 2007, 515 SCRA 219.

[12] Section 3 of Article IX-C of the Constitution reads:

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. (Emphasis supplied)

SEPARATE OPINION

CARPIO MORALES, J.:

I proffer my opinion on four issues indicated below as sub-headings in interrogative form. The ponencia of Justice Jose Perez glosses over the first and second questions, into which I opt to delve and to which I answer in the negative. I register my dissent on the third issue. As to the fourth issue, I concur in the finding that the Commission on Elections (Comelec) abdicated its positive duty.

Is petitioner guilty of forum shopping?

Forum shopping is defined in *Santos v. Comelec*[1] as "an act of a party, against whom an adverse judgment or order has been rendered in one forum, of seeking and possibly securing a favorable opinion in another forum, other than by appeal or special civil action for certiorari[; and] may also be the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition." [2]

Petitioner did not forum-shop.

A circumstance of forum-shopping presupposes a simultaneous or successive availment of two viable remedies, which could result in two conflicting opinions. Petitioner's (1) Urgent Motion to Recall the Resolution promulgated on February 8, 2010 before the Comelec en banc (filed alongside the present petition), and (2) Urgent Motion to Declare Null & Void and Recall Latest En Banc Resolution Dated March 4, 2010 and Urgent Motion to Set Aside March 4, 2010 En Banc Resolution Granting Motion for Execution Pending Motion for Reconsideration before the Comelec en banc (filed alongside a Supplement to the present petition) are prohibited pleadings, for they are in the nature of a "motion for reconsideration of an en banc ruling, resolution, order or

decision"[3] which is one of the pleadings not allowed by the Comelec Rules of Procedure.

As prohibited pleadings, they do not deserve the attention of the Comelec as they face the certainty of outright dismissal and the vulnerability of being expunged. In fact, a prohibited pleading cannot be given any legal effect precisely because it is being prohibited.[4]

The Comelec cannot grant or entertain prohibited pleadings regardless of their merit. The evils of coming up with a conflicting opinion and congesting the dockets are thus absent. The Comelec cannot be considered another forum from which to shop since it is no longer offering any legal remedy or recourse to the parties.

Petitioner no longer waited for the resolution of the motions before filing the present petition, after perhaps realizing the futility of the prohibited pleadings that, moreover, do not toll the running of the reglementary period.[5] Petitioner may not thus be faulted for beating the deadline and resorting to the only remedy available provided under Rule 64 of the Rules of Court.

While petitioner did not faithfully comply with the rule on prohibited pleadings, the consequences of which he alone, by all means, should bear, his actuations cannot be likened to forum-shopping.

In line with the foregoing, I answer the next question in the negative.

Is the petition premature?

The petition was not prematurely filed.

Upon the promulgation by the Comelec en banc of the February 8, 2010 Resolution which was arrived at without a rehearing in spite of a "deadlock," there was nothing else to be done in the ordinary course of law to ripen the petition.

By law, the Comelec en banc is not required to rectify its mistakes upon motion, precisely because of the rule prohibiting a motion for reconsideration of an en banc resolution. Neither are the parties expected to wait and see if the Comelec en banc would *motu proprio*[6] reconsider its resolution and realize the need for a hearing, for the clock is ticking in the meantime and the reglementary period would soon toll the bells of finality of judgment. Certainly, petitioner cannot risk preparing a petition at the eleventh hour when he is very certain that the Comelec would no longer correct itself.

In *Juliano v. Commission on Elections*,[7] the Court granted a petition similar to the present and underscored the necessity of the conduct of a rehearing in cases when the Comelec en banc was equally divided in opinion or when the necessary majority cannot be had. It held that the Comelec en banc acts with grave abuse of discretion when it fails to give a party the rehearing required by the Comelec Rules of Procedure.

At the time of filing of the present petition, the issues raised therein were already mature for adjudication.

The maturity of the issues, however, was immediately spoiled by mootness. The Comelec en banc eventually ordered on February 10, 2010 the conduct of a rehearing, which order contradicted its earlier pronouncement that its February 8, 2010 Resolution is "immediately executory." The parties' notification on February 12, 2010 of this Comelec Order of February 10, 2010 incidentally coincided with the present petition's filing on February 12, 2010. This development effectively forestalled an argument of petitioner in challenging the February 8, 2010 Resolution, and may have mooted an issue, as what happened in *Marcoleta v. Commission on Elections*[8] where the Comelec's subsequent positive action for a rehearing frustrated the resolution of the issue, but it is not an argument for prematurity.

After rehearing and having failed to reach the necessary majority, the Comelec en banc, by Order of March 4,

2010, disposed of the motion for reconsideration in the same way as its February 8, 2010 Resolution. This development technically provided the basis for the filing of petitioner's supplemental petition which assails said March 4, 2010 Order of the Comelec. As observed by the ponencia, the filing of the supplemental petition was proper.

What happens when the necessary majority cannot be reached by the Comelec en banc after a rehearing?

The parties cite Section 6, Rule 18 of the Comelec Rules of Procedure, reading:

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 and underscoring supplied)

The bone of contention is the manner of disposition of a motion for reconsideration when in spite of rehearing, no decision is reached by the Comelec en banc which remains equally divided in opinion, or wherein the necessary majority still cannot be had. The rule states that "the action or proceeding shall be dismissed if originally commenced in the Commission."

I respectfully differ from the ponencia.

There are cases which may be initiated at the Comelec en banc, the voting in which could also result to a stalemate. The Comelec sits en banc in cases specifically provided by the Rules, pre-proclamation cases upon a vote of a majority of its members, all other cases where a Division is not authorized to act,[9] inter alia. These matters include election offense cases,[10] contempt proceedings,[11] and postponement or declaration of failure of elections and the calling for a special elections.[12] In such cases, when the necessary majority in the Comelec en banc cannot be had even after a rehearing of the action, the effect is dismissal of the action.

In an election protest originally commenced in the Comelec and a decision is reached[13] by the Division, it is, as the ponencia correctly posits, the banc that shall effectively "complete the process,"[14] which position hews well with Justice Presbitero Velasco, Jr.'s view of "one integrated process,"[15] to which I also agree. A motion for reconsideration before the Comelec en banc is one such proceeding that is a part of the entire procedural mechanism of election cases. Ergo, when the necessary majority in the Comelec en banc cannot be had even after a rehearing, the effect is dismissal of the proceeding. The motion for reconsideration should be dismissed.

As defined by Black, the term "proceeding" may refer to a procedural step that is part of a larger action or special proceeding.[16] Black defines "process" as a series of actions, motions or occurrences.[17]

The word "proceeding" could not have been used as an innocuous term. It was used to refer to matters requiring the resolution of the banc in cases originally commenced in the Comelec that pass through a two-tiered process, as differentiated from actions initiated[18] and totally completed at the banc level. It is a universal rule of application that a construction of a statute is to be favored, and must be adopted if reasonably possible, which will give meaning to every word, clause, and sentence of the statute and operation and effect to every part and provision of it.

Following the position of the ponencia, it is observed that in such cases where a Comelec Division dismisses an election protest and the necessary majority is not reached after the rehearing of a motion for reconsideration, the Comelec en banc, in effect, affirms such decision by similarly dismissing the "action." Under my submission, the result is the same but what is dismissed is the "proceeding" which is the motion for reconsideration. There should be no declaration of affirmance since, as the ponencia concedes, there is "no conclusive result in the form of a

majority vote." [19] The Comelec en banc should dismiss the proceeding at hand but not the action, petition or case.

The glaring difference becomes more apparent when the Comelec Division grants an election protest like that in the present case. Since a majority vote was not attained after rehearing the Motion for Reconsideration, the ponencia states that the Comelec en banc should have dismissed the election protest itself or, in effect, vacated the decision of the Division. Again I submit that it is the Motion for Reconsideration that is the "proceeding" which should be dismissed. First, it is absurd for a deliberating body which arrived at "no conclusive result in the form of a majority vote" to do something about a matter on the table, much less to overturn it. Second, the resulting tyranny of the minority is unjust for, in such cases where the Comelec en banc has a quorum of four, the protestee only needs to obtain the vote of just one Commissioner to frustrate the protestant's victory that was handed down by three Commissioners. Third, the ponencia incorrectly denotes that a body which could not pronounce a decision can effectively pronounce one and even one contrary to that of a body that could reach a decision. Otherwise stated, it downplays the significance of "the concurrence of a majority," which breathes life to any handiwork of the decision-making power of the Comelec. Certainly, that was not the purpose and principle envisioned by the Comelec Rules of Procedure.

Did the Comelec gravely abuse its discretion when it failed to credit petitioner's claims?

The above discussions notwithstanding, I submit that on the merits of the case, the Comelec gravely abused its discretion amounting to lack or excess of jurisdiction.

When the handwritings on the ballots are the subject matter of the election contest, the best evidence would be the ballots themselves as the Comelec can examine or compare these handwritings even without the assistance from handwriting experts, [20] with due consideration to the presence of assisted voters, if any is reflected in the Minutes of Voting. [21] General appearance or pictorial effect is not enough to warrant that two writings are by the same hand. The ballots cannot be invalidated on such ground if they display but a single consistent dissimilarity in any feature which is fundamental to the structure of the handwriting, and whose presence is not capable of reasonable explanation. An exegesis of the semblances or similarities and differences or variations in the master patterns governing letter design is thus imperative. I thus agree with Justice Antonio Carpio's position that the Comelec abdicated its positive duty.

The Comelec failed to consider whether there is a type of consistent dissimilarity in a fundamental feature of the handwriting structure of the entries in the ballots. The Comelec did not rebut the presumption of validity of the ballots since it did not take the position that the similarities in the class and individual characteristics do not lean more towards accidental coincidence or that the divergences in class and individual characteristics are superficial. Neither did it point out that the presence of the alleged dissimilarities could be reasonably explained by or attributed to an attempt to disguise the handwriting after examining its fluency and rhythm which may normally vary from one ballot to another but should remain consistent within each ballot.

In light of the foregoing discussions, I vote to GRANT the petition.

[1] G.R. No. 164439, January 23, 2006, 479 SCRA 487.

[2] *Id.* at 493.

[3] COMELEC RULES OF PROCEDURE, Rule 13, Sec. 1(d).

[4] *Securities and Exchange Commission v. PICOP Resources, Inc.*, G.R. No. 164314, September 26, 2008, 566

SCRA 451, 468; *Land Bank of the Philippines v. Ascot Holdings and Equities, Inc.*, G.R. No. 175163, October 19, 2007, 537 SCRA 396, 405.

