

DANIEL GARCIA AND TEODORO O’HARA, PETITIONERS, VS. ERNESTO DE JESUS AND CECILIA DAVID, AND THE COMMISSION ON ELECTIONS, RESPONDENTS.

G.R. No. 88158. March 04, 1992

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

The jurisdiction of the Commission on Elections (COMELEC) to issue Writs of Certiorari, Prohibition and Mandamus in electoral contests involving municipal and barangay officials is the common question addressed in these election cases, hence, their consolidation.

The antecedent facts follow:

(1) G.R. No. 88158 (The Antipolo Case)

In the 18 January 1988 local elections, Petitioners Daniel GARCIA and Teodoro O'HARA were the winning candidates for Mayor and Vice Mayor, respectively, of Antipolo, Rizal. They were proclaimed as such on 22 January 1988.

On 1 February 1988, Private Respondents Ernesto DE JESUS and Cecilia DAVID instituted an election protest before the Regional Trial Court of Antipolo, Rizal, Branch 72 (RTC), docketed as Election Case No. 02-A, where the results in twenty five (25) precincts were put in issue.

On 25 July 1988, the RTC issued an Order directing the delivery to it of all ballot boxes and other election paraphernalia used in the 25 protested precincts so that the ballots could be examined and the votes recounted.

After five (5) ballot boxes were already examined and revised, Petitioners' newly-hired counsel moved for the suspension of the hearing being conducted on 18 September 1988 alleging that an error was committed in the proceedings because there was no basis for the opening of the ballot boxes. He contended that the irregularities alleged in the election protest do not relate to the appreciation of ballots and thus, the opening of those boxes would not affect the result of the election.

On 26 September 1988, Petitioners GARCIA and O'HARA filed before the RTC a "Motion To Dismiss Opening Of Ballot Boxes and/or To Dismiss The Protest" which was premised on the ground that the allegations in the election protest were merely self-serving.

Acting on the aforesaid Motion, the RTC issued an Order dated 28 October 1988, amending its Order dated 25 July 1988, limiting the opening of ballot boxes to only nine (9) precincts out of the 25 protested ones, and limiting the examination of the ballot boxes only to those anomalies specified in the annexes attached to the election protest by Respondents DE JESUS and DAVID.

The latter moved for reconsideration thereof which was denied by the RTC, in an Order dated 27 December 1988. On 9 January 1989, Respondents DE JESUS and DAVID filed a Petition for Certiorari and Mandamus before the

COMELEC, docketed as SPR No. 2-89, which sought to nullify the RTC Order limiting the examination of ballot boxes to only 9 precincts.

On 13 January 1989, respondent COMELEC temporarily restrained the proceedings before the RTC and set for hearing Respondents DAVID and DE JESUS' application for Preliminary Injunction on 29 January 1989.

Petitioners GARCIA and O'HARA, meanwhile, registered their objection to the assumption of jurisdiction by the COMELEC over the Petition for Certiorari and Mandamus through their "Manifestation With Motion To Dismiss." It was their contention that the COMELEC was not empowered to take cognizance of Petitions for Certiorari, Prohibition and Mandamus.

After the parties had filed their respective pleadings, the COMELEC issued the questioned Decision, dated 27 April 1989, which directed the RTC to open all the ballot boxes in the 25 protested precincts.

(2) G.R. Nos. 97108-09 (The Isabela Case)

After the canvass of election returns was made in the same local elections, Respondent Jose C. NEYRA was proclaimed Mayor of Gamu, Isabela over Petitioner Tomas TOBON UY, with a plurality of 28 votes.

Petitioner TOBON UY filed an election protest before the Regional Trial Court of Ilagan, Isabela, Branch 16 (RTC), docketed as Election Case No. 369. On 7 January 1991, the RTC declared TOBON UY the winner "by a majority of five (5) votes" over NEYRA (RTC Decision, p. 24).

On the same date that said RTC Decision was promulgated, NEYRA filed a "Notice of Appeal," and TOBON UY, a "Motion for Execution Pending Appeal," with the latter pleading set for hearing on 10 January 1991.

The day before, or on 9 January 1991, NEYRA filed before the COMELEC a Petition for Certiorari and/or Prohibition, docketed as SPR No. 1-91, seeking to enjoin the RTC from further acting on TOBON UY's aforesaid "Motion for Execution Pending Appeal."

On 10 January 1991, the RTC, after due hearing, gave due course to NEYRA's appeal, granted execution pending appeal stating the special reasons therefor, and required TOBON UY to post a bond in the amount of P300,000.00. On the same date, the COMELEC issued a Temporary Restraining Order enjoining the RTC from further proceeding with the case. NEYRA's application for a Writ of Preliminary Injunction was likewise set for hearing by the COMELEC on 24 January 1991.

On 15 January 1991, NEYRA filed a second Petition for Certiorari and/or Prohibition before the COMELEC, docketed as SPR No. 2-91. This time, he sought to set aside the RTC Order, dated 10 January 1991, which granted TOBON UY's "Motion for Execution Pending Appeal."

