

JOSE TAPALES VILLAROSA, PETITIONER, VS. ROMULO DE MESA FESTIN AND COMMISSION ON ELECTIONS, RESPONDENT.

G.R. No. 212953. August 05, 2014

Ponente: VELASCO JR., J.

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VELASCO JR., J.:

Nature of the Case

This treats of the Petition for Certiorari under Rule 64 in relation to Rule 65 of the Rules of Court assailing the Order[1] dated June 3, 2014 of public respondent Commission on Elections (COMELEC) in SPR (AEL) No. 04-2014.

The Facts

Petitioner Jose Tapales Villarosa (Villarosa) and respondent Romulo de Mesa Festin (Festin) were two of the four rival candidates for the mayoralty post in San Jose, Occidental Mindoro during the May 13, 2013 National and Local Elections. On May 15, 2013, private respondent was proclaimed the victor, having garnered 20,761 votes, edging out petitioner who obtained 19,557 votes.

With a difference of only 1,204 votes, petitioner filed a Petition for Protest Ad Cautelam before the Regional Trial Court (RTC) alleging irregularities attending the conduct of the elections. Specifically, petitioner brought to the attention of the court the complaints of various voters who claimed that several ballots were pre-marked or that the ovals appearing on the face of the ballots corresponding to the name of petitioner were embossed or waxed to prevent them from being shaded. As a consequence of the alleged massive electoral fraud and irregularities in the 92 clustered precincts of San Jose, Occidental Mindoro, private respondent, so petitioner claimed, was illegally proclaimed.

In his answer, private respondent Festin likewise impugned the election results in the precincts, particularly the number of votes credited to petitioner.

With both parties raising as principal issue the accuracy of the vote count, a physical recount of the ballots were conducted under the auspices of the RTC, Branch 46 in San Jose, Occidental Mindoro.

Ruling of the RTC

On November 7, 2013, the RTC rendered a Decision declaring the proclamation of respondent Festin void, viz:

WHEREFORE, premises considered, this Court hereby DECLARES the Protestant, JOSE TAPALES VILLAROSA as the duly elected mayor of San Jose, Occidental Mindoro during the May 13, 2013 National and Local Election and VOIDS the Proclamation of Protestee Romulo De Mesa Festin as elected Mayor by the Board of Election Inspectors of San Jose, Occidental Mindoro.[2]

The RTC justified its ruling by deducting 2,050 votes from private respondent that were allegedly pre-marked or tampered.

Following this development, petitioner filed a Motion for Execution Pending Appeal, which was granted by the RTC on January 15, 2014.[3] On January 23, 2014, respondent Festin's motion for reconsideration was denied.

Meanwhile, on February 3, 2014, private respondent Festin elevated the case to public respondent COMELEC via a Petition for Certiorari with prayer for injunctive relief. Petitioner immediately moved for its dismissal on the ground that the petition's verification is allegedly defective.

Ruling of the COMELEC

Without yet ruling on the motion to dismiss, the COMELEC, acting through its First Division, on February 13, 2014, issued an Order requiring petitioner to file his answer to the petition. Through the same Order, the COMELEC issued a Temporary Restraining Order (TRO) to enjoin the RTC from implementing its Decision during the pendency of the case. Without waiving the grounds relied on his motion to dismiss, petitioner timely filed his answer to the petition.

To petitioner's surprise, on April 10, 2014, public respondent COMELEC granted private respondent's request for a preliminary injunction, enjoining the RTC Decision's execution pending appeal. What petitioner considered questionable was that the injunction was issued by a newly-constituted Special First Division, which was allegedly formed due to the absence of several COMELEC commissioners who, at that time, were personally attending to the concerns of the overseas absentee voters abroad. Petitioner points out that the special division was constituted only on April 8, 2014 through Resolution No. 9868 and was composed of only two members, Chairman Sixto S. Brillantes, Jr. and Commissioner Al A. Parreño, with the former presiding.

In response to the issuance of the injunction, petitioner filed an urgent motion praying for its quashal, which was denied by public respondent COMELEC First Division through the assailed June 3, 2014 Order. Thus, the instant petition.

The Issues

In ascribing grave abuse of discretion on the part of public respondent COMELEC, petitioner relied on the following grounds:

- Public respondent COMELEC (First Division) committed grave abuse of discretion amounting to lack or excess of jurisdiction when it did not find that the Special First Division did not have jurisdiction to issue an injunction;
- Public respondent COMELEC (First Division) committed grave abuse of discretion amounting to lack or excess of jurisdiction when it denied the urgent ex-parte motion to quash the writ of preliminary injunction.