[5] *Ibid*; *Villamor v. Commission on Elections*, G.R. No. 169865, July 21, 2006, 496 SCRA 334, 343.

[6] *Marcoleta v. Commission on Elections*, G.R. No. 181377, April 24, 2009, 586 SCRA 765, 775, where it was held that the Comelec has "x x x the inherent power to amend or control its processes and orders before these become final and executory. 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. 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,' 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.'"

[7] G.R. No. 167033, April 12, 2006, 487 SCRA 263, where the Court differentiated "re-consultation" from "rehearing."

[8] *Supra* note 6.

[9] *Vide* COMELEC RULES OF PROCEDURE, Rule 3, Sec. 2.

[10] *Baytan v. Commission on Elections*, G.R. No. 153945, February 4, 2003, 396 SCRA 703, 716. The Comelec en banc can directly approve the filing of a criminal information for an election offense.

[11] *Bedol v. Commission on Elections*, G.R. No. 179830, December 3, 2009.

[12] *Macabago v. Commission on Elections*, G.R. No. 152163, November 18, 2002, 392 SCRA 178, 187 citing Republic Act No. 7166, Art. 1, Secs. 4-6.

[13] There are cases that are originally cognizable by the Division but is automatically elevated to the Comelec en banc for decision due to lack of majority vote in the Division; *vide* COMELEC RULES OF PROCEDURE, Rule 3, Sec. 5(b).

[14] *Decision*, p. 12.

[15] *Concurring Opinion of Velasco, Jr., J.*, p. 8.

[16] *BLACK'S LAW DICTIONARY* (6th Ed.), p. 1204.

[17] *Id.* at 1205.

[18] Including those automatically elevated to the banc for decision; *supra* note 13.

[19] *Decision*, p. 12.

[20] *Delos Reyes v. Commission on Elections*, G.R. No. 170070, February 28, 2007, 517 SCRA 137, 148 citing *Bautista v. Castro*, G.R. No. 61260, February 17, 1992, 206 SCRA 305, 312.

[21] *Id.* citing *De Guzman v. Commission on Elections*, G.R. No. 159713, March 31, 2004, 426 SCRA 698, 707-708.

CONCURRING OPINION

VELASCO, JR., J.:

Notwithstanding the passage of time, the clear and express provisions of the Constitution on what constitute a majority vote on actions or proceeding before the Commission on Elections (COMELEC) continue and should remain to speak the words it plainly suggests. Given this perspective, I respectfully submit this opinion.

A summary of the pertinent facts follows.

Petitioner Joselito R. Mendoza (petitioner Mendoza) and respondent Roberto M. Pagdanganan (respondent Pagdanganan) were candidates for the gubernatorial post in the province of Bulacan in the May 14, 2007 elections. With a winning margin of fifteen thousand seven hundred thirty-two (15,732) votes, COMELEC proclaimed petitioner Mendoza as the duly elected governor of Bulacan.

On June 1, 2007, respondent Pagdanganan filed an election protest with the COMELEC questioning the outcome of the elections in all the five thousand sixty-six (5,066) precincts which functioned in the thirteen (13) municipalities and three (3) cities in the province of Bulacan for massive electoral fraud purportedly committed during the elections to favor petitioner Mendoza. Ruffled to the Second Division of the COMELEC, the protest was docketed as EPC No. 2007-44.

On June 18, 2007, petitioner Mendoza filed an Answer With Counter-Protest[1] denying petitioner Mendoza's allegations of massive electoral fraud and claimed that had it not been for the electoral fraud purportedly committed by respondent Pagdanganan in nine municipalities, petitioner Mendoza would have been credited with more votes.

Thereafter, a preliminary conference was conducted, after which the COMELEC ordered a revision of the ballots involving the protested and counter-protested precincts. The revision was conducted and supervised by the COMELEC at its premises. Subsequently, on February 20, 2009, the parties submitted their respective memoranda after their respective formal offer of exhibits were admitted. The case was then submitted for resolution.

As a result of the revision proceedings, the Second Division of the COMELEC proclaimed respondent Pagdanganan as the duly elected governor of the province of Bulacan in its Resolution[2] dated December 1, 2009, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, the election protest is hereby GRANTED. Consequently, the proclamation of Protestee Joselito R. Mendoza is ANNULLED and SET ASIDE. Accordingly, Protestant Roberto M. Pagdanganan is hereby proclaimed as the duly elected Governor of the Province of Bulacan having obtained a total of Three Hundred Forty-Two Thousand Two Hundred Ninety-Five (342,295) votes, with a winning margin of Four Thousand Three Hundred Twenty-One (4,321) votes.

Protestee is ordered to IMMEDIATELY vacate the Office of the Provincial Governor of Bulacan; cease and desist from discharging functions thereof; and peacefully turn-over the said office to Protestant Pagdanganan.

Let the Department of Interior and Local Government implement this resolution.[3]

Subsequently, respondent Pagdanganan filed a Motion for Immediate Execution of Judgment Pending Motion for Reconsideration[4] dated December 1, 2009. Petitioner Mendoza, on the other hand, filed an Opposition to the Motion for Execution[5] dated December 4, 2009 with the Second Division of the COMELEC and a Motion for Reconsideration[6] dated December 4, 2009 with the COMELEC en banc.

By Resolution dated February 8, 2010 (the questioned Resolution), the COMELEC en banc, by a 3:3:1 vote, denied the motion for reconsideration filed by petitioner Mendoza. The dispositive portion of the questioned Resolution reads:

WHEREFORE, in view of the foregoing, the Commission En Banc DENIES the Motion for Reconsideration for lack of merit. The Resolution of the Commission (Second Division) promulgated on December 1, 2009 ANNULING the proclamation of JOSELITO R. MENDOZA as the duly elected Governor of Bulacan and DECLARING ROBERTO M. PAGDANGANAN as duly elected to said Office is AFFIRMED with modification.

Considering the proximity of the end of the term of the office involved, this Resolution is declared immediately executory.

ACCORDINGLY, the Commission En Banc hereby ISSUES a WRIT OF EXECUTION directing the Provincial Election Supervisor of Bulacan, in coordination with the DILG Provincial Operations Officer to implement the Resolution of the Commission (Second Division) dated December 1, 2009 and this Resolution of the Commission En Banc by ordering JOSELITO R. MENDOZA to CEASE and DESIST from performing the functions of Governor of the Province of Bulacan and VACATE said office in favor of ROBERTO M. PAGDANGANAN.

x x x x

On February 11, 2010, an Urgent Motion to Recall the Resolution Promulgated on February 8, 2010[7] (Urgent Motion) dated February 10, 2010 was filed by petitioner Mendoza before the COMELEC. In the said Urgent Motion, petitioner Mendoza contends, among others, that the desired majority, as mandated by Section 5, Rule 3 of the COMELEC Rules of Procedure, was not obtained in the COMELEC en banc considering that only three commissioners voted to deny the motion for reconsideration, while one dissented, and the remaining three commissioners took no part.

On February 12, 2010, petitioner Mendoza filed before this Court the instant petition questioning the COMELEC Resolution dated February 8, 2010 based on the same grounds he cited in his Urgent Motion and further disputing the appreciation and result of the revision of ballots which favored respondent Pagdanganan. This was subsequently supplemented by petitioner Mendoza with a Supplement to the Petition with a Most Urgent Reiterating Motion for the Issuance of a Temporary Restraining Order or a Status Quo Order[8] dated March 8, 2010 filed on even date.

In the meantime, the COMELEC en banc, in view of the 3:3:1 vote, issued on February 10, 2010 an Order for the rehearing of the protest. In the said rehearing, the parties agreed to submit the matter for resolution by the COMELEC en banc upon the submission of their respective memoranda.

Upon deliberations, the commissioners voted in the same manner, particularly: three concurred, three took no part, and one dissented from the Resolution dated December 1, 2009 of the Second Division of COMELEC.

As against the foregoing factual milieu, this Court is now tasked to ascertain whether the COMELEC committed grave abuse of discretion when it rendered, and even subsequently affirmed, the questioned Resolution notwithstanding the absence of the required majority in reaching a decision. Essentially, the issue for this Court's resolution is whether the manner and procedure by which the commissioners of COMELEC voted in the instant case was in accord with its own Rules of Procedure.

A careful examination of certain provisions of the Constitution, as well as of the laws applicable in the instant case, will reveal that since the concurrence of the majority of the members of the COMELEC en banc was not

achieved, the COMELEC committed grave abuse of discretion in issuing the questioned Resolution affirming the ruling of its Second Division instead of dismissing the election protest of respondent Pagdanganan.

All election cases shall be heard and decided in divisions, provided that motions for reconsideration shall be decided by the COMELEC en banc

Under Section 3, Article IX-C of the 1987 Constitution, the COMELEC, sitting en banc, does not have the authority to decide election cases in the first instance as this authority belongs to the divisions of the COMELEC. Specifically:

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.

As the Court held in *Pacificador v. COMELEC*:^[9]

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

As a matter of fact, if the COMELEC en banc renders a decision in an election case in the first instance, said decision is void. As held in *Municipal Board of Canvassers of Glan v. COMELEC*:^[10]

Beginning with *Sarmiento v. COMELEC* and reiterated in subsequent cases, the most recent being *Balindong v. COMELEC*, the Court has upheld this constitutional mandate and consistently ruled that the COMELEC sitting en banc does not have the requisite authority to hear and decide election cases in the first instance. This power pertains to the divisions of the Commission and any decision by the Commission en banc as regards election cases decided by it in the first instance is null and void for lack of jurisdiction.

Verily, it is only when a motion for reconsideration is filed that the COMELEC en banc hears the same. Nonetheless, this does not in any way mean that the filing of such a motion constitutes an appeal to the COMELEC en banc. As fittingly pointed out by Commissioner Rene V. Sarmiento in his Dissenting Opinion:

Furthermore, no way by any stretch of imagination can this controversy be considered as an appealed case. Yes, it is true that the instant Motion for Reconsideration assails the Resolution of the Second Division. But this does not mean that it is an appeal from the said Second Division's ruling. Aside from the obvious legal difference between the two reliefs, to construe a Motion for Reconsideration as an appeal would defeat the purpose of the delineation made in Section 6 of Rule 18 of the COMELEC Rules of Procedure with regard to the cases originally commenced and those appealed. Take note that all controversies brought to the Commission, either originally or on appeal with the exception of election offenses, are first heard and decided in the division level. The same is elevated to the Commission en banc when a Motion for Reconsideration has been timely filed.

