

SALVADOR D. VIOLAGO, SR., PETITIONER, VS. COMMISSION ON ELECTIONS AND JOAN V. ALARILLA, RESPONDENTS.*G.R. No. 194143. October 04, 2011*

Ponente: PERALTA, J.

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Before the Court is a special civil action for certiorari under Rule 65 of the Rules of Court seeking to set aside the August 12, 2010 Order of the 2nd Division of the Commission on Elections (COMELEC) and the Order of the COMELEC en banc dated September 21, 2010 in EPC No. 2010-23. The August 12, 2010 Order dismissed the election protest filed by herein petitioner against herein private respondent, while the September 21, 2010 Order denied petitioner's Motion for Reconsideration.

The factual and procedural antecedents of the case are as follows:

Herein petitioner and private respondent were candidates for the mayoralty race during the May 10, 2010 elections in the City of Meycauayan, Bulacan. Private respondent was proclaimed the winner.

On May 21, 2010, petitioner filed a Petition^[1] with the COMELEC questioning the proclamation of private respondent on the following grounds: (1) massive vote-buying; (2) intimidation and harassment; (3) election fraud; (4) non-appreciation by the Precinct Count Optical Scan (PCOS) machines of valid votes cast during the said election; and, (5) irregularities due to non-observance of the guidelines set by the COMELEC.

On June 15, 2010, private respondent filed her Answer with Motion to Set for Hearing Affirmative Defenses in the Nature of a Motion to Dismiss for Being Insufficient in Form and Substance. ^[2]

Thereafter, on July 16, 2010, the COMELEC 2nd Division issued an Order ³ setting the preliminary conference on August 12, 2010 and directing the parties to file their Preliminary Conference Briefs at least one (1) day before the scheduled conference.

On August 11, 2010, private respondent filed her Preliminary Conference Brief. ^[4]

Petitioner, on the other hand, filed his Brief ^[5] on the day of the scheduled preliminary conference. He, likewise, filed an Urgent Motion to Reset Preliminary Conference on the ground that he did not receive any notice and only came to know of it when he inquired with the COMELEC a day before the scheduled conference. Petitioner also claimed that on the date set for the preliminary conference, his counsel and his associate were scheduled to appear before different tribunals in connection with other cases they were handling. ^[6] Subsequently, petitioner and his counsel failed to appear during the actual conference on August 12, 2010. On even date, private respondent's counsel moved for the dismissal of the case.

In its assailed Order ^[7] dated August 12, 2010, the COMELEC 2nd Division dismissed petitioner's protest on the ground that the latter belatedly filed his Brief in violation of the COMELEC rule on the filing of briefs.

On August 19, 2010, petitioner filed a Motion for Reconsideration ⁸ with the COMELEC en banc contending that

it was only on August 16, 2010 that he received a copy of the Order of the COMELEC which set the preliminary conference on August 12, 2010.

In its second assailed Order [9] dated September 21, 2010, the COMELEC en banc denied petitioner's Motion for Reconsideration on the ground that petitioner failed to file a verified motion in violation of Section 3, Rule 19 of the COMELEC Rules of Procedure.

Hence, the present petition based on the following grounds:

- No notice of preliminary conference hearing was sent to petitioner before the August 12, 2010 hearing.
- The COMELEC did not exercise sound judicial discretion when it denied the Motion for Reconsideration.
- Petitioner is totally blameless and the COMELEC committed undue haste and speed in disposing the case.
- The denial of the MR, although within the discretion of the COMELEC, was not based on sound judicial discretion. [10]

Petitioner's basic contention is that the COMELEC 2[nd] Division and the COMELEC en banc committed grave abuse of discretion in dismissing his electoral protest and in denying his motion for reconsideration, respectively.

The Court finds the petition meritorious.

The COMELEC 2[nd] Division's reason for dismissing petitioner's election protest is the latter's failure to timely file his Preliminary Conference Brief.