Concisely stated, the issue in this case is the legality of the formation of the Special First Division and the validity of the Orders it issued, specifically the April 10, 2014 Order granting the issuance of a writ of preliminary injunction.

According to the petitioner, the COMELEC First Division acquired jurisdiction over the case on February 13, 2014 when it directed him to file an answer relative to the appeal filed by private respondent Festin, and when it issued a TRO enjoining the execution pending appeal. Thus, petitioner insists that this precluded the Special First Division from acquiring jurisdiction over the same case and, consequently, from issuing the writ of preliminary injunction. As argued by the petitioner, the mere absence of two of the commissioners in the division is not sufficient to oust it of jurisdiction and confer the same on a new one.

The Court's Ruling

We dismiss the petition for lack of merit.

Propriety of certiorari in assailing COMELEC rulings

Petitioner's recourse, aside from being unsound in substance, is procedurally infirm. 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. (emphasis added)

In the instructive case of *Ambil v. Commission on Elections*,^[4] We have interpreted the provision to limit the remedy of certiorari against final orders, rulings and decisions of the COMELEC en banc rendered in the exercise of its adjudicatory or quasi-judicial powers.^[5] Certiorari will not generally lie against an order, ruling, or decision of a COMELEC division for being premature, taking into account the availability of the plain, speedy and adequate remedy of a motion for reconsideration. As elucidated in the case:

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.^[6] (emphasis added)

The above doctrine further gained force when it was reiterated in Our recent ruling in *Cagas v. COMELEC*,^[7] in which We held that a party aggrieved by an interlocutory order issued by a Division of the COMELEC in an election protest may not directly assail the said 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.^[8]

The exception in *Kho v. COMELEC* is inapplicable

As an exception to the cases of *Ambil* and *Cagas*, We have ruled in *Kho vs. COMELEC*^[9] that when it does not appear to be specifically provided under the COMELEC Rules of Procedure that the challenged final order or decision is one that the COMELEC en banc may sit and consider, the aggrieved party can, by necessity, directly resort to the Court as the proper forum for reviewing the ruling. Thus, We have granted, in the said case, the petition assailing an interlocutory order of a COMELEC division.

The exception, however, does not obtain herein. Noteworthy is that in 1997, when *Kho* was resolved, what was then in force was the COMELEC Rules of Procedure promulgated on February 15, 1993 (1993 COMELEC Rules). As expressly provided in Rule 3 of the 1993 COMELEC Rules:

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 an action or proceeding before it is decided to be referred to the commission en banc.

x x x x

Section 5. Quorum; Votes required. x x x

x x x x

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

Patent in the above-cited provisions is that the COMELEC en banc, at that time, did not have the power to resolve motions for reconsideration with respect to interlocutory orders issued by a division. This circumstance was a controlling factor in Our ruling in Kho.

On the other hand, applicable in the instant petition is COMELEC Resolution No. 8804,[10] promulgated on March 22, 2010. As expressly provided:

Rule 20

Motion for Reconsideration

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.

x x x x

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.

x x x x

Section 7. Period to Decide by the Commission En Banc. - The motion for reconsideration shall be decided within fifteen (15) days from the date the case or matter is deemed submitted for decision, unless otherwise provided by law. (emphasis added)

Stark is the contrast between the two cited rules. To reiterate, under the 1993 COMELEC Rules, the COMELEC en banc is strictly prohibited from entertaining motions for reconsideration of interlocutory orders unless unanimously referred to the en banc by the members of the division that issued the same, whereas under COMELEC Resolution No. 8804, all motions for reconsideration filed with regard to decisions, resolutions, orders and rulings of the COMELEC divisions are automatically referred to the COMELEC en banc. Thus, in view of COMELEC Resolution No. 8804's applicability in the instant petition, a motion for reconsideration before the COMELEC en banc is available to petitioner herein unlike in Kho.

From the foregoing, petitioner's procedural lapse becomes manifest. With the availability of a plain, speedy, and adequate remedy at petitioner's disposal, his hasty resort to certiorari to this Court cannot be justified. On this ground alone, the instant petition can and should be dismissed outright.