Significantly, the COMELEC, sitting en banc or in divisions, is just one body. By analogy, even the Court which hears and decides cases in divisions and en banc is composed of only one body. Decisions of any division are not appealable to the en banc, and decisions of each division and the en banc form acts of only one Supreme Court.^[11]

The adjudicatory power of the COMELEC consists of both original and appellate jurisdiction

A distinction must be made as to whether an election case is brought before the COMELEC in the exercise of its original or appellate jurisdiction.

As stated in Section 2(2), Article IX-C of the 1987 Constitution, the COMELEC is vested with adjudicatory power consisting of both original and appellate jurisdictions, to wit:

Section 2. The Commission on Elections shall exercise the following powers and functions:

x x x x

(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.

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

Concomitantly, election protests involving elective regional, provincial or city positions fall within the exclusive original jurisdiction of the COMELEC. On the other hand, election protests involving elective municipal and barangay positions fall within the exclusive original jurisdiction of the proper regional trial court and municipal trial court, respectively. The COMELEC, in turn, exercises appellate jurisdiction over the decisions of either court.[12]

While the Constitution grants COMELEC appellate jurisdiction, it is clear that such appellate jurisdiction operates as a review by the COMELEC of decisions of trial courts. There is really no appeal within the COMELEC itself. As such, it is absurd to consider the filing of a motion for reconsideration as an appeal from the COMELEC, sitting in a division, to the COMELEC, sitting en banc.

At best, the filing of a motion for reconsideration with the COMELEC en banc of a decision or resolution of the division of the COMELEC should be viewed as part of one integrated process. Such motion for reconsideration before the COMELEC en banc is a constitutionally guaranteed remedial mechanism for parties aggrieved by a division decision or resolution. However, at the risk of repetition, it is not an appeal from the COMELEC division to the en banc.

Considering the dichotomy of the jurisdiction and powers of the COMELEC, the question now arises as to how the commission en banc should arrive at a decision in the absence of the required majority of all its members.

A majority vote of all its members is needed in order for the COMELEC en banc to reach a decision

The COMELEC is an independent constitutional commission. As such, the rule set forth by the Constitution as to how constitutional commissions should arrive at a decision applies to it.

As sanctioned by Section 7, Article IX-A of the 1987 Constitution:

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. A case or matter is deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the Rules of the Commission or by the Commission itself. Unless otherwise provided by this Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Supreme Court on certiorari by the aggrieved party within thirty days from receipt of a copy thereof. (Emphasis supplied.)

The foregoing constitutional provision was faithfully observed by the COMELEC when it adopted the same in its own Rules of Procedure. Rule 3, Section 5(a) of the COMELEC Rules of Procedure provides:

Section 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.

In reinforcing the above-quoted provision, the Court, in *Estrella v. COMELEC*,^[13] prescribed that the majority of all the commissioners is necessary for the pronouncement of a decision or resolution by the COMELEC en banc. Particularly:

Since Commissioner Lantion could not participate and vote in the issuance of the questioned order, thus leaving three (3) members concurring therewith, the necessary votes of four (4) or majority of the members of the COMELEC was not attained. The order thus failed to comply with the number of votes necessary for the pronouncement of a decision or order, as required under Rule 3, Section 5(a) of the COMELEC Rules of Procedure which provides:

Section 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.

WHEREFORE, the instant petition is GRANTED. The Status Quo Ante Order dated November 5, 2003 issued by the COMELEC En Banc is hereby NULLIFIED. This Resolution is IMMEDIATELY EXECUTORY. (Emphasis in the original.)

In cases, however, where the COMELEC en banc is equally divided in opinion or the necessary majority vote cannot be obtained, Rule 18, Section 6 of the 1993 COMELEC Rules of Procedure applies:

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.

Based on the above-cited provision, if no decision is reached after the case is reheard, there are two different remedies available to the COMELEC, to wit: (1) dismiss the action or proceeding, if the case was originally commenced in the COMELEC; or (2) consider as affirmed the judgment or order appealed from, in appealed cases. This rule adheres to the constitutional provision that the COMELEC must decide by a majority of all its members.

Notably, it is evident that when Rule 18, Section 6 of the 1993 COMELEC Rules of Procedure speaks of cases originally commenced in the COMELEC, the reference is to election protests involving elective regional, provincial or city positions falling within its exclusive original jurisdiction. On the other hand, when the same provision mentioned appealed cases, this has reference to election protests involving elective municipal and barangay positions cognizable by the COMELEC in the exercise of its appellate jurisdiction.

In the first instance, an election protest is originally commenced before the COMELEC, which first decides by the division. If a motion for reconsideration is subsequently filed with the COMELEC en banc and no majority decision is reached even after a rehearing, then pursuant to Section 6, Rule 18 of the COMELEC Rules of Procedure, the election protest shall be dismissed.

In the second instance, the trial court originally decides an election protest. If the case is brought on appeal to the

COMELEC, which again shall first act thru a division, the division's decision may become the subject of a motion for reconsideration filed with the COMELEC en banc. And if before the en banc a majority decision is not reached even after a rehearing, then, also pursuant to Section 6, Rule 18 of the COMELEC Rules of Procedure, the appealed decision stands affirmed.

In both cases, however, if no motion for reconsideration is filed with the COMELEC en banc, the decision or resolution of the division shall remain.

Verily, since the election protest in the case at bar involves an elective provincial position, specifically, the gubernatorial post in the province of Bulacan, exclusive original jurisdiction over which is vested in the COMELEC, the election protest filed by respondent Pagdanganan against petitioner Mendoza should be dismissed for lack of necessary majority vote in the COMELEC en banc.

On a final note, it is worthwhile to remember the Court's ruling in *Yangco v. The Division of the Court of First Instance of the City of Manila*,^[14] which warns us of the dangers in making unnecessary interpretation of clear and unambiguous provisions of law:

There is no need for interpretation or construction of the word in the case before us. Its meaning is so clear that interpretation and construction are unnecessary. Our simple duty is to leave untouched the meaning with which the English language has endowed the word; and that is the meaning which the ordinary reader would accord to it on reading a sentence in which it was found. Where language is plain, subtle refinements which tinge words so as to give them the color of a particular judicial theory are not only unnecessary but decidedly harmful. That which has caused so much confusion in the law, which has made it so difficult for the public to understand and know what the law is with respect to a given matter, is in considerable measure the unwarranted interference by judicial tribunals with English language as found in statutes and contracts, cutting out words here and inserting them there, making them fit personal ideas of what the legislature ought to have done or what parties should have agreed upon, giving them meanings which they do not ordinarily have, cutting, trimming, fitting, changing and coloring until lawyers themselves are unable to advise their clients as to the meaning of a given statute or contract until it had been submitted to some court for its 'interpretation and construction.' As we said in the case of *Lizarraga Hermanos vs. Yap Tico* (24 Phil. Rep., 504, 513):

Construction and interpretation come only after it has been demonstrated that application is impossible or inadequate without them. They are the very last functions which a court should exercise. The majority of the laws need no interpretation or construction. They require only application, and if there were more application and less construction, there would be more stability in the law, and more people would know what the law is.

Accordingly, I vote to grant the petition.

[1] Rollo, pp. 947-1025.

[2] Id. at 221-931.

[3] Id. at 930.

[4] Id. at 1219-1238.

[5] Id. at 1408-1418.

[6] Id. at 1239-1390.

[7] Id. at 5136-5145.

[8] Id. at 5288-5303.

- [9] G.R. No. 178259, March 13, 2009, 581 SCRA 372, 384.
- [10] G.R. No. 150946, October 23, 2003, 414 SCRA 273, 276.
- [11] Apo Fruits Corporation v. Court of Appeals, G.R. No. 164195, April 30, 2008, 553 SCRA 237, 248.
- [12] See Borja v. COMELEC et al., G.R. No. 120140, August 21, 1996, 260 SCRA 604.
- [13] G.R. No. 160465, April 28, 2004, 428 SCRA 315, 320.
- [14] No. L-10050, January 6, 1915, 29 Phil 183.

DISSENTING OPINION

LEONARDO-DE CASTRO, J.:

Before the Court is a Petition for Certiorari with an Urgent Prayer for the Issuance of a Temporary Restraining Order and/or a Status Quo Ante Order and Writ of Preliminary Injunction filed by Joselito R. Mendoza (petitioner) against the Commission on Elections (COMELEC) and Roberto M. Pagdanganan (respondent Pagdanganan), assailing the COMELEC's Resolution[1] promulgated on February 8, 2010 in EPC NO. 2007-44, entitled "Roberto M. Pagdanganan versus Joselito R. Mendoza" (the questioned Resolution).

The antecedent facts are summarized below.

Petitioner and respondent Pagdanganan were rival candidates for the gubernatorial position in the Province of Bulacan during the May 14, 2007 elections. After the COMELEC count, petitioner Mendoza ranked first and bested respondent Pagdanganan with a winning margin of Fifteen Thousand Seven Hundred Thirty-Two (15,732) votes. Thus, petitioner was proclaimed as the duly elected Governor of the Province of Bulacan.

Respondent Pagdanganan filed an Election Protest with the COMELEC on June 1, 2007 impugning the results of the elections in all the five thousand sixty-six (5,066) precincts which functioned in the thirteen (13) municipalities and three (3) cities in the province of Bulacan on the basis of massive electoral fraud allegedly committed during the elections to ensure the victory of petitioner. This election protest was raffled to the Second Division of the COMELEC and was docketed as EPC No. 2007-44.

On June 18, 2007, petitioner filed an Answer With Counter-Protest[2] denying the allegation of massive electoral fraud and claiming that he would have been credited with more votes had it not been for the electoral fraud allegedly committed by respondent Pagdanganan in nine municipalities.

Then on June 5, 2008, petitioner filed a Manifestation and Motion for Investigation of Substitution of Ballots with Fake/Spurious Ballots[3] due to the alleged alarming number of fake/spurious ballots, which were substituted for the genuine ballots after the voting and conduct of election in the different precincts of the municipalities of Bulacan and were uncovered during the revision of ballots.

After the preliminary conference, the COMELEC ordered a revision of the ballots involving the protested and counter-protested precincts, and this was conducted and supervised by the COMELEC at its premises. After their respective formal offers of exhibits were admitted, the parties submitted their respective memoranda on February 20, 2009. The case was then submitted for resolution.