However, a perusal of the records of the instant case would show that petitioner was able to present a copy of the Certification [11] issued by the Postmaster of Meycauayan City, Bulacan, attesting to the fact that the Order sent by the COMELEC to petitioner's counsel informing the latter of the scheduled hearing set on August 12, 2010 and directing him to file his Preliminary Conference Brief was received only on August 16, 2010. Petitioner likewise submitted an advisory issued by the Chief of the Operations Division of the TELECOM Office in Meycauayan that the telegraph service in the said City, through which the COMELEC also supposedly sent petitioner a notice through telegram, has been terminated and the office permanently closed and transferred to Sta. Maria, Bulacan as of April 1, 2009. [12] Respondent did not question the authenticity of these documents.

On the basis of the abovementioned documents, the Court finds no justifiable reason why the COMELEC 2[nd] Division hastily dismissed petitioner's election protest. There is no indication that the COMELEC 2[nd] Division made prior verification from the proper or concerned COMELEC department or official of petitioner's allegation that he did not receive a copy of the subject Order. In fact, it was only on the day following such dismissal that the Electoral Contests Adjudication Department, through the 2[nd] Division Clerk, sent a letter to the Postmaster of Meycauayan City, Bulacan requesting for a certification as to the date of receipt of the said Order stating therein that the "certification is urgently needed for the proper and appropriate disposition" [13] of petitioner's election protest. Fairness and prudence dictate that the COMELEC 2[nd] Division should have first waited for the requested certification before deciding whether or not to dismiss petitioner's protest on technical grounds.

Petitioner should not be penalized for belatedly filing his Preliminary Conference Brief. While it may be argued that petitioner acquired actual knowledge of the scheduled conference a day prior to the date set through means other than the official notice sent by the COMELEC, the fact remains that, unlike his opponent, he was not given sufficient time to thoroughly prepare for the said conference. A one-day delay, as in this case, does not justify the outright dismissal of the protest based on technical grounds where there is no indication of intent to violate the rules on the part of petitioner and the reason for the violation is justifiable. Thus, the COMELEC 2[nd] Division committed grave abuse of discretion in dismissing petitioner's protest.

With respect to the COMELEC en banc's denial of petitioner's Motion for Reconsideration, it is true that Section 3, Rule 20 of the COMELEC Rules of Procedure on Disputes in an Automated Election System, [14] as well as Section 3, Rule 19 of the COMELEC Rules of Procedure, clearly require that a motion for reconsideration should be verified. However, the settled rule is that the COMELEC Rules of Procedure are subject to liberal construction.

In *Quintos v. Commission on Elections*, [15] this Court held that "the alleged lack of verification of private respondent's Manifestation and Motion for Partial Reconsideration is merely a technicality that should not defeat the will of the electorate. The COMELEC may liberally construe or even suspend its rules of procedure in the interest of justice, including obtaining a speedy disposition of all matters pending before the COMELEC." [16]

In the same manner, this Court, in the case of *Panlilio v. Commission on Elections*, [17] restated the prevailing principle that the COMELEC's rules of procedure for the verification of protests and certifications of non-forum shopping should be liberally construed.

In *Pacanan v. Commission on Elections*, [18] this Court, in clarifying the mandated liberal construction of election laws, held thus:

x x x An election contest, unlike an ordinary civil action, is clothed with a public interest. The purpose of an election protest is to ascertain whether the candidate proclaimed by the board of canvassers is the lawful choice of the people. What is sought is the correction of the canvass of votes, which was the basis of proclamation of the winning candidate. An election contest therefore involves not only the adjudication of private and pecuniary interests of rival candidates but paramount to their claims is the deep public concern involved and the need of dispelling the uncertainty over the real choice of the electorate. And the court has the corresponding duty to ascertain, by all means within its command, who is the real candidate elected by the people.

Moreover, the Comelec Rules of Procedure are subject to a liberal construction. This liberality is for the purpose of promoting the effective and efficient implementation of the objectives of ensuring the holding of free, orderly, honest, peaceful and credible elections and for achieving just, expeditious and inexpensive determination and disposition of every action and proceeding brought before the Comelec. Thus, we have declared:

It has been frequently decided, and it may be stated as a general rule recognized by all courts, that statutes providing for election contests are to be liberally construed to the end that the will of the people in the choice of public officers may not be defeated by mere technical objections. An election contest, unlike an ordinary action, is imbued with public interest since it involves not only the adjudication of the private interests of rival candidates but also the paramount need of dispelling the uncertainty which beclouds the real choice of the electorate with respect to who shall discharge the prerogatives of the office within their gift. Moreover, it is neither fair nor just to keep in office for an uncertain period one who's right to it is under suspicion. It is imperative that his claim be immediately cleared not only for the benefit of the winner but for the sake of public interest, which can only be achieved by brushing aside technicalities of procedure which protract and delay the trial of an ordinary action. [19]

