

DOUGLAS R. CAGAS, PETITIONER, VS. THE COMMISSION ON ELECTIONS, AND CLAUDE P. BAUTISTA, RESPONDENTS.

G.R. No. 194139. January 24, 2012

Ponente: BERSAMIN, J.

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BERSAMIN, J.:

A party aggrieved by an interlocutory order issued by a Division of the Commission on Elections (COMELEC) in an election protest may not directly assail the order in this Court through a special civil action for certiorari. The remedy is to seek the review of the interlocutory order during the appeal of the decision of the Division in due course.

For resolution is the petition for certiorari brought under Rule 64 of the Rules of Court, assailing the order dated August 13, 2010 (denying the affirmative defenses raised by the petitioner),[1] and the order dated October 7, 2010 (denying his motion for reconsideration),[2] both issued by the COMELEC First Division in EPC No. 2010-42, an election protest entitled Claude P. Bautista, protestant v. Douglas R. Cagas, protestee.[3]

Antecedents

The petitioner and respondent Claude P. Bautista (Bautista) contested the position of Governor of the Province of Davao del Sur in the May 10, 2010 automated national and local elections. The fast transmission of the results led to the completion by May 14, 2010 of the canvassing of votes cast for Governor of Davao del Sur, and the petitioner was proclaimed the winner (with 163,440 votes), with Bautista garnering 159,527 votes.[4]

Alleging fraud, anomalies, irregularities, vote-buying and violations of election laws, rules and resolutions, Bautista filed an electoral protest on May 24, 2010 (EPC No. 2010-42).[5] The protest was raffled to the COMELEC First Division.

In his answer submitted on June 22, 2010,[6] the petitioner averred as his special affirmative defenses that Bautista did not make the requisite cash deposit on time; and that Bautista did not render a detailed specification of the acts or omissions complained of.

On August 13, 2010, the COMELEC First Division issued the first assailed order denying the special affirmative defenses of the petitioner,[7] viz:

After careful examination of the records of the case, this Commission (First Division) makes the following observation:

- Protestant paid the cash deposit amounting to one hundred thousand pesos (P100,000.00) on June 3, 2010 as evidenced by O.R. No. 1118105; and
- Paragraph nos. 9 to 28 of the initiatory petition filed by the Protestant set forth the specific details of the acts and omissions complained of against the Protestee.

It is therefore concluded that the payment by the Protestant on June 3, 2010 is a substantial compliance with

the requirement of COMELEC Resolution No. 8804, taking into consideration Section 9(e), Rule 6 of said Resolution. Furthermore, the Protestant has likewise essentially complied with Section 7(g), Rule 6 of the above-mentioned Resolution.

In view of the foregoing, this Commission (First Division) RESOLVES to DENY the Protestee's special affirmative defenses.

SO ORDERED.[8]

The petitioner moved to reconsider on the ground that the order did not discuss whether the protest specified the alleged irregularities in the conduct of the elections, in violation of Section 2, paragraph 2,[9] Rule 19 of COMELEC Resolution No. 8804,[10] requiring all decisions to clearly and distinctly express the facts and the law on which they were based; and that it also contravened Section 7(g),[11] Rule 6 of COMELEC Resolution No. 8804 requiring a detailed specification of the acts or omissions complained of. He prayed that the matter be certified to the COMELEC en banc pursuant to Section 1,[12] Section 5,[13] and Section 6,[14] all of Rule 20 of COMELEC Resolution No. 8804.

The petitioner insisted that COMELEC Resolution No. 8804 had introduced the requirement for the "detailed specification" to prevent "shotgun fishing expeditions by losing candidates;"[15] that such requirement contrasted with Rule 6, Section 1 of the 1993 COMELEC Rules of Procedure,[16] under which the protest needed only to contain a "concise statement of the ultimate facts" constituting the cause or causes of action; that Bautista's protest did not meet the new requirement under COMELEC Resolution No. 8804; and that in *Peña v. House of Representatives Electoral Tribunal*,[17] the Court upheld the dismissal of a protest by the House of Representatives Electoral Tribunal (HRET) for not specifically alleging the electoral anomalies and irregularities in the May 8, 1995 elections.