On March 2, 2009, the COMELEC transferred the ballot boxes containing the ballots, election returns, and other pertinent election documents of both protested and unprotested precincts of Bulacan to the Senate Electoral

Tribunal (SET) pursuant to SET Resolution No. 07-54 in connection with the protest filed by Aquilino Pimentel III against Juan Miguel Zubiri. Petitioner thereafter filed a Motion for Suspension of Further Proceedings. The COMELEC issued an Order[4] denying petitioner's motion for lack of merit.

On July 8, 2009, petitioner went to this Court and filed a Petition for Prohibition & Certiorari with Urgent Prayer for the Issuance of a Temporary Restraining Order and Writ of Preliminary Injunction,[5] docketed as G.R. No. 188308, to prohibit the COMELEC from proceeding with the appreciation by its personnel of ballots in the custody of the SET. On July 14, 2009, this Court issued a Status Quo Order[6] in G.R. No. 188308 enjoining the COMELEC Second Division from further proceeding with the revision of the ballots until further notice from the Court. This Order was lifted subsequently and the petition was dismissed by the Court En Banc in its Decision dated October 15, 2009, wherein the Court ruled that, on the basis of the standards set by Section 4 of the COMELEC Rules of Procedure (the COMELEC Rules) and of the Constitution itself in the handling of election cases, the COMELEC's consideration of the provincial election contest, specifically its appreciation of the contested ballots at the SET premises, while the same ballots were also under consideration by the SET for another election contest, was a valid exercise of discretion. The Court further ruled that such COMELEC action was "a suitable and reasonable process within the exercise of its jurisdiction over provincial election contests, aimed at expediting the disposition of [the] case, and with no adverse, prejudicial or discriminatory effects on the parties to the contest that would render the rule unreasonable." [7]

The COMELEC Second Division, as a result of the revision proceedings, proclaimed respondent Pagdanganan as the duly elected Governor of the Province of Bulacan in a Resolution[8] dated December 1, 2009 in EPC No. 2007-44, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, the election protest is hereby GRANTED. Consequently, the proclamation of Protestee Joselito R. Mendoza is ANNULLED and SET ASIDE. Accordingly, Protestant Roberto M. Pagdanganan is hereby proclaimed as the duly elected Governor of the Province of Bulacan having obtained a total of Three Hundred Forty-Two Thousand Two Hundred Ninety-Five (342,295) votes, with a winning margin of Four Thousand Three Hundred Twenty-One (4,321) votes.

Protestee is ordered to IMMEDIATELY vacate the Office of the Provincial Governor of Bulacan; cease and desist from discharging the functions thereof; and peacefully turn-over the said office to Protestant Pagdanganan.

Let the Department of Interior and Local Government implement this resolution.[9]

Petitioner filed an Opposition to the Motion for Execution[10] with the COMELEC Second Division on December 7, 2009 and a Motion for Reconsideration[11] with the COMELEC En Banc while respondent Pagdanganan filed a Motion for Immediate Execution of Judgment Pending Motion for Reconsideration.[12]

After deliberations on the Motion for Reconsideration in EPC No. 2007-44, the COMELEC En Banc voted as follows: Commissioners Nicodemo T. Ferrer, Lucenito N. Tagle, and Elias R. Yusoph voted to DENY the motion for reconsideration for lack of merit[13]; Commissioner Rene V. Sarmiento DISSENTED and wrote a separate opinion[14]; while three Commissioners TOOK NO PART, namely, Chairman Jose A. R. Melo, Commissioner Armando C. Velasco, and Commissioner Gregorio Y. Larrazabal.

Thereafter, the COMELEC En Banc issued the questioned Resolution dated February 8, 2010, wherein it held:

WHEREFORE, in view of the foregoing, the Commission En Banc DENIES the Motion for Reconsideration for lack of merit. The Resolution of the Commission (Second Division) promulgated on December 1, 2009 ANNULING the proclamation of JOSELITO R. MENDOZA as the duly elected Governor of Bulacan and DECLARING ROBERTO M. PAGDANGANAN as duly elected to said Office is AFFIRMED with

modification.

Considering the proximity of the end of the term of the office involved, this Resolution is declared immediately executory.

ACCORDINGLY, the Commission En Banc hereby ISSUES a WRIT OF EXECUTION directing the Provincial Election Supervisor of Bulacan, in coordination with the DILG Provincial Operations Officer to implement the Resolution of the Commission (Second Division) dated December 1, 2009 and this Resolution of the Commission En Banc by ordering JOSELITO R. MENDOZA to CEASE and DESIST from performing the functions of Governor of the Province of Bulacan and to VACATE said office in favor of ROBERTO M. PAGDANGANAN.

Let a copy of this Resolution be furnished the Secretary of the Department of Interior and Local Government, the Provincial Election Supervisor of Bulacan, and the DILG Provincial Operations Officer of the Province of Bulacan.[15]

On February 11, 2010, petitioner filed an Urgent Motion to Recall the Resolution Promulgated on February 8, 2010 before the COMELEC and raised as grounds, among others, that: (1) the resolution was issued without the concurrence of the majority of the members of the Commission as mandated by Section 5, Rule 3 of the COMELEC Rules, and without conducting a rehearing under Section 6, Rule 18 of the same rule; (2) no notice was issued for the promulgation of the resolution as mandated by Section 5, Rule 18 of the said rule; and (3) the resolution could not be immediately executory, as the appealed case was an ordinary action, which can only become final and executory after 30 days from its promulgation under Section 13, Rule 18 of the adverted rule. Petitioner argued that the desired majority was not obtained in the voting of the COMELEC En Banc, considering that only three Commissioners voted to deny the Motion for Reconsideration, three Commissioners took no part, and one Commissioner dissented from the Resolution.

On February 12, 2010, petitioner filed before this Court the instant petition assailing the COMELEC Resolution dated February 8, 2010; raising the same grounds that he had cited in his Urgent Motion to Recall the Resolution Promulgated on February 8, 2010; and, in addition, disputing the appreciation and result of the revision of the ballots, which resulted in respondent Pagdanganan's proclamation as the duly elected Governor of the Province of Bulacan.

Meanwhile, on February 10, 2010, the COMELEC En Banc issued an Order[16] for the rehearing of the protest, stating as follows:

Considering that there was no majority vote of the members obtained in the Resolution of the Commission En Banc promulgated on February 8, 2010, the Commission hereby orders the re-hearing of the above-entitled case on Monday, February 15, 2010 at 2:00 o'clock in the afternoon.

The Clerk of the Commission is directed to notify all parties and counsels concerned. (Emphases added.)

During the rehearing on February 15, 2010, the parties agreed to submit the matter for resolution by the COMELEC En Banc upon the submission of their respective memoranda, without further argument. After deliberation, the Commissioners voted in the same way: three concurred, three took no part, and one dissented from the Resolution of the COMELEC Second Division dated December 1, 2009.

Respondent Pagdanganan filed his Comment (To Petition for Certiorari) on February 22, 2010, while the COMELEC, represented by the Office of the Solicitor General, filed its Comment on March 1, 2010 before this Court. Both respondents allege that the instant petition was prematurely filed in view of the scheduled rehearing of the case on February 15, 2010, and that petitioner is guilty of forum shopping for seeking relief from the

questioned Resolution simultaneously before the COMELEC and this Court.

Petitioner, in his Reply to Respondent Pagdanganan's Comment dated March 2, 2010, contends that he fully disclosed to this Court the pendency before the COMELEC of his Urgent Motion to Recall the Resolution Promulgated on February 8, 2010; and explains that he was just compelled to file the instant petition, since the questioned resolution was already accompanied by a writ of execution directing the Provincial Election Supervisor of Bulacan and the Department of Interior and Local Government (DILG) Provincial Operations Officer to implement it despite the fact that the said ruling had not yet become final and executory under Section 13, Rule 18 of the COMELEC Rules. Petitioner further claims that the COMELEC's order for the rehearing of the case was not actually and legitimately served on his counsel, as a copy of the said order for rehearing was initially handed to a revisor while he was at the premises of the COMELEC; and a copy of the said order was received only in the "late hours of the morning of February 12, 2010" when the instant petition was already on its way to filing.

In an Order[17] dated March 4, 2010, the COMELEC En Banc denied protestee's Motion for Reconsideration and granted protestant's Motion for Immediate Execution. It also directed the Clerk of the Commission to issue a Writ of Execution directing the Provincial Election Supervisor of Bulacan, in coordination with the DILG Provincial Operations Officer of Bulacan, to implement the Resolution of the "Commission (Second Division)" dated December 1, 2009; and ordered petitioner to cease and desist from performing the functions of the Governor of the Province of Bulacan and to vacate said office in favor of respondent Pagdanganan. Pursuant to this, on March 5, 2010, the COMELEC Electoral Contests Adjudication Department (ECAD) issued a Writ of Execution,[18] while the COMELEC En Banc issued an Order[19] directing the ECAD personnel to deliver by personal service copies of the March 4, 2010 Order of the COMELEC En Banc and the corresponding March 5, 2010 Writ of Execution to the parties. Petitioner filed on March 5, 2010 an Urgent Motion to Declare Null & Void and Recall Latest En Banc Resolution Dated March 4, 2010[20] and an Urgent Motion to Set Aside March 4, 2010 En Banc Resolution Granting Protestant's Motion for Execution Pending Motion for Reconsideration[21] with the COMELEC En Banc.

On March 8, 2010, petitioner filed with the Court a Supplement to the Petition with a Most Urgent Reiterating Motion for the Issuance of a Temporary Restraining Order or a Status Quo Order[22] arguing that: (1) the election protest should have been dismissed after no majority vote was obtained by respondent Pagdanganan after rehearing; (2) the Order dated March 4, 2010 and the writ of execution dated March 5, 2010 were null and void, as they pertained to a wrong Resolution of the COMELEC Second Division; (3) no valid decision could have been rendered by the COMELEC En Banc without the originals of the ballots having been appreciated; (4) public respondent ignored the recent ruling of the Court in *Corral v. Commission on Elections*,[23] which made the Resolutions dated December 1, 2009 and February 8, 2010 null and void; and (5) all of the above are clear revelations that there is something terribly wrong in the adjudication of the above case - both on the Division and on the En Banc levels - which the Honorable Court should not allow to bear any further illicit consequences through the immediate issuance of a temporary restraining order/status quo ante order.

Respondent Pagdanganan filed a Most Respectful Urgent Manifestation with the Court citing petitioner's blatant forum shopping in pursuing simultaneous reliefs both before the Court and the COMELEC En Banc.