This principle was reiterated in the more recent consolidated cases of *Tolentino v. Commission on Elections*, [20] and *De Castro v. Commission on Elections*, [21] where the Court held that in exercising its powers and jurisdiction, as defined by its mandate to protect the integrity of elections, the COMELEC "must not be straitjacketed by procedural rules in resolving election disputes."

In the present case, notwithstanding the fact that petitioner's motion for reconsideration was not verified, the COMELEC en banc should have considered the merits of the said motion in light of petitioner's meritorious claim that he was not given timely notice of the date set for the preliminary conference. The essence of due

process is to be afforded a reasonable opportunity to be heard and to submit any evidence in support of one's claim or defense. [22] It is the denial of this opportunity that constitutes violation of due process of law. [23] More particularly, procedural due process demands prior notice and hearing. [24] As discussed above, the fact that petitioner somehow acquired knowledge or information of the date set for the preliminary conference by means other than the official notice sent by the COMELEC is not an excuse to dismiss his protest, because it cannot be denied that he was not afforded reasonable notice and time to adequately prepare for and submit his brief. This is precisely the reason why petitioner was only able to file his Preliminary Conference Brief on the day of the conference itself. Petitioner's counsel may not likewise be blamed for failing to appear during the scheduled conference because of prior commitments and for, instead, filing an Urgent Motion to Reset Preliminary Conference.

Hence, by denying petitioner's motion for reconsideration, without taking into consideration the violation of his right to procedural due process, the COMELEC en banc is also guilty of grave abuse of discretion.

WHEREFORE, the petition for certiorari is GRANTED. The Order of the COMELEC 2nd Division dated August 12, 2010, as well as the Order of the COMELEC en banc dated September 21, 2010, in EPC No. 2010-23 are REVERSED and SET ASIDE. Petitioner's election protest is REINSTATED. The COMELEC 2nd Division is hereby DIRECTED to continue with the proceedings in EPC No. 2010-23 and to resolve the same with dispatch.

SO ORDERED.

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

[1] Annex "D" to Petition, rollo, pp. 22-36.

[2] Annex "E" to Petition, id. at 59-67.

[3] Annex "F" to Petition, id. at 77.

[4] Annex "H" to Petition, id. at 79-84.

[5] Annex "J" to Petition, id. at 88-91.

[6] Annex "I" to Petition, id. at 85.

[7] Annex "A" to Petition, id. at 18.

[8] Annex "M" to Petition, id. 94-98.

[9] Annex "B" to Petition, id. at 19-20.

[10] Rollo, pp. 9-12.

[11] Records, p. 87.

[12] Id. at 88.

[13] See Letter from Electoral Contests Adjudication Department dated August 13, 2010, id. at 80.

[14] Resolution No. 8804 approved by the COMELEC en banc on March 22, 2010.

[15] 440 Phil. 1045 (2002).

[16] Id. at 1062-1063.

[17] G.R. No. 181478, July 15, 2009, 593 SCRA 139, 150.

[18] G.R. No. 186224, August 25, 2009, 597 SCRA 189.

[19] Id. at 203-204, citing Barroso v. Ampig, G.R. No. 138218, March 17, 2000, 328 SCRA 530, 541-542.

[20] G.R. Nos. 187958, 187961, and 187962, April 7, 2010, 617 SCRA 575, 598.

[21] G.R. Nos. 187966-68, April 7, 2010, 617 SCRA 575, 598.

[22] Octava v. Commission on Elections, G.R. No. 166105, March 22, 2007, 518 SCRA 759, 763; Gomez v. Alcantara, G.R. No. 179556, February 13, 2009, 579 SCRA 472, 488.

[23] Octava v. Commission on Elections, *supra*, at 764.

[24] Namil v. Commission on Elections, 460 Phil. 751, 760 (2003), citing Sandoval v. Commission on Elections, 380 Phil. 375, 392 (2000).

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