The COMELEC took cognizance of both Certiorari Petitions and, on 15 February 1991, issued the questioned Resolution (in SPR Nos. 1-91 & 2-91), declaring as null and void the Writ of Execution Pending Appeal granted by the RTC, premised on Rule 35, Section 18, of its Rules of Procedure, and enjoining TOBON UY from "assuming the office and performing in whatever and however manner the duties of Mayor of Gamu, Isabela, until the final disposition of the appeal."

Principally, Petitioners GARCIA and O'HARA in G.R. No. 88158, and Petitioner TOBON UY in G.R. Nos. 97108-09, question the arrogation unto itself by the COMELEC of the power to issue Writs of Certiorari, Prohibition and Mandamus. They invoke the previous ruling of this Court in *Pimentel v. COMELEC* (G.R. Nos. 53581-83, 19 December 1980, 101 SCRA 769), which maintained that no such jurisdiction was ever conferred on respondent Commission by the 1973 Constitution or by law.

On the other hand, all Respondents in the Antipolo Case (G.R. No. 88185) and in the Isabela Case (G.R. Nos. 97108-09) contend that since the 1987 Constitution now expressly empowers the COMELEC to exercise "appellate jurisdiction over all contests involving elective municipal officials decided by trial courts of general jurisdiction" (Section 2[2], Article IX-C), and to "promulgate its own rules concerning pleadings and practice before it" provided they do "not diminish, increase, or modify substantive rights" (Section 6, Article IX-A and Section 3, Article IX-C), the COMELEC validly promulgated the rule which empowers it to issue the special Writs.

As a subsidiary issue, Petitioners GARCIA and O'HARA maintain that the COMELEC denied them due process in the Antipolo Case (G.R. No. 88158) when it rendered its questioned Decision without benefit of hearing. For his part, TOBON UY, in the Isabela Case (G.R. Nos. 97108-09), raises the question of whether or not Regional Trial Courts have the authority to order execution pending appeal in election contests decided by it. His view is that said Courts possess that authority. Respondent NEYRA contends otherwise.

In the absence of any specific conferment upon the COMELEC, either by the Constitution or by legislative fiat, the COMELEC is bereft of jurisdiction to issue said Writs.

It is the COMELEC alone, invoking its Constitutionally invested appellate jurisdiction and rule-making power, that arrogated unto itself the authority to issue Writs of Certiorari, Prohibition and Mandamus in Rule 28, Section 1, of its Rules of Procedure, thus:

"SECTION 1. When available. - In aid of its appellate jurisdiction in election cases before courts of general jurisdiction relating to the elections, returns and qualifications of elective municipal officials, and before courts of limited jurisdiction in cases relating to the elections, returns and qualifications of elective barangay officials, the Commission en banc may hear and decide petitions for certiorari, prohibition and mandamus."

However, neither the appellate jurisdiction of the COMELEC nor its rule-making power justifies such self-conferment of authority.

Jurisdiction, or the legal power to hear and determine a cause or causes of action, must exist as a matter of law. It may be classified into original jurisdiction and appellate jurisdiction. Original jurisdiction is the power of the Court to take judicial cognizance of a case instituted for judicial action for the first time under conditions provided by law. Appellate jurisdiction is the authority of a Court higher in rank to re-examine the final order or judgment of a lower Court which tried the case now elevated for judicial review (Remedial Law Compendium, Regalado, Florenz D., Fifth Revised Edition, Vol. I, p. 3). Since the two jurisdictions are exclusive of each other, each must be expressly conferred by law. One does not flow from, nor is inferred from the other.

In the Philippine setting, the authority to issue Writs of Certiorari, Prohibition and Mandamus involves the exercise of original jurisdiction. Thus, such authority has always been expressly conferred, either by the Constitution or by law. As a matter of fact, the well-settled rule is that jurisdiction is conferred only by the Constitution or by law (Orosa, Jr. v. Court of Appeals, G. R. Nos. 76828-32, 28 January 1991; Bacalso v. Ramolete, G.R. No. L-22488, 26 October 1967, 21 SCRA 519). It is never derived by implication. Indeed, "(w)hile the power to issue the writ of certiorari is in some instance conferred on all courts by constitutional or statutory provisions, ordinarily, the particular courts which have such power are expressly designated" (J. Aquino's Concurring Opinion in Pimentel, supra, citing 14 C.J.S. 202; Underscoring ours).

Thus, our Courts exercise the power to issue Writs of Certiorari, Prohibition and Mandamus by virtue of express constitutional grant or legislative enactments. To enumerate:

(1) Section 5[1], Article VIII of the 1987 Constitution conferred upon this Court such jurisdiction;

(2) Section 9[1] of Batas Pambansa Blg. 129, or the Judiciary Reorganization Act of 1980, to the Court of Appeals (then Intermediate Appellate Court);

(3) Section 21[1] of the said Act, to Regional Trial Courts;

(4) Section 5[1] of Republic Act No. 6734, or the Organic Act for the Autonomous Region in Muslim Mindanao, to the newly created Shari'ah Appellate Court; and

(5) Article 143[e], Chapter I, Title I, Book IV of Presidential Decree No. 1083, or the Code of Muslim Personal Law, to Shari'a District Courts.