In a Resolution dated March 9, 2010, this Court resolved to grant petitioner's prayer for the issuance of a status quo ante order. The pertinent portion of said resolution reads as follows:

Acting on Petitioner's prayer for the urgent issuance of a temporary restraining order and/or status quo ante order in his Petition for Certiorari and Supplement to the Petition, the Court FURTHER RESOLVES to issue a STATUS QUO ANTE ORDER, for the maintenance of the situation prevailing at the time of the filing of the

instant Petition for a period of seven (7) days. Specifically, respondents and all other persons acting on their authority are enjoined from enforcing or executing the following issuances in EPC Case No. 2007-44: (1) Resolution dated December 1, 2009 issued by the COMELEC Second Division; and (2) Resolution dated February 8, 2010, Order dated March 4, 2010, and Writ of Execution dated March 5, 2010 issued by the COMELEC En Banc, which ordered petitioner to cease and desist from performing the functions of the Governor of the Province of Bulacan and to vacate said office in favor of respondent [Pagdanganan]. This STATUS QUO ANTE ORDER shall be effective immediately and continuing until March 16, 2010, unless otherwise ordered by this Court.

On March 16, 2010, this Court issued another Resolution extending the status quo order for another seven (7) days or until March 23, 2010 unless otherwise ordered by this Court.

Respondent Pagdanganan filed on March 10, 2010 a Manifestation and Comment to Petitioner's Supplement to the Petition with a Most Urgent Reiterating Motion for the Issuance of a Temporary Restraining Order or a Status Quo Order. Petitioner filed a Manifestation with Motion to Appreciate Ballots Invalidated as Written by One Person and Marked Ballots on March 12, 2010.

The issues before the Court are:

- WHETHER PETITIONER IS GUILTY OF FORUM SHOPPING;
 - WHETHER THE INSTANT PETITION IS PREMATURE;
 - WHETHER COMELEC GRAVELY ABUSED ITS DISCRETION TANTAMOUNT TO LACK OF OR IN EXCESS OF JURISDICTION WHEN IT ISSUED THE QUESTIONED RESOLUTION WITHOUT THE CONCURRENCE OF THE MAJORITY OF THE MEMBERS OF THE COMMISSION AND WITHOUT CONDUCTING A REHEARING OF THE CASE;
 - WHETHER COMELEC GRAVELY ABUSED ITS DISCRETION TANTAMOUNT TO LACK OF OR IN EXCESS OF JURISDICTION WHEN IT FAILED TO CREDIT THE CLAIMS OF THE PETITIONER;
- 4.1 WHETHER COMELEC GRAVELY ABUSED ITS DISCRETION TANTAMOUNT TO LACK OF OR IN EXCESS OF JURISDICTION WHEN IT INVALIDATED 9,160 BALLOTS OF THE PETITIONER AS WRITTEN BY ONE PERSON IN PAIRS OR IN GROUP; and
- 4.2 WHETHER COMELEC GRAVELY ABUSED ITS DISCRETION TANTAMOUNT TO LACK OF OR IN EXCESS OF JURISDICTION WHEN IT INVALIDATED THOUSANDS OF VALID BALLOTS OF THE PETITIONER AS SPURIOUS, WRITTEN BY TWO OR MORE PERSONS AND AS MARKED BALLOTS WITH NO FACTUAL AND LEGAL BASIS.[24]

DISCUSSION

1. WHETHER PETITIONER IS GUILTY OF FORUM SHOPPING

Respondent Pagdanganan and the COMELEC both claim that petitioner's act of filing on February 11, 2010 with the COMELEC a Motion to Recall the Resolution Promulgated on February 8, 2010 and praying that the questioned Resolution be immediately recalled by the latter, and thereafter filing on the following day, i.e., on February 12, 2010, with this Court the instant Petition for Certiorari with Prayer for a Temporary Restraining Order and/or Status Quo Order asking, among others, that the questioned Resolution be set aside, undeniably constitute forum shopping;^[25] that at the time of the filing of the case at bar, petitioner did not disclose his act of filing a Motion to Recall with the COMELEC; and that petitioner sought to have this procedural lapse cured through his Manifestation and Motion to Admit Further Documents for Compliance and Additional Annexes to

the Petition filed on February 15, 2010, with a modified "Verification and Certification of Non-Forum Shopping" wherein he had inserted a clause saying, "[t]hat other than the Motion to Recall the Resolution Promulgated on February 8, 2010 which I filed before the Commission on Elections En Banc on February 11, 2010, I have not commenced any other action or proceeding involving the same issues x x x." [26]

Petitioner's actions do constitute forum shopping, as this term was defined in *Santos v. Commission on Elections*, [27] cited by the COMELEC in its Comment, the pertinent portions of which read as follows:

Santos is Guilty of Forum-Shopping

Forum shopping is an act of a party, against whom an adverse judgment or order has been rendered in one forum, of seeking and possibly securing a favorable opinion in another forum, other than by appeal or special civil action for certiorari. It may also be the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition.

x x x x

Santos stated in his petition before this Court that on 9 July 2004, he filed a motion for reconsideration of the COMELEC First Division's Resolution. However, he did not disclose that at the time of the filing of his petition, his motion for reconsideration was still pending before the COMELEC En Banc. Santos did not also bother to inform the Court of the denial of his motion for reconsideration by the COMELEC En Banc. Had Asistio not called this Court's attention, we would have ruled on whether the COMELEC First Division committed grave abuse of discretion in dismissing SPC No. 04-233, which is one of the issues raised by Santos in this petition. This act of Santos alone constitutes a ground for this Court's summary dismissal of his petition. (Emphasis added.)

In the case at bar, petitioner's claim that he was compelled to seek immediate redress from this Court since the questioned Resolution had already incorporated a Writ of Execution does not justify his actions, as this does not take away the fact that he had a pending Motion to Recall with the COMELEC En Banc when he filed the instant petition questioning the Resolution issued by the COMELEC En Banc on February 8, 2010. This simultaneous filing of two actions in different fora involving the same Resolution is an act of malpractice precisely prohibited by the rules against forum shopping, since, like in this instance, it adds to the congestion of the dockets of the Court, trifles with the Court's rules, and hampers the administration of justice.

On this ground alone, this petition should be dismissed, however, considering the public interest involved in this case, specifically in the province of Bulacan where the people now eagerly await the Court's pronouncement as to who is their duly-elected governor, I have opted to discuss a few more issues below to address the concerns raised by both parties.

2. WHETHER THE INSTANT PETITION IS PREMATURE

It is clear from the events immediately succeeding the filing of this petition that it was, as correctly averred by respondents, premature. The parties do not dispute the fact that this petition was filed during the pendency of the Urgent Motion to Recall the Resolution Promulgated on February 8, 2010 filed on February 11, 2010 by petitioner and the scheduled "re-hearing" of the case on February 15, 2010 before the COMELEC. Respondent COMELEC aptly pointed out that there was nothing to judicially pass upon at this time considering that, when the instant petition was filed, the COMELEC had yet to make a final ruling on the protest of respondent Pagdanganan.

In *Ambil, Jr. v. Commission on Elections*, [28] the Court held:

In a long line of cases, this Court has held consistently that "before a party is allowed to seek the intervention

of the court, it is a pre-condition that he should have availed of all the means of administrative processes afforded him. Hence, if a remedy within the administrative machinery can still be resorted to by giving the administrative officer concerned every opportunity to decide on a matter that comes within his jurisdiction, then such remedy should be exhausted first before the court's judicial power can be sought. The premature invocation of court's intervention is fatal to one's cause of action."

Further proof that this petition is premature is the fact that the rehearing conducted on February 15, 2010 rendered moot and academic the primary issues raised by petitioner regarding the questioned Resolution, specifically, "whether or not [the COMELEC] gravely abused its discretion tantamount to lack of or in excess of jurisdiction when it issued the assailed resolution without the concurrence of the majority of the members of the Commission and without conducting a rehearing of the case," as well as without issuing a notice of promulgation of the said assailed Division Resolution, and before it had attained finality.[29] The COMELEC Rules require that a rehearing be conducted when the necessary majority is not reached in the En Banc level. This was already complied with on February 10, 2010 when the COMELEC issued an Order scheduling a rehearing of the case, and fulfilled when such hearing actually took place on February 15, 2010, after which the COMELEC issued an Order dated March 4, 2010.

Petitioner's act of filing a Supplement to the Petition with a Most Urgent Reiterating Motion for the Issuance of a Temporary Restraining Order or a Status Quo Order on March 8, 2010 that dealt with the COMELEC En Banc's Order dated March 4, 2010, that in effect amends the instant petition to include a new subject matter, i.e., the Order dated March 4, 2010, and new issues as mentioned above, should not be allowed to take the place of a proper petition, otherwise, we would merely be condoning petitioner's acts of forum shopping, premature filing, and his overall tendency to carelessly trifle with our rules to suit his needs. What petitioner should have done after the rehearing was to file a new petition before this Court questioning the Order dated March 4, 2010, and not to merely "amend" his petition by filing a "Supplement," as such Order already raised new issues, e.g., the alleged lack of the necessary majority upon rehearing, the alleged erroneous dispositive portion of the Order, and other matters not anymore covered by the original petition.

Be that as it may, if we are to temporarily set aside our technical rules in the interest of justice, and we take a look into petitioner's arguments in his "Supplement to the Petition..." against the Order dated March 4, 2010, we would still arrive at the same conclusion that the petition should be dismissed.

As a result of the rehearing, petitioner raises a new argument before this Court, that the Order of the COMELEC En Banc dated March 4, 2010 referred to a wrong Resolution. The said Order provides: "the Second Division's Resolution, dated December 1, 2009 denying protestee's Motion for Reconsideration and granting protestant's Motion for Immediate Execution is hereby affirmed." Petitioner points out that the December 1, 2009 Resolution of the COMELEC Second Division neither denied petitioner's Motion for Reconsideration nor granted respondent Pagdanganan's Motion for Immediate Execution. I agree to the extent that the Order of March 4, 2010 should have referred to the February 8, 2010 Resolution of the COMELEC En Banc. However, the disposition of the Motion for Reconsideration in the March 4, 2010 Order, even with such oversight, is the same, which is to affirm the Denial of protestee's motion for reconsideration and the grant of protestant's Motion for Immediate Execution.

3. WHETHER COMELEC GRAVELY ABUSED ITS DISCRETION TANTAMOUNT TO LACK OF OR IN EXCESS OF JURISDICTION WHEN IT ISSUED THE ASSAILED RESOLUTION WITHOUT THE CONCURRENCE OF THE MAJORITY OF THE MEMBERS OF THE COMMISSION AND WITHOUT CONDUCTING A REHEARING OF THE CASE

Petitioner argues that the questioned Resolution of February 8, 2010 was issued without the concurrence of the majority of the members of the COMELEC as mandated by Rule 3, Section 5 of the COMELEC Rules and

without conducting a rehearing under Rule 18, Section 6 thereof. According to petitioner, since only three Commissioners concurred with the assailed Resolution, the desired majority of four concurring members for the pronouncement of a resolution was not attained, and a rehearing should have been conducted by the COMELEC En Banc.