In his opposition,[18] Bautista countered that the assailed orders, being merely interlocutory, could not be elevated to the COMELEC en banc pursuant to the ruling in *Panlilio v. COMELEC*;^[19] that the rules of the COMELEC required the initiatory petition to specify the acts or omissions constituting the electoral frauds, anomalies and election irregularities, and to contain the ultimate facts upon which the cause of action was based; and that *Peña v. House of Representatives Electoral Tribunal* did not apply because, firstly, *Peña* had totally different factual antecedents than this case, and, secondly, the omission of material facts from *Peña's* protest prevented the protestee (Alfredo E. Abueg, Jr.) from being apprised of the issues that he must meet and made it eventually impossible for the HRET to determine which ballot boxes had to be collected.

On October 7, 2010, the COMELEC First Division issued its second assailed order,[20] denying the petitioner's motion for reconsideration for failing to show that the first order was contrary to law, to wit:

The Protestee's August 28, 2010 "Motion for Reconsideration with Prayer to Certify the Case to the Commission En Banc" relative to the Order issued by the Commission (First Division) dated August 13, 2010 is hereby DENIED for failure to show that the assailed order is contrary to law

Without going into the merits of the protest, the allegations in the protestant's petition have substantially complied with the requirements of COMELEC Resolution No. 8804 that will warrant the opening of the ballot boxes in order to resolve not only the issues raised in the protest but also those set forth in the Protestee's answer. When substantial compliance with the rules is satisfied, allowing the protest to proceed is the best way of removing any doubt or uncertainty as to the true will of the electorate. All other issues laid down in the parties' pleadings, including those in the Protestee's special and affirmative defenses and those expressed in the preliminary conference brief, will best be threshed out in the final resolution of the instant case.

The prayer to elevate the instant Motion for Reconsideration to the Commission En Banc is DENIED

considering that the 13 August 2010 Order is merely interlocutory and it does not dispose of the instant case with finality, in accordance with Section 5(c), Rule 3 of the COMELEC Rules of Procedure.

SO ORDERED.

Not satisfied, the petitioner commenced this special civil action directly in this Court.

Issue

The petitioner submits that:—

THE RESPONDENT COMELEC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN REFUSING TO DISMISS THE PROTEST FOR INSUFFICIENCY IN FORM AND CONTENT.

The petitioner argues that Section 9,[21] Rule 6 of COMELEC Resolution No. 8804 obliged the COMELEC First Division to summarily dismiss the protest for being insufficient in form and content; and that the insufficiency in substance arose from the failure of the protest to: (a) specifically state how the various irregularities and anomalies had affected the results of the elections; (b) indicate in which of the protested precincts were “pre-shaded bogus-ballots” used; (c) identify the precincts where the PCOS machines had failed to accurately account for the votes in favor of Bautista; and (d) allege with particularity how many additional votes Bautista stood to receive for each of the grounds he protested. He concludes that the COMELEC First Division gravely abused its discretion in allowing the protest of Bautista despite its insufficiency.

Moreover, the petitioner urges that the protest be considered as a mere fishing expedition to be outrightly dismissed in light of the elections being held under an automated system. In support of his urging, he cites *Roque, Jr. v. Commission on Elections*,[22] where the Court took judicial notice of the accuracy and reliability of the PCOS machines and CCS computers, such that allegations of massive errors in the automated counting and canvassing had become insufficient as basis for the COMELEC to entertain or to give due course to defective election protests.[23] He submits that a protest like Bautista’s cast doubt on the automated elections.

On the other hand, the Office of the Solicitor General (OSG) and Bautista both posit that the COMELEC had the power and prerogative to determine the sufficiency of the allegations of an election protest; and that certiorari did not lie because the COMELEC First Division acted within its discretion. Additionally, the OSG maintains that the assailed orders, being interlocutory, are not the proper subjects of a petition for certiorari.

As we see it, the decisive issue is whether the Court can take cognizance of the petition for certiorari.

Ruling

We dismiss the petition for lack of merit.

The governing provision is Section 7, Article IX of the 1987 Constitution, which provides:

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.