The assailed Order was not issued in grave abuse of discretion

Even delving into the merits of the case, it cannot be said that the issuance of the assailed Order was tainted with grave abuse of discretion since public respondent's actions find sufficient constitutional basis under Sec. 3, Art. IX-C of the 1987 Constitution, which 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.(emphasis added)

Evidently, it is pursuant to this mandate that the COMELEC promulgated Resolution No. 7808[11] on January 16, 2007. Sec. 6, Rule 3 of the said Resolution, in part, provides:

Sec. 6.Substitution of members of a Division. –

(a) Temporary vacancy. – Whenever a member of a Division is on leave, seriously ill, temporarily disabled, is absent, inhibits himself, or is disqualified from sitting in a case, the junior member of the other Division shall substitute such Commissioner, participating therein in an acting capacity, in addition to his regular membership in his own Division.

x x x x

Under either of the foregoing substitutions, the Division where the acting or signing member is assigned shall be designated as “Special First Division” or “Special Second Division,” as the case may be, for purposes of the pertinent cases therein pending.”

Thereafter, with the retirement of Commissioner Rene V. Sarmiento and Commissioner Armando Velasco, the above-quoted rule was amended by Resolution No. 9636[12] on February 13, 2013 to now read as:

Sec. 6 Substitution of member of a Division. -

(a) Temporary vacancy. - Whenever a member of a Division is on Leave, seriously ill, temporarily disabled, is absent, inhibits himself, or is disqualified from sitting in a case, the Chairman shall substitute him with another Commissioner, or the Chairman shall sit in place of said member, and in that event he will preside.

x x x x

Under either of the foregoing substitutions, the Division where the acting or signing member is assigned shall be designated as “Special First Division” or “Special Second Division” as the case may be, for purposes of the pertinent case therein pending.

Invoking the rule, as amended, the COMELEC then issued Resolution No. 9868[13] on April 8, 2014. The Resolution sought to address the temporary vacancies in both Divisions of the COMELEC in view of the pressing matters concerning overseas absentee voting that required the attention and presence abroad of Commissioners Lucenito N. Tagle and Christian Robert S. Lim of the COMELEC First Division, and of Commissioner Elias R. Yusoph of the Second Division.[14]

Due to the absences of the aforementioned Commissioners, and to constitute a quorum for the Divisions, Chairman Sixto S. Brillantes, Jr. sat as presiding Chairman for both Divisions until his colleagues’ return.[15] Thus, pursuant to Section 6, Rule 3 as amended, Special Divisions were created with the following compositions:[16]

SPECIAL FIRST DIVISION

Chairman Sixto S. Brillantes, Jr. – Presiding
Commissioner Al A. Parreño – Member Commissioner

SPECIAL SECOND DIVISION

Chairman Sixto S. Brillantes, Jr. – Presiding
Commissioner Maria GraciaCielo M. Padaca – Member Commissioner

Commissioner Luie Tito F. Guia – Member Commissioner

With the foregoing discussion, it becomes indisputable that the formation of the Special Divisions is not only sanctioned by the COMELEC Rules but also by the Constitution no less.

No fault, let alone grave abuse of discretion, can be ascribed to the COMELEC when the Special First Division issued the questioned writ of preliminary injunction. Contrary to petitioner's claim, it cannot be said that the First Division and the Special First Division are two distinct bodies and that there has been consequent transfers of the case between the two. Strictly speaking, the COMELEC did not create a separate Division but merely and temporarily filled in the vacancies in both of its Divisions. The additional term "special," in this case, merely indicates that the commissioners sitting therein may only be doing so in a temporary capacity or via substitution.

The COMELEC First Division exercises jurisdiction over the cases that were assigned to it before the substitution was made, including SPR (AEL) No. 04-2014. This jurisdiction was not lost by the subsequent formation of the Special First Division since this only entailed a change in the Division's composition of magistrates. Indeed, the case was not reassigned or re-raffled anew. If anything, it was only petitioner's naivety that misled him into interpreting the designation of the division as a "special" one, meaning it is distinct from the first. Corollarily, petitioner is also mistaken in claiming that the jurisdiction was eventually "re-acquired" by the First Division from the Special First Division by ruling on the motion to quash since the First Division never lost jurisdiction to begin with.

Petitioner raises a fuss anent the temporary or permanent shuffling of members in the Commission when, in fact, this is not a novel practice. In instances such as this, exigencies justify the substitution of members and the designation of special divisions to prevent paralysis in the administration of justice. This is also resorted to in order to ensure that the speedy disposition of cases is not impeded and that docket systems are unclogged. Obviously, these advantages far outweigh petitioner's baseless cry of violation of due process.

WHEREFORE, in view of the foregoing, the instant petition is hereby DISMISSED.

SO ORDERED.