After the rehearing, the same number of votes were cast at the COMELEC En Banc. The Chairman and two (2) Commissioners inhibited themselves from taking part in the case; three (3) Commissioners voted to deny the protestee's Motion for Reconsideration and to grant protestant's Motion for Immediate Execution; and one (1) Commissioner dissented.

The COMELEC Rules provide the instances when a Commissioner may be disqualified from voting or may voluntarily inhibit himself from sitting in a case, to wit:

RULE 4

Disqualification and Inhibition

SECTION 1. Disqualification or Inhibition of Members. -- (a) No Member shall sit in any case in which he or his spouse or child is related to any party within the sixth civil degree of consanguinity or affinity, or to the counsel of any of the parties within the fourth civil degree of consanguinity or affinity, or in which he has publicly expressed prejudgment as may be shown by convincing proof, or in which the subject thereof is a decision promulgated by him while previously serving as presiding judge of an inferior court, without the written consent of all the parties, signed by them and entered in the records of the case; Provided, that no Member shall be the "ponente" of an en banc decision/resolution on a motion to reconsider a decision/resolution written by him in a Division.

(b) If it be claimed that a Member is disqualified from sitting as above provided, the party raising the issue may, in writing, file his objection with the Commission, stating the grounds therefor. The member concerned shall either continue to participate in the hearing or withdraw therefrom, in accordance with his determination of the question of his disqualification. His decision thereon shall forthwith be made in writing and filed with the Commission for proper notation and with the records of the case. No appeal or stay shall be allowed from, or by reason of, his decision in favor of his own competency until after final judgment in the case.

(c) A Member may, in the exercise of his sound discretion, inhibit himself from sitting in a case for just or valid reasons other than those mentioned above. (Emphasis ours.)

The three Commissioners who did not take part when the COMELEC En Banc deliberated on petitioner's Motion for Reconsideration in EPC No. 2007-44 gave their respective reasons for their inhibition. Chairman Jose A. R. Melo cited his relationship with the parties and their respective counsel; Commissioner Armando C. Velasco stated in his Explanation^[30] dated February 8, 2010 that he could not take part in the deliberation because a proper re-examination of the original ballots subject of the case was not feasible at that time, considering that the same were under the custody of the Senate Electoral Tribunal (SET); while Commissioner Gregorio Y. Larrazabal wrote in his Explanation^[31] likewise dated February 8, 2010, that from February 2004 to January 2008, he was the Provincial Election Supervisor (PES) IV in the Province of Bulacan and had related to the parties in such capacity. Furthermore, he had served as the PES during the 2007 elections, the results of which were being questioned before the COMELEC, and he concluded that considering the foregoing, his moral and ethical beliefs had constrained him from participating so as to secure the people's faith and confidence in the COMELEC's impartiality and fairness.^[32]

It appears that the inhibition by the three Commissioners was proper and in accordance with the COMELEC Rules. The said Commissioners used their sound discretion, which they were allowed to do under the present COMELEC rules. Notwithstanding their voluntary inhibition, there still was a quorum when the COMELEC En

Banc deliberated on petitioner's Motion for Reconsideration with the participation of the remaining four out of the seven Commissioners.

Moreover, with regard to the February 8, 2010 Resolution, the issue of lack of necessary majority had become moot because the COMELEC En Banc subsequently issued an Order for the rehearing of petitioner's Motion for Reconsideration and respondent Pagdanganan's Motion for Execution of the Resolution issued by its Second Division, as required by the COMELEC Rules. The rehearing was actually conducted on February 15, 2010. After the matter was submitted for resolution, the COMELEC En Banc issued an Order[33] dated March 4, 2010, stating as follows:

There is no issue on the presence of a quorum when the foregoing voting was conducted, as the seven (7) members of the Commission were present when the case was deliberated on, and they announced their respective votes. Nevertheless, the voting on the twin motions as indicated above wherein three (3) commissioners voted to deny protestee's Motion for Reconsideration and grant the protestant's Motion for Immediate Execution Pending Motion for Reconsideration, and one (1) commissioner dissenting, clearly shows that at least four (4) commissioners participated, and, hence, there was a quorum. The case of *Estrella vs. COMELEC* is applicable.

In *Estrella* the Supreme Court laid down the rule that the COMELEC en banc shall decide a case on matter[s] brought before it by a majority vote of "all its members," and NOT majority of the members who deliberated and voted thereon. In the present case, the majority of four (votes) was not attained as only three (3) commissioners concurred in the aforesaid Resolution denying protestee's Motion for Reconsideration and granting protestant's Motion for Immediate Execution pending the protestee's Motion for Reconsideration. Hence, the subject Resolution may not yet be promulgated. It is by virtue of this impasse that the Commission en banc scheduled a rehearing of the case as mandated by the Rules. At the rehearing conducted on February 15, 2010, the parties agreed to submit the matter for resolution by the Commission en banc upon the submission of their respective memoranda, without further argument.

The parties having submitted their respective memoranda, the matter was deliberated on by the Commission en banc and the seven (7) members maintained their respective stands (3 votes concurring-1 vote dissenting-3 stating "no part") on the Resolution of the Second Division dated December 1, [2009]. Hence, pursuant to Section 6, Rule 18, COMELEC Rules of Procedure, the latter is deemed affirmed.

WHEREFORE, premises considered, and, applying the provision of Rule 18, Section 6 of the COMELEC Rules of Procedure, the Second Division's Resolution, dated December 1, 2009, denying protestee's Motion for Reconsideration and granting protestant's Motion for Immediate Execution is hereby AFFIRMED.

ACCORDINGLY, the Clerk of the Commission, ECAD, is hereby ordered to forthwith ISSUE a WRIT OF EXECUTION directing the Provincial Election Supervisor of Bulacan, in coordination with the DILG Provincial Operations Officer of Bulacan, to implement the Resolution of the Commission (Second Division) dated December 1, 2009, and this Order of the Commission by ordering JOSELITO R. MENDOZA to CEASE AND DESIST from performing the functions of the Governor of the Province of Bulacan and to VACATE said office in favor of ROBERTO M. PAGDANGANAN.

Let a copy of this Order be furnished the Secretary of the Department of Interior and Local Government, the Provincial Election Supervisor of Bulacan and the DILG Provincial Operations Officer of the Province of Bulacan.[34]

What is left for determination regarding this issue is the validity of the Order dated March 4, 2010, because a majority of four votes was still not reached even after rehearing.

To do this, it is necessary to look into the COMELEC Rules, as amended, wherein the manner by which the

COMELEC shall transact business is spelled out, and we quote the relevant portions below:

RULE 3

How the Commission Transacts Business

x x x x

SECTION 3. The Commission Sitting in Divisions. - The Commission shall sit in two (2) Divisions to hear and decide protests or petitions in ordinary actions, special actions, special cases, provisional remedies, contempt and special proceedings except in accreditation of citizens' arms of the Commission.

RULE 18

Decisions

x x x x

SECTION 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 ours.)

The lone dissenter in both the questioned Resolution and the March 4, 2010 Order, Commissioner Rene V. Sarmiento, wrote that Rule 18, Section 6 of the COMELEC Rules should be read to mean that "in the event that even after a rehearing there is still an impasse as regards the opinion of the Commission En Banc, two different remedies are recognized; first, the case shall be dismissed if it was originally commenced in the Commission; and second, in appealed cases, the judgment or order appealed from shall be affirmed." [35] Commissioner Sarmiento opined that an election protest case is originally commenced in the Commission En Banc and should therefore be dismissed if the majority of four votes is not obtained. Adverting to Section 2(2), Article IX(C) of the Constitution, he ratiocinated as follows:

SECTION 2. The Commission on Elections shall exercise the following powers and functions:

x x x x

(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.

x x x x

In the case at bar, considering that the contested position is provincial governor, undoubtedly, exclusive original jurisdiction lies with the Commission on Elections. Correlatively, the protest should be and, indeed, was filed before the Commission at the first instance. It goes without saying therefore that the present case falls under the category originally commenced in the Commission.

Furthermore, no way by any stretch of imagination can this controversy be considered as an appealed case. Yes, it is true that the instant Motion for Reconsideration assails the Resolution of the Second Division. But this does not mean that it is an appeal from the said Second Division's ruling. Aside from the obvious legal difference between the two reliefs, to construe a Motion for Reconsideration as an appeal would defeat the purpose of the delineation made in Section 6 of Rule 18 of the COMELEC Rules of Procedure with regard to the cases originally commenced and those appealed. Take note that all controversies brought to the Commission, either originally or on appeal with the exception of election offenses, are first heard and decided

in the division level. The same is elevated to the Commission en banc when a Motion for Reconsideration has been timely filed.

Having duly determined that this case falls under the category originally commenced, it is mandated therefore that the election protest filed by protestant Roberto Pagdanganan be dismissed.[36]

Similarly, petitioner, in his Supplement to the Petition with a Most Urgent Reiterating Motion for the Issuance of a Temporary Restraining Order or a Status Quo Order, avers that the election protest should have been dismissed after no majority vote was obtained after rehearing, citing the above discussion of Commissioner Sarmiento in his dissent.

I do not agree. The COMELEC Rules should be interpreted in harmony with the Constitution, to give meaning to, and fulfill the purpose of, its framers.

The COMELEC is a constitutionally-created body that is primarily an administrative agency, which also possesses quasi-judicial and quasi-legislative functions. Article IX(A) of the 1987 Constitution contains the provisions common to all Constitutional Commissions, and Sections 1 and 7 thereof read:

SECTION 1. The Constitutional Commissions, which shall be independent, are the Civil Service Commission, the Commission on Elections, and the Commission on Audit.

x x x x

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. A case or matter is deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the rules of the Commission or by the Commission itself. Unless otherwise provided by this Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Supreme Court on certiorari by the aggrieved party within thirty days from receipt of a copy thereof. (Emphasis ours.)

Specifically, Article IX(C) of the Constitution covers the COMELEC, Section 3 of which provides:

SECTION 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. (Emphases supplied.)