This provision, although it confers on the Court the power to review any decision, order or ruling of the COMELEC, limits such power to a final decision or resolution of the COMELEC en banc, and does not extend to

an interlocutory order issued by a Division of the COMELEC. Otherwise stated, the Court has no power to review on certiorari an interlocutory order or even a final resolution issued by a Division of the COMELEC. The following cogent observations made in *Ambil v. Commission on Elections*[24] are enlightening, viz:

To begin with, the power of the Supreme Court to review decisions of the Comelec is prescribed in the Constitution, as follows:

“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]

“We have interpreted this provision to mean final orders, rulings and decisions of the COMELEC rendered in the exercise of its adjudicatory or quasi-judicial powers.” This decision must be a final decision or resolution of the Comelec en banc, not of a division, certainly not an interlocutory order of a division. The Supreme Court has no power to review via certiorari, an interlocutory order or even a final resolution of a Division of the Commission on Elections.

The mode by which a decision, order or ruling of the Comelec en banc may be elevated to the Supreme Court is by the special civil action of certiorari under Rule 65 of the 1964 Revised Rules of Court, now expressly provided in Rule 64, 1997 Rules of Civil Procedure, as amended.

Rule 65, Section 1, 1997 Rules of Civil Procedure, as amended, requires that there be no appeal, or any plain, speedy and adequate remedy in the ordinary course of law. A motion for reconsideration is a plain and adequate remedy provided by law. Failure to abide by this procedural requirement constitutes a ground for dismissal of the petition.

In like manner, a decision, order or resolution of a division of the Comelec must be reviewed by the Comelec en banc via a motion for reconsideration before the final en banc decision may be brought to the Supreme Court on certiorari. The pre-requisite filing of a motion for reconsideration is mandatory.xxx[25]

There is no question, therefore, that the Court has no jurisdiction to take cognizance of the petition for certiorari assailing the denial by the COMELEC First Division of the special affirmative defenses of the petitioner. The proper remedy is for the petitioner to wait for the COMELEC First Division to first decide the protest on its merits, and if the result should aggrieve him, to appeal the denial of his special affirmative defenses to the COMELEC en banc along with the other errors committed by the Division upon the merits. It is true that there may be an exception to the general rule, as the Court conceded in *Kho v. Commission on Elections*. [26] In that case, the protestant assailed the order of the COMELEC First Division admitting an answer with counter-protest belatedly filed in an election protest by filing a petition for certiorari directly in this Court on the ground that the order constituted grave abuse of discretion on the part of the COMELEC First Division. The Court granted the petition and nullified the assailed order for being issued without jurisdiction, and explained the exception thuswise:

As to the issue of whether or not the case should be referred to the COMELEC en banc, this Court finds the respondent COMELEC First Division correct when it held in its order dated February 28, 1996 that no final decision, resolution or order has yet been made which will necessitate the elevation of the case and its records to the Commission en banc. No less than the Constitution requires that election cases must be heard and decided first in division and any motion for reconsideration of decisions shall be decided by the Commission en banc. Apparently, the orders dated July 26, 1995, November 15, 1995 and February 28, 1996 and the other

orders relating to the admission of the answer with counter-protest are issuances of a Commission in division and are all interlocutory orders because they merely rule upon an incidental issue regarding the admission of Espinosa's answer with counter-protest and do not terminate or finally dispose of the case as they leave something to be done before it is finally decided on the merits. In such a situation, the rule is clear that the authority to resolve incidental matters of a case pending in a division, like the questioned interlocutory orders, falls on the division itself, and not on the Commission en banc. Section 5 (c), Rule 3 of the COMELEC Rules of Procedure explicitly provides for this,

Sec. 5. Quorum; Votes Required xxx

xxx

(c) Any motion to reconsider a decision, resolution, order or ruling of a Division shall be resolved by the Commission en banc except motions on interlocutory orders of the division which shall be resolved by the division which issued the order. (emphasis provided)

Furthermore, a look at Section 2, Rule 3 of the COMELEC Rules of Procedure confirms that the subject case does not fall on any of the instances over which the Commission en banc can take cognizance of. It reads as follows:

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

In the instant case, it does not appear that the subject controversy is one of the cases specifically provided under the COMELEC Rules of Procedure in which the Commission may sit en banc. Neither is it shown that the present controversy a case where a division is not authorized to act nor a situation wherein the members of the First Division unanimously voted to refer the subject case to the Commission en banc. Clearly, the Commission en banc, under the circumstances shown above, can not be the proper forum which the matter concerning the assailed interlocutory orders can be referred to.