Significantly, what the Constitution granted the COMELEC was appellate jurisdiction. The Constitution makes no mention of any power given the COMELEC to exercise original jurisdiction over Petitions for Certiorari, Prohibition and Mandamus unlike in the case of the Supreme Court which was specifically conferred such authority (Art. VIII, Sec. 5[1]). The immutable doctrine being that jurisdiction is fixed by law, the power to issue such Writs can not be implied from the mere existence of appellate jurisdiction. Just as implied repeal of statutes are frowned upon, so also should the grant of original jurisdiction by mere implication to a quasi-judicial body be tabooed. If appellate jurisdiction has to be statutorily granted, how much more the original jurisdiction to issue the prerogative Writs?

Apparently, the COMELEC Rule on its Certiorari jurisdiction is patterned after the previous authorization to the Court of Appeals to issue Writs of Certiorari, Prohibition and Mandamus in aid of its appellate jurisdiction. That authority, however, was not inherent in the Court of Appeals but was specifically conferred by Section 30 of the Judiciary Act (Rep. Act No. 296) and Section 9(1) of the Judiciary Reorganization Act of 1980 (B.P. Blg. 129). It does not follow that just because the 1987 Constitution vests the COMELEC with appellate jurisdiction, without more, it can issue such Writs in aid of that appellate jurisdiction.

The view that the subject Writs are but common-law Writs not owing their existence to any constitutional provision or statutory enactment may be true in foreign jurisdictions but not in the Philippine judicial system where such Writs are specifically characterized as original Special Civil Actions (Rule 65, Rules of Court). It is original jurisdiction, as contrasted to appellate jurisdiction, that is exercised in the issuance of said Writs. And although there may be authorities in other jurisdictions which maintain that such Writs are inherent in the power of higher Courts exercising appellate jurisdiction, the same refers to judicial tribunals, which the COMELEC is not. What this agency exercises are administrative and quasi-judicial powers (*Filipinas Engineering and Machine Shop vs. Ferrer*, G.R. No. L-31455, 28 February 1985, 135 SCRA 25).

As defined, Certiorari "is a writ from a superior court to an inferior court or tribunal commanding the latter to send up the record of a particular case" (*Pimentel v. COMELEC*, *supra*). The function of a Writ of Certiorari is to keep an inferior Court within the bounds of its jurisdiction or to prevent it from committing such a grave abuse of discretion amounting to excess of jurisdiction (*Central Bank of the Philippines v. Court of Appeals*, G.R. No. 41859, 8 March 1989, 171 SCRA 49). The grant of appellate jurisdiction to the COMELEC does not necessarily make it a "superior Court" vis-a-vis Regional Trial Courts. In fact, in *People v. Delgado* (G.R. Nos. 93419-32, 18 September 1990, 189 SCRA 715), we ruled that Regional Trial Courts have jurisdiction to review the actions taken by the COMELEC in criminal prosecutions for violations of election laws. This, notwithstanding the grant to the COMELEC of "exclusive power" to conduct preliminary investigations of all election offenses punishable under Section 265 of the Omnibus Election Code.

The power vested in the COMELEC to promulgate its Rules of Procedure neither confers upon itself the jurisdiction to issue the prerogative Writs. Procedure, as distinguished from jurisdiction, is the means by which the power or authority of a Court to hear and decide a class of cases is put into action (*Manila Railroad Co. v.*

Attorney General, 20 Phil. 523). Rules of procedure are remedial in nature and not substantive. They cover only rules on pleadings and practice. And in respect of the COMELEC, the authority to promulgate its rules of procedure was specifically "in order to expedite disposition of cases" (Section 3, Article IX-C). That limited purpose can not be expanded to include the conferment upon itself of jurisdiction which is substantive in nature and can only be fixed by law.

The doctrine laid down in *Pimentel*, supra, holding that the COMELEC has not been invested with jurisdiction to issue the Writs in question, therefore, still finds application under the 1987 Constitution. Said case also involved an elective municipal official except that it was decided under the regime of the 1973 Constitution and the 1978 Election Code (Pres. Decree No. 1296).

There is no gainsaying that, unlike the 1987 Constitution, the 1973 Constitution did not grant appellate jurisdiction to the COMELEC over election contests involving elective municipal officials decided by trial courts of general jurisdiction. Nonetheless, such appellate jurisdiction was conferred upon it by Section 196 of the 1978 Election Code (Pres. Decree No. 1296), reading:

"Section 196. Appeal. - From any decision rendered by the Court of First Instance in the cases stated in Section 190 hereof, the aggrieved party may appeal to the Commission within five days after receipt of a copy of the decision; Provided, That no motion for reconsideration shall be entertained by the court (Underscoring ours).