It is clear from the above that the framers of the Constitution intended the COMELEC to be an independent body. It appears that a division of the COMELEC is vested with constitutional authority to hear and decide election cases subject to the filing of a motion for reconsideration with the COMELEC En Banc. Thus, before a case is elevated to the COMELEC En Banc, there exists a decision of a division of the COMELEC, which it has rendered in accordance with its constitutionally vested jurisdiction to hear and decide election cases.

Furthermore, under the COMELEC Rules, a COMELEC division can validly decide election cases upon the concurrence of at least two Members. Rule 3, Section 5 provides:

SECTION 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 or resolution.

(b) When sitting in Division, two (2) Members of a Division shall constitute a quorum to transact business. The concurrence of at least two (2) Members of a Division shall be necessary to reach a decision, resolution, order

or ruling. If this required number is not obtained, the case shall be automatically elevated to the Commission En Banc for decision or resolution.

(c) Any motion to reconsider a decision, resolution, or order of 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.

It appears that this Rule contemplates two distinct situations when a case originally heard before a Division reaches the COMELEC En Banc. Under paragraph (b), when the required number of two (2) Members is not obtained in the Division, the case shall be automatically elevated to the COMELEC En Banc, and in that situation, what is before the latter is the original election protest. On the other hand, under paragraph (c), when the required number is in fact obtained and a decision, resolution, order, or ruling is duly reached by the Division, the motion for reconsideration of such decision, resolution, order, or ruling shall be resolved by the COMELEC En Banc, and NOT the original election protest.

Applying Section 6, Rule 18, quoted above, the effect of the lack of the necessary majority of four (4) votes in the COMELEC En Banc, which results in the inability of the COMELEC En Banc to reach a decision either to grant or deny the protest or a motion for reconsideration, is as follows: (i) the original election protest is dismissed, in cases falling under paragraph (b); while (ii) the decision of the division sought to be reconsidered must be deemed affirmed, in cases falling under paragraph (c).

Furthermore, even if we consider the proceeding before the En Banc as a continuation of the election protest heard and decided by the division, the motion for reconsideration will be but an incident of the original election protest. Utilizing the provisions of the COMELEC Rules (Sec. 6, Rule 18) cited by Commissioner Sarmiento, the Motion for Reconsideration, not being an appeal but only an incidental motion, should be denied.

To construe Section 6, Rule 18 as providing for the dismissal of the original action that was decided upon by a division, as suggested by petitioner as well as Commissioner Sarmiento, would make the rule objectionable on constitutional grounds because, as discussed above, the Constitution gives the COMELEC divisions the jurisdiction to hear and decide election cases; and the COMELEC En Banc the authority to hear and resolve motions for reconsideration. To adopt petitioner's as well as Commissioner Sarmiento's interpretation of the COMELEC Rules would render nugatory said Constitutional mandate vesting the said jurisdiction on a division of the COMELEC. In other words, the COMELEC Rules as so interpreted would be vulnerable to objection on the ground of unconstitutionality.

Therefore, construing Section 6, Rule 18 in relation to Section 5(b) and (c) of the same COMELEC Rules, in harmony with the pertinent provisions of the Constitution, the rule providing for dismissal of the original protest action upon failure to reach the necessary majority before the COMELEC En Banc should only apply in a case where there was NO decision reached by the Division, because in such situation, the COMELEC En Banc would be acting not on the motion for reconsideration but on the original election protest. But if the COMELEC En Banc acts on a motion for reconsideration of a decision or resolution of a Division, then the failure to reach the necessary majority of four should result to the DENIAL of the motion for reconsideration. Otherwise, the motion for reconsideration would be accorded greater weight than the decision rendered by the Division, which was arrived at in the exercise of its constitutionally vested jurisdiction over election protests.

As it stands, when the subject election protest was elevated through a Motion for Reconsideration to the COMELEC En Banc, the decision of all three Members of the Second Division could have only been set aside by the majority of ALL Members of the COMELEC En Banc, meaning four out of seven votes. I agree with petitioner as well as Commissioner Sarmiento that under the Rules and *Estrella v. COMELEC*,^[37] the necessary

majority was not reached in order to decide on the Motion for Reconsideration. However, since no decision was reached by the COMELEC En Banc on the Motion for Reconsideration, what remains is the decision of the Second Division, which was validly rendered in consonance with the provisions of the Constitution and the COMELEC Rules. The protestant, who was proclaimed the winner and who already took his oath subsequent to such proclamation, cannot be removed by protestee's failure to obtain the necessary votes from the COMELEC En Banc to sustain his Motion for Reconsideration.

As regards petitioner's averment that the questioned Resolution dated February 8, 2010, as well as the Resolution dated December 1, 2009 of the COMELEC Second Division, was issued when the original ballots subject of the election protest were still in the custody of the SET, I see no reason to take this matter up again, as this Court had already passed upon this with finality in G.R. No. 188308.[38] I quote relevant portions of the Court's Decision in said case, which is clear and requires no further explanation:

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. The SET Secretary responded on June 17, 2009 as follows:

. . . 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. ED

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. x x x.

x x x x

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. 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.

x x x x

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.

x x x x

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.

4. WHETHER COMELEC GRAVELY ABUSED ITS DISCRETION TANTAMOUNT TO LACK OF OR IN EXCESS OF JURISDICTION WHEN IT FAILED TO CREDIT THE CLAIMS OF THE PETITIONER

I register my dissent to the ponencia's finding that there was grave abuse of discretion on the part of the COMELEC En Banc.

Based on petitioner's contentions, the following are the sub-issues to be resolved:

4.1 WHETHER COMELEC GRAVELY ABUSED ITS DISCRETION TANTAMOUNT TO LACK OF OR IN EXCESS OF JURISDICTION WHEN IT INVALIDATED 9,160 BALLOTS OF THE PETITIONER AS WRITTEN BY ONE PERSON IN PAIRS OR IN GROUP; and

4.2 WHETHER COMELEC GRAVELY ABUSED ITS DISCRETION TANTAMOUNT TO LACK OF OR IN EXCESS OF JURISDICTION WHEN IT INVALIDATED THOUSANDS OF VALID BALLOTS OF THE PETITIONER AS SPURIOUS, WRITTEN BY TWO OR MORE PERSONS AND AS MARKED BALLOTS WITH NO FACTUAL AND LEGAL BASIS.

The numerous allegations of petitioner under these sub-issues go into the manner of appreciation of ballots conducted by the COMELEC, and are factual in nature, requiring a thorough physical examination of the original ballots if a proper review is to be made.

As this Court has have held in *Balingit v. Commission on Elections*[39]:

The appreciation of the contested ballots and election documents involves a question of fact best left to the determination of the COMELEC, a specialized agency tasked with the supervision of elections all over the country, as it is the constitutional commission vested with the exclusive original jurisdiction over election contests involving regional, provincial and city officials, as well as appellate jurisdiction over election protests involving elective municipal and barangay officials. In the absence of grave abuse of discretion or any jurisdictional infirmity or error of law, the factual findings, conclusions, rulings, and decisions rendered by the said Commission on matters falling within its competence shall not be interfered with by this Court. (Emphases supplied.)

Even if the Court were to entertain petitioner's assertions regarding the alleged erroneous invalidation by the COMELEC Second Division of petitioner's 9,160 ballots on the ground that they were written by one person in pairs or in a group on the basis of photocopies of said ballots submitted by petitioner as Annexes "II"- "II-3000" to the instant petition, a meticulous examination of the said copies reveals that the COMELEC Second Division was correct in declaring them invalid on the aforesaid ground.

The ponencia holds that the COMELEC En Banc gravely abused its discretion in justifying the invalidation of 9,160 ballots in the assailed December 1, 2009 COMELEC Second Division Resolution by mere generalizations bereft of specific details, in contravention of Rule 14, Section 1(d) of the new Rules of Procedure in Election Contests Before the Courts Involving Elective Municipal and Barangay Officials,[40] which petitioner claims is applicable by analogy. However, I find that this rule cited by petitioner is inapplicable to the case at bar, as what is involved here is the appreciation of ballots in an election contest involving provincial officials. It is not difficult to understand that the said rule cannot be applied to provincial election contests, owing to the large number of ballots usually involved that would result in an extremely voluminous and unwieldy Resolution containing very

specific details on why each and every contested ballot is deemed as written by one person in pairs or in a group. Conversely, petitioner did not present to this Court specific and detailed allegations for each and every ballot which he argues should not have been declared invalid for having been written by one.

After meticulously examining Annexes "JJ"- "JJ-577," which are uncertified photocopies of ballots that petitioner alleges were erroneously invalidated as marked ballots, it appears that only 510 of these ballots may have been mistakenly invalidated as marked. Nevertheless, I cannot attribute grave abuse of discretion on the part of the COMELEC Second Division on this point on account of the complicated rules on what constitutes a mark on a ballot that would render it invalid. Besides, the aforesaid number does not suffice to overturn the results of the final count of the ballots.

Regarding petitioner's contention that the COMELEC Second Division erroneously invalidated ballots in his favor as spurious, made erroneous computations, and did not take into account the fact that illiterate voters requiring voting assistance actually voted in the precincts in which COMELEC found ballots as written by one, our assessment of such generalized claims would require the appreciation of election documents, i.e., original ballots, Minutes of Voting, etc., which neither party submitted to the Court. Absent the presentation of such vital documents, petitioner cannot expect this Court to uphold his bare assertions.

In determining whether the COMELEC en banc acted with grave abuse of discretion in this case as asserted by petitioner, the standard used by the Court in *Mendoza v. Commission on Elections*[41] is as follows:

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". Mere abuse of discretion is not enough; the abuse must be grave to merit our positive action.

I maintain the presumption that the COMELEC regularly performed its official duties in relation to the revision of ballots in this election case, absent a clear showing that it acted in an arbitrary, whimsical, capricious, or despotic manner. Records show that the COMELEC ordered the respective Election Officers and City/Municipal Treasurers of the various cities and municipalities of Bulacan to undertake all the necessary security measures to preserve and secure the ballot boxes and their contents.[42] In addition, the COMELEC granted the requests of both petitioner and respondent Pagdanganan for the designation of their respective security personnel in the storage facility where the ballot boxes were kept.[43] Its findings that some ballots were written by one or by two or more persons, or marked, or spurious were supported by laws and jurisprudence regarding the appreciation of ballots.[44]

Time and again, it has been held that this Court is not a trier of facts. To conclude, I quote from *Juan v. Commission on Elections*,[45] wherein the Court said:

The Court's jurisdiction to review decisions and orders of the COMELEC on this matter operates only upon a showing of grave abuse of discretion on the part of the COMELEC. Verily, only where grave abuse of discretion is clearly shown shall the Court interfere with the COMELEC's judgment.

x x x The office of a petition for certiorari is not to correct simple errors of judgment; any resort to the said petition under Rule 64 in relation to Rule 65 of the 1997 Rules of Civil Procedure is limited to the resolution of jurisdictional issues. Thus, it is imperative for the petitioner to show caprice and arbitrariness on the part of the COMELEC whose exercise of discretion is being assailed.