In a situation such as this where the Commission in division committed grave abuse of discretion or acted without or in excess of jurisdiction in issuing interlocutory orders relative to an action pending before it and the controversy did not fall under any of the instances mentioned in Section 2, Rule 3 of the COMELEC Rules of Procedure, the remedy of the aggrieved party is not to refer the controversy to the Commission en banc as this is not permissible under its present rules but to elevate it to this Court via a petition for certiorari under Rule 65 of the Rules of Court. (Bold emphasis supplied)

Under the exception, therefore, the Court may take cognizance of a petition for certiorari under Rule 64 to review an interlocutory order issued by a Division of the COMELEC on the ground of the issuance being made without jurisdiction or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction when it does not appear to be specifically provided under the COMELEC Rules of Procedure that the matter is one that the COMELEC en banc may sit and consider, or a Division is not authorized to act, or the members of the Division unanimously vote to refer to the COMELEC en banc. Of necessity, the aggrieved party can directly resort to the Court because the COMELEC en banc is not the proper forum in which the matter concerning the assailed interlocutory order can be reviewed.

However, the *Kho v. Commission on Elections* exception has no application herein, because the COMELEC First Division had the competence to determine the lack of detailed specifications of the acts or omissions complained of as required by Rule 6, Section 7 of COMELEC Resolution No. 8804, and whether such lack called for the

outright dismissal of the protest. For sure, the 1987 Constitution vested in the COMELEC broad powers involving not only the enforcement and administration of all laws and regulations relative to the conduct of elections but also the resolution and determination of election controversies.[27] The breadth of such powers encompasses the authority to determine the sufficiency of allegations contained in every election protest and to decide based on such allegations whether to admit the protest and proceed with the hearing or to outrightly dismiss the protest in accordance with Section 9, Rule 6 of COMELEC Resolution No. 8804.

The Court has upheld the COMELEC's determination of the sufficiency of allegations contained in election protests, conformably with its imperative duty to ascertain in an election protest, by all means within its command, who was the candidate elected by the electorate.[28] Indeed, in *Panlilio v. Commission on Elections*,[29] we brushed aside the contention that the election protest was insufficient in form and substance and was a sham for having allegations couched in general terms, stating:

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

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

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

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

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

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

The petitioner adds that with the Court having noted the reliability and accuracy of the PCOS machines and consolidation/canvassing system (CCS) computers in *Roque, Jr. v. Commission on Elections*,[30] Bautista's election protest assailing the system and procedure of counting and canvassing of votes cast in an automated system of elections should be immediately dismissed.

We are not persuaded.

Roque, Jr. v. Commission on Elections does not preclude the filing of an election protest to challenge the outcome of an election undertaken in an automated system of elections. Instead, the Court only ruled there that the system and procedure implemented by the COMELEC in evaluating the PCOS machines and CCS computers met the minimum system requirements prescribed in Section 7 of Republic Act No. 8436.[31] The Court did not guarantee the efficiency and integrity of the automated system of elections, as can be gleaned from the following

pronouncement thereat:

The Court, however, will not indulge in the presumption that nothing would go wrong, that a successful automation election unmarred by fraud, violence, and like irregularities would be the order of the moment on May 10, 2010. Neither will it guarantee, as it cannot guarantee, the effectiveness of the voting machines and the integrity of the counting and consolidation software embedded in them. That task belongs at the first instance to Comelec, as part of its mandate to ensure clean and peaceful elections. This independent constitutional commission, it is true, possesses extraordinary powers and enjoys a considerable latitude in the discharge of its functions. The road, however, towards successful 2010 automation elections would certainly be rough and bumpy. The Comelec is laboring under very tight timelines. It would accordingly need the help of all advocates of orderly and honest elections, of all men and women of goodwill, to smoothen the way and assist Comelec personnel address the fears expressed about the integrity of the system. Like anyone else, the Court would like and wish automated elections to succeed, credibly.[32]

In view of the foregoing, we have no need to discuss at length the other submissions of the petitioner.

ACCORDINGLY, the petition for certiorari is DISMISSED for lack of merit.

SO ORDERED.

Corona, C.J., Carpio, Velasco, Jr., Leonardo-De Castro, Del Castillo, Abad, Villarama, Jr., Perez, Mendoza, Sereno, Reyes, and Perlas-Bernabe, JJ., concur.

Brion, J., on official leave.

Peralta, J., no part.

[1] Rollo, pp. 34-35.

[2] Id., p. 37.