"The appeal shall proceed as in a criminal case and shall be decided within sixty days after the case has been submitted for decision."

Section 190 referred to in the first paragraph deals with election contests for municipal and municipal district offices.

Again, while the 1973 Constitution did not empower the COMELEC to promulgate its own rules of procedure, Section 192 of the same 1978 Election Code granted it such powers. Thus:

"Section 192. Procedure in election contests. - The Commission shall prescribe the rules to govern the procedure and other matters relating to election contests pertaining to all national, regional, provincial, city, municipal and barangay offices. Such rules shall provide a simple and inexpensive procedure for the expeditious disposition of election contests" (Underscoring ours).

It would appear, therefore, that what were merely statutory provisions under the 1978 Election Code became constitutional grants under the 1987 Constitution. Significantly, however, neither the 1973 Constitution nor the 1987 Constitution expressly confers upon the COMELEC the jurisdiction to issue Writs of Certiorari, Prohibition and Mandamus. In essence, therefore, the statutory set-up in the present Petition and in *Pimentel*, insofar as the COMELEC power to issue those Writs is concerned, is on all fours.

Then, as now, there is no specific grant to the COMELEC, either in the Constitution or by legislative fiat, of jurisdiction over said petitions.

It may be that, as pointed out by the Solicitor General, division of authority between the Courts and the COMELEC could affect the expeditious settlement of election contests. That is no justification, however, for conferring a quasi-judicial body with original Certiorari jurisdiction. That would place the COMELEC in a class by itself apart from similar administrative and quasi-judicial agencies. Neither would there be "sharing of appellate jurisdiction" thereby, since the issuance of the special Writs involves the exercise of original jurisdiction.

In the last analysis, the remedy lies with the legislature and not with this Court. It is Congress that has the power to define prescribe, and apportion the jurisdiction of the various Courts (Art. VIII, Sec. 2, 1987 Constitution).

That should include quasi-judicial bodies.

Considering that the COMELEC does not have jurisdiction over Petitions for Certiorari, Prohibition and Mandamus, it would thus be moot and academic to still pass upon GARCIA and O'HARA's contention that they were denied due process when the respondent Commission issued the questioned Decision in the Antipolo Case. Suffice it to state that absence of hearing per se, does not necessarily imply denial of due process. The fact that they were afforded reasonable opportunity to explain their side of the controversy through their pleadings, destroys the validity of their argument. As long as the parties were given the opportunity to be heard before judgment was rendered, the demands of due process are sufficiently met (*Lindo v. COMELEC*, G. R. No. 95016, 11 January 1991, 194 SCRA 25).

We now come to the subsidiary issue raised by Petitioner TOBON UY in G.R. Nos. 97108-09 of whether or not Regional Trial Courts can order execution pending appeal in election contests decided by it involving elective municipal officials.

The COMELEC Rules of Procedure would also deprive Regional Trial Courts of the prerogative to order execution pending appeal in Rule 35, Section 18, reading:

"SEC. 18. Decision on the contest. - The Court shall decide the election contest within thirty (30) days from the date it is submitted for decision, but in every case within six (6) months after its filing and shall declare who among the parties has been elected, or in a proper case, that none of them has been legally elected. The party who in the judgment has been declared elected shall have the right to assume the office as soon as the judgment becomes final." (underscoring ours).

The COMELEC, however, is bereft of authority to deprive Regional Trial Courts of the competence to order execution pending appeal. For one, it is essentially a judicial prerogative. For another, it is a pronouncement of the COMELEC alone in its procedural rules, without benefit of statute, unlike in the past where it was specifically provided for in Section 177 of the Revised Election Code (Rep. Act No. 180, as amended)[1] and Section 224 of the Election Code of 1971 (Rep. Act No. 6388)[2] from whence the rule was lifted verbatim. Significantly, however, when the Election Code of 1971 (Rep. Act No. 6388) was super-seded by the 1978 Election Code (Pres. Decree No. 1296), said clause was deleted therefrom. It is likewise absent in the Electoral Reforms Law of 1987 (Rep. Act No. 6646) and in the Omnibus Election Code (B.P. Blg. 881), which were the election laws in effect during the 18 January 1988 local elections.

There is no express provision of law, therefore, disauthorizing executions pending appeal, and the COMELEC, in its procedural rules alone, should not be allowed to divest Regional Trial Courts of that authority. It deprives the prevailing party of a substantive right to move for such relief contrary to the constitutional mandate that those Rules can not diminish nor modify substantive rights (Section 6, Article IX-A, 1987 Constitution).

At any rate, the clause "as soon as the judgment becomes final" had already been interpreted by this Court as a general one defining the effect of a final judgment on the right of the winner to assume the contested office as the de jure elected official to serve up to the end of the term. (*Gahol v. Hon. Riodique*, G.R. No. L-40415, 27 June 1975, 64 SCRA 494 at p. 514). It does not disallow Regional Trial Courts from ordering execution pending appeal.