Carpio,[*] Leonardo-De Castro, Peralta, Bersamin, Del Castillo, Villarama, Jr., Perez, Mendoza, Reyes, Perlas-Bernabe, and Leonen, JJ., concur.

Sereno, C.J., on leave.

Brion, J., see separate concurring opinion.

[*] Acting Chief Justice per Special Order No. 1743 dated August 4, 2014.

[1] Rollo, pp. 29-32.

[2] Id. at 320.

[3] Id. at 330.

[4] G.R. No. 143398, October 25, 2000, 344 SCRA 358.

[5] Id. at 365-366

[6] Id. at 366.

[7] G.R. No. 194139, January 24, 2012, 663 SCRA 644.

[8] Id. at 645.

[9] G.R. No. 124033, September 25, 1997, 279 SCRA 463.

[10] In Re: COMELEC Rules of Procedure on disputes in an automated election system in connection with the May 10, 2010 Elections.

[11] In the matter of amending Rule 3 Sections 4, 6 and 8; Rule 18 Sections 1 and 5; and Rule 38 Section 8 with additional sections of the 1993 COMELEC Rules of Procedure and inserting a new rule on precedence and protocol.

[12] In the matter of the composition of the two (2) Divisions of the Commission pursuant to COMELEC Resolution No. 7808 promulgated on January 16, 2007, particularly, a new rule on precedence and protocol and to amend Sec. 6, Rule 3 of COMELEC Resolution No. 7808 on the substitution of members of a division.

[13] In the matter of the designation of the Honorable Chairman Sixto S. Brillantes, Jr. as Presiding Chairman of the COMELEC Special First Division and Special Second Division.

[14] Rollo, p. 514

[15] Id. at 515.

[16] Id.

SEPARATE CONCURRING OPINION

BRION, J.:

I agree with the ponencia's conclusion that the recourse to the present petition for certiorari is improper and that, even if we entertain the petition on the merits, the Commission on Elections (Comelec) committed no grave abuse of discretion.

However, I write this Separate Concurring Opinion to reflect my view on the ponencia's discussion on the propriety of the certiorari petition.

The Case

Jose Tapales Villarosa (petitioner) filed an election protest against Romulo de Mesa Festin (respondent) before the Regional Trial Court (RTC). After trial, the RTC nullified the respondent's proclamation and declared petitioner the victor in the 2013 mayoralty elections. The respondent appealed to the Comelec First Division. In the meantime, the RTC ordered the execution of its decision pending the respondent's appeal.

During the pendency of the respondent's appeal with the Comelec First Division, Comelec Chairman Sixto Brillantes constituted a "Special First Division," where he sat as Presiding Chairman together with Commissioner Al Parreno. The move was due to the absence of some of the Comelec Commissioners who had to attend to official duties abroad. The "Special First Division" then issued a preliminary injunction to prevent the execution of the RTC's decision.

The petitioner moved for the quashal of the injunction. The Comelec First Division denied the petitioner's motion, prompting him to file the present for petition certiorari.

The Ponencia

The ponencia dismissed the petition because the petitioner failed to avail, in the words of Section 1, Rule 65, in relation to Rule 64, of the Rules of Court, of the “plain, speedy and adequate remedy in the ordinary course of law” before seeking recourse with the Court. This remedy is a motion for reconsideration (of the denial of the petitioner’s motion to quash the injunction) with the Comelec en banc.

According to the ponencia, under Section 5(c), Rule 3 of the 1993 Comelec Rules of Procedure, the general rule is that the Comelec en banc cannot entertain a motion for reconsideration of an interlocutory order (e.g., denial of a motion to quash an injunction) of a division. One of the exceptions is where the members of the Division that issued the interlocutory order unanimously voted to refer the matter to the Comelec en banc. Section 5(c) reads:

Sec. 5. Quorum; Votes Required. - xxx.

x x x x

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

The result of the general rule is that after the division denies reconsideration of its interlocutory order, the remedy of certiorari with the Supreme Court may only exceptionally be availed of by the aggrieved party.

Under Section 5, Rule 20 of Comelec Resolution No. 8804[1] (March 22, 2010), however, a motion for reconsideration of an interlocutory order, among others, is now automatically referred to and necessarily must be coursed through the Comelec en banc.

According to the ponencia, there is a “stark contrast” between Section 5(c), Rule 3 of the 1993 Comelec Rules of Procedure, on one hand, and Section 5, Rule 20 of Comelec Resolution No. 8804, on the other hand. Unlike the earlier rule, the present rule provides an available remedy of a motion for reconsideration (of an interlocutory order of a division) with the Comelec en banc itself.