[3] Id., pp. 38-77.

[4] Id., p. 8.

[5] Supra, note 3.

[6] Id., pp. 78-95.

[7] Supra, note 1.

[8] Emphasis supplied.

[9] Section 2. Procedure in Making Decisions.— The conclusions of the Commission in any case submitted to it for decision shall be reached in consultation before the case is assigned by raffle to a Member for the writing of the opinion. A certification to this effect signed by the Chairman or Presiding Commissioner shall be incorporated in the decision. Any member who took no part or dissented, or abstained from a decision or resolution must state the reason therefor.

Every decision shall express therein clearly and distinctly the facts and the law on which it is based. In its decision, the Commission shall be guided by the principle that every ballot is presumed to be valid unless there is clear and good reason to justify its rejection and that the object of the election is to obtain the true expression of the voters.

[10] In Re: COMELEC Rules of Procedure on Disputes in an Automated Election System in connection with the

May 10, 2010 Elections.

[11] Section 7. Contents of the protest of petition.— An election protest or petition for quo warranto shall specifically state the following facts:

xxx

g) A detailed specification of the acts or omissions complained of showing the electoral frauds, anomalies or irregularities in the protested precincts.

[12] Section 1. Grounds of Motion for Reconsideration.— A motion for reconsideration may be filed on the grounds that the evidence is insufficient to justify the decision, order or ruling; or that the said decision, is contrary to law.

[13] Section 5. How Motion for Reconsideration Disposed of.—Upon the filing of a motion to reconsider a decision, resolution, order or ruling of a Division, the ECAD Clerk concerned shall, within twenty-four (24) hours from the filing thereof, notify the Presiding Commissioner. The latter shall within two (2) days thereafter certify the case to the Commission en banc.

[14] Section 6. Duty of ECAD Director to Calendar Motion for Resolution.—The ECAD Director concerned shall calendar the motion for reconsideration for the resolution of the Commission en banc within ten days from the certification thereof.

[15] Rollo, p. 120.

[16] Section 1. Commencement of Action or Proceedings by Parties.—Any natural or juridical person authorized by these rules to initiate any action or proceeding shall file with the Commission a protest or petition alleging therein his personal circumstances as well as those of the protestee or respondent, the jurisdictional facts, and a concise statement of the ultimate facts constituting his cause or causes of action and specifying the relief sought. He may add a general prayer for such further or other relief as may be deemed just or equitable.

[17] G.R. No. 123037, March 21, 1997, 270 SCRA 340.

[18] Rollo, pp. 128-138.

[19] G.R. No. 181478, July 15, 2009, 593 SCRA 139.

[20] Rollo, p. 37 (emphasis supplied).

[21] Section 9. Summary dismissal of election contest. – The Commission shall summarily dismiss, motu proprio, an election protest and counter-protest on the following grounds: xxx b) The protest is insufficient in form and content as required in Section 7 hereof; xxx

[22] G.R. No. 188456, September 10, 2009, 599 SCRA 69.

[23] Rollo, pp. 23-24.

[24] G.R. No. 143398, October 25, 2000, 344 SCRA 358, 365-366; reiterated in, among others, *Jumamil v. Commission on Elections*, G.R. Nos. 167989-93, March 6, 2007, 517 SCRA 553; *Dimayuga v. Commission on Elections*, G.R. No. 174763, April 24, 2007, 522 SCRA 220; *Cayetano v. Commission on Elections*, G.R. No. 193846, April 12, 2011.

[25] Emphasis supplied.

[26] G.R. No. 124033, September 25, 1997, 279 SCRA 463, 471-473. See also *Repol v. Commission on*

Elections, G.R. No. 161418, April 28, 2004, 428 SCRA 321.

[27] Dela Llana v. Commission on Elections, G.R. No. 152080, November 28, 2003, 416 SCRA 638.

[28] Benito v. Commission on Elections, G.R. No. 106053, August 17, 1994, 235 SCRA 436, 422.

[29] Supra, note 19 at pp. 151-153.

[30] Supra, note 22.

[31] Entitled “An Act Authorizing the Commission on Elections to Use an Automated Election System in the May 11, 1998 National or Local Elections and in Subsequent National and Local Electoral Exercises, Providing Funds Therefor and For Other Purposes.”

[32] Supra, note 22 at pp. 153-154.

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