Admittedly, unlike in Section 218 of the Election Code of 1971, applied in *Gahol v. Hon. Riodique*, supra, there is no express provision in the Electoral Reforms Law (Rep. Act No. 6646) nor in the Omnibus Election Code (B.P. Blg. 881) that would allow execution pending appeal. Said Section 218 reads:

"Sec. 218. - Assumption of office notwithstanding an election contest. - Every candidate for a provincial, city, municipal or municipal district office duly proclaimed elected by the corresponding board of canvassers shall

assume office, notwithstanding the pendency in the courts of any contest against his election, without prejudice to the final decision thereon and applicable provisions of the Rules of Court regarding execution of judgment pending appeal."

Nonetheless, Section 2, Rule 39 of the Rules of Court, which allows Regional Trial Courts to order executions pending appeal upon good reasons stated in a special order, may be made to apply by analogy or suppletorily to election contests decided by them (Rule 43, Section 1, COMELEC Rules of Procedure). Indeed, as much recognition should be given to the value of the decision of a judicial body as a basis for the right to assume office as that given by law to the proclamation made by the Board of Canvassers. In the words of *Gahol v. Hon. Riodique*, supra:

"x x x Why should the proclamation by the board of canvassers suffice as a basis of the right to assume office, subject to future contingencies attendant to a protest, and not the decision of a court of justice? Indeed, when it is considered that the board of canvassers is composed of persons who are less technically prepared to make an accurate appreciation of the ballots, apart from their being more apt to yield to external considerations, and that the board must act summarily, practically racing against time, while on the other hand, the judge has the benefit of all the evidence the parties can offer and of admittedly better technical preparation and background, apart from his being allowed ample time for conscientious study and mature deliberation before rendering judgment, one cannot but perceive the wisdom of allowing the immediate execution of decisions in election cases adverse to the protestees, notwithstanding the perfection and pendency of appeals therefrom, as long as there are, in the sound discretion of the court, good reasons therefor."

To construe otherwise would be to bring back the ghost of the "grab-the-proclamation-prolong-the-protest" techniques so often resorted to by devious politicians in the past in their efforts to perpetuate their hold to an elective office. This would, as a consequence, lay to waste the will of the electorate (See *Estrada v. Sto. Domingo*, G. R. No. L-30570, 29 July 1969; *Lagumbay v. COMELEC*, G.R. No. L-25444, 31 January 1966, 16 SCRA 175).

In retrospect, good reasons did, in fact, exist which justified the RTC Order, dated 10 January 1991, granting execution pending appeal. Among others mentioned by the RTC are the combined considerations of the near expiration of the term of office, public interest, the pendency of the election contest for more than three (3) years, and that TOBON UY had filed a bond in the amount of P300,000.00 (Rollo, p. 46).

To recapitulate, in the absence of an express Constitutional or legislative authorization, the COMELEC is devoid of competence to issue special Writs simply on the basis of its appellate jurisdiction and its rule-making power. Neither is the COMELEC empowered, through its procedural rules alone, to deprive Regional Trial Courts of authority, in the exercise of their discretion, to order execution pending appeal upon good reasons stated in a special order.

It must be noted that the term of office of the contested positions is nearing expiration. There is need, then, for this Decision to be immediately executory.

WHEREFORE, these consolidated Petitions for Certiorari and Prohibition are hereby GRANTED.

In G. R. No. 88158, the COMELEC Decision, dated 27 April 1989, in SPR No. 2-89 is hereby SET ASIDE, and the Order of the Regional Trial Court of Antipolo, Rizal, Branch 72, dated 28 October 1988 in Election Case No. 02-A, limiting the opening of ballot boxes to only nine (9) precincts, is hereby REINSTATED, the case to proceed until final disposition.

In G. R. Nos. 97108-09, the COMELEC Resolution dated 15 February 1991, in SPR Nos. 1-91 and 2-91, is likewise SET ASIDE, and the Order of the Regional Trial Court of Ilagan, Isabela, Branch 16, dated 10 January 1991, in Election Case No. 369 granting execution pending appeal, is hereby REINSTATED, without prejudice to

the disposition of respondent Jose Neyra's appeal before the COMELEC.

This Decision shall be immediately executory.

No costs.

SO ORDERED.

Padilla, Griño-Aquino, Regalado, Romero, and Nocon, JJ., concur.

Narvasa, C.J., Gutierrez, Jr., Feliciano, Medialdea, and Davide, Jr., JJ., join J. Bidin, in his dissenting opinion.

Cruz, J., concurring opinion.

Paras, J., no part.

Bidin, J., see dissenting opinion.

[1] "SEC. 177. Decision of the contest. – The court shall decide the protest within six months after it is presented in case of a municipal office, and within one year in case of a provincial office, and shall declare who among the parties has been elected, or, in the proper case, that none of them has been legally elected. The party who in the judgment has been declared elected shall have the right to assume office as soon as the judgment becomes final. A copy of such final judgment shall be furnished the Commission on Elections."