Proof of such grave abuse of discretion is found wanting in this case.

The COMELEC'S conclusion on a matter decided within its competence is entitled to utmost respect. It is not sufficient to allege that the COMELEC gravely abused its discretion. Such allegation should also be justified. In this case, petitioner failed to justify his assertion of grave abuse of discretion against the COMELEC. x x x Moreover, the COMELEC's proceedings were conducted in accordance with the prevailing laws and regulations.

WHEREFORE, premises considered, I vote to dismiss the instant Petition for Certiorari.

[1] Rollo, pp. 197-207.

[2] Id. at 947-1025.

[3] Id. at 1026-1034.

[4] Id. at 1117-1118.

[5] Id. at 1135-1155.

[6] Id. at 1156-1160.

[7] *Mendoza v. Commission on Elections*, G.R. No. 188308, October 15, 2009.

[8] Rollo, pp. 221-931.

[9] Id. at 930.

[10] Id. at 1408-1418.

[11] Id. at 1239-1390.

[12] Id. at 1219-1238.

[13] Id. at 207.

[14] Id. at 208-217.

[15] Id. at 206.

[16] Id. at 5245.

[17] Id. at 5304-5308.

[18] Id. at 5313-5315.

[19] Id. at 5316.

[20] Id. at 5317-5321.

[21] Id. at 5322-5326.

[22] Id. at 5288-5303.

[23] G.R. No. 190156, February 12, 2010.

[24] Rollo, pp. 16-17.

[25] Id. at 5189 and 5224.

[26] Id. at 5264-5273.

[27] G.R. No. 164439, January 23, 2006, 479 SCRA 487, 493-494.

[28] 398 Phil. 257, 282 (2000).

[29] Rollo, pp. 16-17. Emphasis added.

[30] Id. at 218.

[31] Id. at 219-220.

[32] Id.

[33] Id. at 5304-5308.

[34] Id. at 5306-5307.

[35] Id. at 5310.

[36] Id. at 5310-5311.

[37] G.R. No. 160465, May 27, 2004, 429 SCRA 789, 792-793. In *Estrella* we held:

The provision of the Constitution is clear that it should be the majority vote of all its members and not only those who participated and took part in the deliberations. Under the rules of statutory construction, it is to be assumed that the words in which constitutional provisions are couched express the objective sought to be attained. Since the above-quoted constitutional provision states "all of its members," without any qualification, it should be interpreted as such.

x x x x

For the foregoing reasons then, this Court hereby abandons the doctrine laid down in *Cua* and holds that the COMELEC En Banc shall decide a case or matter brought before it by a majority vote of "all its members," and NOT majority of the members who deliberated and voted thereon.

[38] *Mendoza v. Commission on Elections*, supra note 7.

[39] G.R. No. 170300, February 9, 2007, 515 SCRA 404, 410.

[40] "(d) On Pair or Group of Ballots Written by One or Individual Ballots Written by Two - When ballots are invalidated on the ground of written by one person, the court must clearly and distinctly specify why the pair or group of ballots has been written by only one person. The specific strokes, figures or letter indicating that the ballots have been written by one person must be specified. A simple ruling that a pair or group of ballots has been written would not suffice. The same is true when ballots are excluded on the ground of having been written by two persons. The court must likewise take into consideration the entries of the Minutes of Voting and Counting relative to illiterate or disabled voters, if any, who cast their votes through assistants, in determining the validity of the ballots found to be written by one person, whether the ballots are in pairs or in groups..."

[41] Supra note 7.

[42] Rollo, p. 238.

[43] Id. at 199.

[44] Id. at 200.

[45] G.R. No. 166639, April 24, 2007, 522 SCRA 119, 128-129.

DISSENTING OPINION

ABAD, J.:

Challenged in this Petition for Certiorari is the Resolution dated February 8, 2010 of the Commission on Elections (COMELEC) in EPC 2007-44 entitled Roberto M. Pagdanganan v. Joselito R. Mendoza.

Brief Antecedents

Petitioner Joselito R. Mendoza was proclaimed winner in the May 14, 2007 gubernatorial race in the Province of Bulacan. Respondent Roberto M. Pagdanganan who opposed him filed an election protest with the COMELEC questioning the election results in all the 5,066 precincts in the province due to massive electoral fraud that Mendoza allegedly committed.

On December 1, 2009 the COMELEC Second Division decided the election protest and proclaimed Pagdanganan as the duly elected Governor of Bulacan. Mendoza opposed Pagdanganan's motion for execution of the decision before the Second Division and filed a motion for reconsideration of that decision with the COMELEC En Banc.

On February 8, 2010 the COMELEC En Banc denied Mendoza's motion for reconsideration. Reacting to it, he filed an urgent motion to recall the February 8 resolution on the ground, among others, that the En Banc issued such resolution (a) without the concurrence of the majority of its members and (b) without conducting a rehearing under Section 6, Rule 18 of the COMELEC rules of procedure. Only three Commissioners voted to deny his motion for reconsideration. A commissioner dissented while three others took no part.

On February 10, 2010 the COMELEC En Banc issued an Order for the rehearing of the motion for reconsideration on February 15, 2010. Meanwhile, on February 12 Mendoza filed with this Court the present petition, raising the same grounds which he cited in the urgent motion to recall that he earlier filed with the COMELEC En Banc

Following its February 15 rehearing, the members of the COMELEC En Banc maintained their votes. On March 4, 2010 the En Banc issued an order directing the immediate execution of the Second Division's decision. This prompted Mendoza to file a supplement to his petition before this Court, bringing up the recent developments in the case.

Issue Subject of Concurring Opinion

I join the dissent of Justice Teresita J. Leonardo-De Castro and in addition would like to add my thoughts on a key issue in this case, namely:

Whether or not the failure of the COMELEC En Banc to muster the majority vote required for denying petitioner Mendoza's motion for reconsideration would effectively result in the abandonment or reversal of the Second Division's decision against him.

Discussion

The dissenting opinion of Justice Teresita J. Leonardo-De Castro holds that, since the majority votes of four Commissioners in the COMELEC En Banc needed for granting Mendoza's motion for reconsideration of the decision of the Second Division could not be had, the Division's decision should be deemed affirmed.

But, adopting petitioner Mendoza's position, the majority opinion penned by Justice Perez's submits that the result of a failure of vote in the En Banc should be to set aside the Second Division's decision and dismiss

Pagdanganan's election protest. Quite frankly, this view is supported by the literal application of Section 6, Rule 18 of the COMELEC Rules of Procedure which reads:

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.

Here, Pagdanganan filed his election protest, an original action, directly with the COMELEC. The Second Division to which the case was raffled heard the parties and their evidence and rendered a decision in Pagdanganan's favor. On Mendoza's motion for reconsideration filed with the En Banc, the latter voted twice with the same result: three votes for denying the motion for reconsideration, one dissenting vote for granting it, and three abstentions. The reasoning is that, since the necessary majority of four votes cannot be had, the election protest originally commenced in the COMELEC should be dismissed.

If the issue were to be decided based solely on Section 6, Rule 18 of the COMELEC rules of procedure, Justice Perez's dissent could hardly be debatable. But this is not the case. The COMELEC rules are inferior to and cannot modify what the Constitution prescribes. Thus:

One. Section 3, Article IX-C, of the 1987 Constitution empowers every COMELEC Division to decide election cases for the COMELEC as a body, not to act as commissioners with mere recommendatory powers. Section 3 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 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. (Underscoring supplied)

Actually, although the COMELEC "may sit en banc or in two divisions," the COMELEC en banc has no power to decide election cases. "All such election cases," says Section 3 above, "shall be heard and decided in division."

The majority opinion's theory that the Division's decisions in original actions are not decisions if, on motion for reconsideration, the required vote of the En Banc cannot be had, contravenes Section 3. Nothing in the provisions of the Constitution implies a proposition that the decision-making process it prescribed for the COMELEC is integrated in that the decision of the Division is a half-decision in original election cases and needs to be approved by the En Banc.

Two. The COMELEC cannot pass a rule that, when the En Banc fails to muster the majority vote required for denying the losing party's motion for reconsideration, the decision of the Division shall be deemed vacated or reversed.

Such rule will alter the scope of the power of the En Banc. The latter's power with respect to all kinds of election cases is limited to deciding motions for reconsideration. Thus, the pertinent portion of section 3, Article IX-C, of the 1987 Constitution, provides:

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. (Underscoring supplied)

The reconsideration of a decision implies reexamination, and possibly a different decision by the entity which

initially decided it.[1] Since the En Banc needs four votes to reconsider and set aside a Division's decision, its failure to muster such votes means that it is unable to exercise its power to decide the motion for reconsideration before it. This also means that it cannot grant the reconsideration asked of it by the losing party. Correct? Consequently, a COMELEC-generated rule which says that such failure to grant reconsideration is the equivalent of actually granting the reconsideration is absurd. It also contravenes the Constitution.

Three. The Constitution does not make a distinction between election cases brought to the COMELEC by appeal and those originally filed with it. The same Section 3 provides that "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." There cannot be one way of disposing of motions for reconsideration in original cases and another way of disposing of motions for reconsideration in appealed cases. The distinction made by Section 6, Rule 18, of the COMELEC rules is unwarranted.

As stated above, it is to the Divisions that the Constitution gave the power to decide all election cases, not to the En Banc. It can be granted that the procedure that the Division may follow in hearing and deciding appealed cases might differ from the procedure it will follow in hearing and deciding original cases. But is there a significant difference between these two kinds of cases that will justify a divergence in results when, on motions for reconsideration, the En Banc is unable to muster the required vote for denying such motions?

There is none. Indeed, the Supreme Court hears and decides both appealed and original cases but it has never crossed its mind to decree that, in original cases filed with it as distinguished from appealed cases, a failure to muster the required vote for acting on a motion for reconsideration shall result in the reversal of its decision. Such a rule would be an outrage to the principle of fairness and to the Constitutional guarantee of due process.

The resolution of the COMELEC en banc being in harmony with both constitutional and statutory provisions, I vote to deny the petition.

[1] Black's Law Dictionary, Sixth Edition, p. 1272.

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