It is at this point that I express my own view on the propriety of a certiorari petition.

My Dissent

Contrary to the ponencia’s observation, Section 5, Rule 20 of Comelec Resolution No. 8804 is already present under the 1993 Comelec Rules of Procedure as Section 5 of Rule 19, as follows:

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

In other words, whether under the 1993 Comelec Rules of Procedure or Comelec Resolution No. 8804, the Presiding Commissioner of the Comelec division is required to “certify the case to the [Comelec] en banc” when a motion for reconsideration of “a decision, resolution, order or ruling of a Division” is filed. While this requirement has been in existence under both Comelec issuances, the Comelec has interpreted this requirement as applicable only to a final - not interlocutory – order of the Comelec in view of Section 5(c), Rule 3 of the 1993 Comelec Rules of Procedure. This Court has likewise been of the same view. [2]

Thus in *Cagas v. Commission on Elections*, [3] the Court observed that the proper remedy available to a party aggrieved by an interlocutory order issued by the Comelec division is to wait for the Comelec division to first decide the main case (election protest) on its merits; and if the decision is unfavorable, then to appeal this decision to the Comelec en banc, and question the propriety of the interlocutory order along with the other errors

committed by the division upon the merits.

At this juncture, it may be observed that in *Cagas*, the petitioner moved for reconsideration of the assailed interlocutory order of the Comelec division in observance of the exception in Section 5(c), Rule 3 of the 1993 Comelec Rules of Procedure. As it stands, the only generally available remedy against an interlocutory order of a Comelec division is a motion for reconsideration addressed to the division itself.

While the provision of Section 5(c), Rule 3 of the 1993 Comelec Rules of Procedure is nowhere found in Comelec Resolution No. 8804, this absence does not mean that the Comelec intended to repeal this provision and thereby support the ponencia's reasoning. Section 3, Rule 1 of Comelec Resolution No. 8804 reads:

Section 3. Application of the Rules of Court and other related rules. - The Commission on Elections (COMELEC) Rules of Procedure, the Rules of Court, and the Rules on Electronic Evidence shall apply by analogy, or in a suppletory character, and whenever necessary, practicable, and convenient.

In other words, Section 5(c), Rule 3 of the 1993 Comelec Rules of Procedure continues to be the governing rule to determine what cases are required to be elevated to the Comelec en banc. Simply put, it is not the "change" in the rules – because there is none – that makes the present petition premature for lack of a motion for reconsideration it being filed with the Comelec en banc. The prematurity of the petition lies in the petitioner's failure to file a motion for reconsideration with the Comelec division itself which rendered the assailed order.

But even if the petitioner did file a motion for reconsideration with the Comelec First Division, the present petition must still fail because the petitioner failed to establish grave abuse of discretion, as the ponencia correctly held. Again, what we mentioned in *Cagas v. Commission on Elections*[4] is worth emphasizing:

In a situation xxx 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,[5] 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.

Thus, in *Sahali v. COMELEC*, [6] the Court already clarified that this Court may take cognizance of a certiorari action directed against an interlocutory order issued by a division of the COMELEC when the following circumstances are present: first, the order was issued without jurisdiction or in excess of jurisdiction or with grave abuse of discretion tantamount to lack or excess of jurisdiction; and second, under the COMELEC Rules of Procedure, the subject of the controversy is a matter which (1) the COMELEC en banc may not sit and consider; (2) a division is not authorized to act; or (3) the members of the division unanimously vote to refer to the COMELEC en banc.

In short, the absence of an available remedy with the Comelec en banc must indispensably be coupled with a strong case for grave abuse of discretion in order to warrant the issuance of the writ of certiorari.

While I ultimately agree with the ponencia's conclusion, I submit that the ponencia's reasoning on the propriety of a certiorari petition may result in confusion on what is otherwise a clear subject in jurisprudence. If the Court intends to require a party to secure a certification and, eventually, a decision from the Comelec en banc on a challenge to an interlocutory order of a Comelec division (as a requisite for filing a certiorari petition with the Court), then the Court's action must have some clear basis under the Comelec rules.

[1] 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. [italics supplied]

[2] See *Cagas v. Commission on Elections*, G.R. No. 194139, January 24, 2012, 663 SCRA 644, 656.

[3] *Ibid.*

[4] *Ibid.* emphasis and underscore ours, italics supplied.

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

[6] 381 Phil. 505 (2000).

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