[2] "SEC. 224. Decision of the contest. – The court shall decide the protest within six months after it is presented in case of a municipal or municipal district office, and within one year in case of provincial or city office, and shall declare who among the parties, including those candidates referred to in the second paragraph of Section two hundred twenty hereof has been elected, or in the proper case that none of them has been legally elected. The party who in the judgment has been declared elected shall have the right to assume office as soon as the judgment becomes final. A copy of such final judgment shall be furnished the Commission.

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DISSENTING OPINION

BIDIN, J.:

With all due respect to the arguments advanced in the majority opinion penned by my esteemed colleague, Madame Justice Ameurфина Melencio-Herrera, it is my humble submission that the Commission on Elections is empowered to issue the assailed prerogative writs, hence, this dissent.

The majority opinion holds that in the absence of any specific conferment upon the COMELEC, either by the Constitution or by legislative fiat, the COMELEC is bereft of jurisdiction to issue writs of certiorari, prohibition and mandamus.

The ponencia further maintains the proposition that "(i)n the Philippine setting, the authority to issue Writs of Certiorari, Prohibition and Mandamus involves the exercise of original jurisdiction" (Decision, p. 8) and that it is original jurisdiction that is exercised in the issuance of said writs (Ibid., p. 10).

The foregoing postulations overlook the fact that the subject writs may also be issued not only in the exercise of original jurisdiction but also in aid of appellate jurisdiction as now conferred upon the Court of Appeals (Sec. 9

[1], BP 129). Inasmuch as the Court of Appeals had been issuing writs of certiorari in aid of its appellate jurisdiction pursuant to Sec. 9 [1], BP 129, and before that Sec. 4, Rule 65, it cannot be said that certiorari is limited to the exercise of original jurisdiction only.

The ponencia states that the COMELEC Rule cannot pattern its certiorari jurisdiction after that of the Court of Appeals because the latter's jurisdiction to issue the prerogative writs is specifically provided by law, while on the other hand, no statutory provision grants the COMELEC with similar powers. Relying on the case of *Pimentel v. Comelec* (101 SCRA 769 [1980]), the main ponencia is likewise of the view that in the absence of an express statutory provision granting the COMELEC the power to issue the special writs, such authority cannot be deduced by mere implication.

In *Pimentel*, this Court ruled that the COMELEC did not have jurisdiction over petitions for certiorari, prohibition or mandamus in election contests cognizable by the then Court of First Instance and appealable to the Commission on the ground that such jurisdiction was not conferred to it by constitutional or statutory enactment. It must be noted, however, that the *Pimentel* case was decided under the 1973 Constitution which limited the Commission's jurisdiction over election contests relating to the members of the Batasang Pambansa, elective provincial and city officials, and excluded therefrom election contests involving municipal and barangay officials. Such limitation no longer holds true under the present state of the law. Neither is this a case where the COMELEC justifies its assumption of jurisdiction by applying, by analogy, Sec. 4, Rule 65 of the Rules of Court as it did in the case of *Pimentel*.

In entertaining the petition for certiorari and mandamus filed by private respondents, the COMELEC now does not trace its authority to the provisions of the Rules of Court but rather to the constitution itself. This constitutional grant of power to the COMELEC, which, in my considered view, authorizes the latter to issue the prerogative writs, marks the point of departure from the majority opinion.

Section 2 (2), Art. IX-C of the 1987 Constitution now grants the COMELEC appellate jurisdiction over all contests involving elective municipal official decided by trial courts of general jurisdiction or involving elective barangay officials decided by trial courts of limited jurisdiction, as follows:

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

x x x

"(2) Exercise exclusive original jurisdiction over all contests relating to 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." (Underscoring supplied)

Taken in conjunction with Sec. 3, Art. IX-C,* which empowers the Commission to promulgate its rules of procedure, the above constitutional grant of appellate jurisdiction to the COMELEC over election cases cognizable by the trial courts of general or limited jurisdiction is broad enough to cover petitions for certiorari, prohibition and mandamus in aid of its appellate jurisdiction.

It is significant to note that no similar provision granting respondent COMELEC with rule-making power as provided in the present Constitution is found in the 1973 Constitution, the fundamental law in force when the *Pimentel* case was decided. Such constitutional conferment of rule-making power in favor of the COMELEC necessarily implies, if not in itself inherent, the authority of the Commission to issue writs of certiorari, prohibition and mandamus in aid of its appellate jurisdiction expressly conferred by the constitution. For one thing, it is elementary that the function of the writ is to keep an inferior court within its jurisdiction or to prevent it

from committing such a grave abuse of discretion amounting to excess of jurisdiction (*Central Bank v. Court of Appeals*, 171 SCRA 429 [1989]; *Calagui v. Court of Appeals*, 186 SCRA 564 [1990]; *Brillo v. Buklatan*, 87 Phil. 519 [1950]). How can the COMELEC effectively exercise its appellate jurisdiction over election cases cognizable by trial courts if it could not issue auxiliary writs necessary to keep them within their jurisdictional confines? It would be highly incongruous, if not outright illogical, to split the jurisdiction of respondent COMELEC by depriving it of appellate jurisdiction over certiorari proceedings involving election cases decided by trial courts while at the same time vesting it with jurisdiction over the ultimate appeal thereon from decisions rendered in the same case and by the same trial courts.

As aforesaid, the 1987 Constitution grants the respondent Commission not only appellate jurisdiction over election contests cognizable by the trial courts but also broad rule-making power to expedite the disposition of election cases. The COMELEC's assumption of certiorari jurisdiction is consistent with the constitutional mandate to expedite the disposition of election cases.

The power to issue special writs also flows from the existence of appellate jurisdiction is a doctrinal pronouncement and settled jurisprudence. It has been held that "grant of jurisdiction implies that there is included in it the power necessary to its effective exercise and to make all orders that will preserve the subject of the action and give effect to the final determination of the appeal" (*Kjellander v. Kjellander* (132 P 1170 [1913])). Premises considered, the COMELEC may issue writs of certiorari in aid of its 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.

The Court must not lose sight of the fact of the origin and historical development of the special writs as it was understood in common law jurisdiction from where it evolved and carried over to the Philippine court system (i.e., from Act 190 through RA 296 to BP 129) that "(t)he writ of certiorari does not owe its existence to a constitutional provision or statutory enactment. It is a common law writ, of ancient origin, and one of the most valuable and efficient remedies which came to us with that admirable system of jurisprudence" (*Tennessee Cent. R. Co. v. Campbell*, 75 SW 1012 [1903]).

More importantly, "(i)t is an established doctrine that one of the essential attributes of appellate jurisdiction, and one of the inherent powers of the appellate court, is the right to make use of all writs known to the common law, and, if necessary, to invent new writs or proceedings in order to suitably exercise the jurisdiction conferred (*Wheeler v. Northern Colorado Irrigation Co.*, 11 P 103 [1886]; citing *Attorney General v. Railroad Cos.*, 35 Wis. 425; *Marbury v. Madison*, 1 Cranch 137; *U.S. v. Commissioners*, 1 Morris, (Iowa,) 42; *Attorney General v. Blossom*, 1 Wis. 277).

The ponencia posits that such a view obtaining in foreign jurisdictions cannot apply in the country's judicial system since the subject writs are specifically characterized as original special civil action under Rule 65 of the Rules of Court. If the subject writs are original in character, why then can the Court of Appeals exercise the same in aid of its appellate jurisdiction? Concededly because of BP 129. But then again, doesn't the Constitution itself grants such appellate jurisdiction to the COMELEC? Do we still need a statutory enactment for such conferment of certiorari jurisdiction? Is the constitutional grant of appellate jurisdiction not enough? The ponencia stresses that the grant of power to the COMELEC must be express. I believe, however, that the constitutional provision investing the COMELEC with appellate jurisdiction is clear and broad enough to comprehend the issuance of the questioned writ.

The power to be the "judge x x x of x x x contests relating to the elections, returns and qualifications of any public official is essentially judicial. As such, x x x, it belongs exclusively to the judicial department, except only insofar

as the Constitution provides otherwise." (Lopez v. Roxas, 17 SCRA 756 [1966]; citing Matthews, American Constitutional System; Cooley, Thomas M., A Treatise on Constitutional Limitations, Vol. 1, pp. 270-271, 1927 ed.; 23 W & P 147 [1965 Pocket Part]; State ex rel. Tanner v. Duncan, 10 So. 2d 507, 511, 23 W & P 148, supra). In granting the COMELEC with the powers and functions to "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" (Sec. 2 [2], Art. IX-C, Constitution), the Constitution vested upon the COMELEC judicial powers to decide all contests relating to elective local officials as therein provided.

As defined in the Constitution, "(j)udicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government" (Sec. 1, par. 2, Art. VIII). Since the COMELEC, in discharging its appellate jurisdiction pursuant to Sec. 2 (2), Art. IX-C, acts a court of justice performing judicial power and said power includes the determination of whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction, it necessarily follows that the COMELEC, by constitutional mandate, is vested with jurisdiction to issue writs of certiorari in aid of its appellate jurisdiction. This, I believe, is the constitutional intent although not spelled out in black and white.

On this score, the classic pronouncement of Justice Holmes in his landmark dissent should serve as a timely reminder:

"The great ordinances of the Constitution do not establish and divide fields of black and white. Even the more specific of them are found to terminate in a penumbra shading gradually from one extreme to the other. x x x When we come to the fundamental distinctions it is still more obvious that they must be received with a certain latitude or our government could not go on." (Springer v. Government of the Philippine Islands, 277 US 189 [1927])

In upholding the authority of the COMELEC to issue the subject writs, I do not wish to imply that as a general proposition, the COMELEC is superior over the Regional Trial Courts. (The case of People v. Delgado cited in the ponencia involves criminal prosecutions which are, undoubtedly, within the province of the regional trial courts.) However, a criminal case instituted by the People is one thing; an electoral contest involving private litigants is another. As a general rule, Regional Trial Courts have jurisdiction over criminal cases. The COMELEC has none. In other words, what is at issue here is not a criminal prosecution, or a civil action for that matter, but rather an election contest involving as it does public interest calling for a proper resolution before an appropriate body. As to which forum is superior in litigations relating to election contests involving local public officials, as in the case at bar, there is no doubt the COMELEC has jurisdictional ascendancy since it has 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 (Sec. 2 [2], Art. IX-C, Constitution; underscoring supplied).

In Angara v. Electoral Commission (63 Phil. 139 [1936]), the Court held:

"The creation of the Electoral Commission carried with it ex necesitate rei the power regulative in character to limit the time within which protests intrusted to its cognizance should be filed. It is a settled rule of construction that where a general power is conferred or duly enjoined, every particular power necessary for the exercise of the one or the performance of the other is also conferred. In the absence of any further constitutional provision relating to the procedure to be followed in filing protests before the Electoral

Commission, therefore, the incidental power to promulgate such rules necessary for the proper exercise of its exclusive power to judge all contests relating to the election, returns and qualifications of members of the National Assembly, must be deemed by necessary implication to have been lodged also in the Electoral Commission." (citing Cooley, Constitutional Limitations, 8th ed., Vol. I, pp. 138-139; underscoring supplied).

The above doctrine was reiterated by this Court in the case of *Lazatin v. House Electoral Tribunal* (168 SCRA 391 [1988]) and should find application to the similar power conferred upon the COMELEC in aid of its appellate jurisdiction in the exercise of its judicial function. In the absence of a constitutional proscription, I submit that this Court should not narrow down the appellate and incidental powers which the constitution confers upon the respondent COMELEC.

And finally, in the 1941 case of *Sumulong v. COMELEC* (73 Phil. 288), this Court had occasion to note that:

"The Commission on Elections is a constitutional body. It is intended to play a distinct and important part in our scheme of government. In the discharge of its functions, it should not be hampered with restriction that would be fully warranted in the case of a less responsible organization. The Commission may err, so may this court also. It should be allowed considerable latitude in devising means and methods that will insure the accomplishment of the great objective for which it was created -- free, orderly and honest elections. We may not agree fully with its choice of means, but unless these are clearly illegal or constitute gross abuse of discretion, this court should not interfere. Politics is a practical matter x x x."

x x x

"There are no ready-made formulas for solving public problems. Time and experience are necessary to evolve patterns that will serve the ends of good government. In the matter of the administration of the laws, relative to the conduct of elections, x x x, we must not by any excessive zeal take away from the Commission on Elections the initiative which by constitutional and legal mandates properly belongs to it. Due regard to the independent character of the Commission, as ordained in the Constitution, requires that the power of this Court to review the acts of that body should, as a general proposition, be used sparingly, but firmly in appropriate cases. We are not satisfied that the present suit is one of such cases." (underscoring supplied)

In issuing the assailed writs, in aid of its appellate jurisdiction, the COMELEC did not overstep its authority nor did it act in a capricious, whimsical or despotic manner amounting to grave abuse of discretion equivalent to lack or excess of jurisdiction.

Accordingly, I vote to DISMISS the instant petitions.

* "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."

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CONCURRING OPINION

CRUZ, J.:

I concur, and would add only the following brief observations.

It is argued that the competence of the Commission on Elections to issue writs of certiorari is derived from its

appellate jurisdiction over cases involving elective barangay officials. I do not believe that this power can be that simply and easily implied nor am I persuaded by the cases cited, which are of American origin and have no application here. In our country, the controlling rule is found in the Constitution, which clearly says that it is only Congress that has the power to "define, prescribe and apportion the jurisdiction of the various courts," subject only to certain specified limitations. (Article VIII, Section 2). Conformably, every judicial tribunal must trace its power to issue writs of certiorari to an express authorization from the legislature and not to mere inference. I know of no such tribunal that exercises this power on the sole justification that it is an appellate court.

The Supreme Court itself derives its power to issue writs of certiorari not by implication only from its appellate jurisdiction but by an express grant in Article VIII, Section 5 of the Constitution. Furthermore, it may exercise this power only "as the law or rules of Court may provide" under paragraph 2 of that section, which means that the conferment is not automatic or self-executing. Without such implementation, this Court is powerless to issue writs of certiorari in the appealed cases mentioned in that provision even if it is the highest court in the land.

We cannot be less strict with the Commission on Elections, which is essentially only an administrative body. If even the Supreme Court itself can be so inhibited by no less than the Constitution, I see no logic in allowing the Commission on Elections a wider latitude in the exercise of what is clearly a judicial power. And on such a fragile ground. While I may concede that this agency can exercise the power if expressly allowed by the legislature, I reject the notion that it can claim such jurisdiction by mere implication.

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