

ISIDORO L. SORIANO, JR., REYNALDO A. ABAS, JR., DANTE S. ALMARIO, ALICIA G. LANDRITO, ALFREDO G. BUNYE IV, JEFFREY L. AREVALO, NORBERTO A. ESPELETA, RODOLFO I. OLIQUINO, CECILIO...

G.R. NOS. 164496-505. April 02, 2007

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This is a petition for certiorari and prohibition[1] with prayer for the issuance of a writ of preliminary injunction or temporary restraining order. The petition seeks to nullify the Orders dated 26 June 2004 of the Commission on Elections' First Division (COMELEC First Division).

The Facts

Petitioners and private respondents were candidates for City Council for the First and Second Districts of Muntinlupa City in the 10 May 2004 elections.

After the elections, the Muntinlupa City Board of Canvassers proclaimed private respondents as the duly elected Councilors of the Muntinlupa City Council. Petitioners individually and separately filed election protest cases against private respondents, contesting the results of the elections in all the 603 precincts of the First District and the 521 precincts of the Second District of Muntinlupa City. The election protest cases for the Second District of Muntinlupa City were docketed as EPC Nos. 2004-36, 2004-37, 2004-38, 2004-39, and 2004-40 while those for the First District were docketed as EPC Nos. 2004-41, 2004-42, 2004-43, 2004-44, and 2004-45.

On 21 June 2003, the COMELEC First Division issued an Order consolidating EPC Nos. 2004-36, 2004-37, 2004-38, 2004-39, 2004-40, 2004-41, 2004-42, 2004-43, 2004-44, and 2004-45.

On 26 June 2004, the COMELEC First Division issued two identical orders. The first order directed petitioners (protestants) Norberto Espeleta, Jeffrey Arevalo, Rodolfo Oliquino, Cecilio Marcelino, and Nathaniel Calalang to deposit P454,020 each to the COMELEC Cash Division to defray expenses under Section 8, Rule 20 of the COMELEC Rules, in the revision of 603 protested precincts in the First District of Muntinlupa City. The order also directed respondents (protestees) Raul Corro, Allan Rey Camilon, Maria Luisa Echavez, Melchor Gaspar Teves, Allen Ampaya, and Icasiano Dela Rea to deposit P454,020 each to the COMELEC Cash Division in the revision of 603 counter-protested precincts in the First District of Muntinlupa City. The second order directed petitioners (protestants) Isidoro Soriano, Reynaldo Abas, Dante Almario, Alicia Landrito, and Alfredo Bunye IV to deposit P408,990 each to the COMELEC Cash Division in the revision of 521 protested precincts in the Second District[2] of Muntinlupa. The order also directed respondents (protestees) Elmer Espeleta, Francis Ian Bagatsing, Marissa Rongavilla, Lucio Constantino, Mamerto Sevilla, Jr., and Mario Bulay, Jr. to deposit P408,990 each to the COMELEC Cash Division in the revision of 521 counter-protested precincts in the Second District of

Muntinlupa.

On 1 July 2004, petitioners filed a motion for reconsideration of the Orders dated 26 June 2004. The COMELEC First Division denied the motion in an Order dated 30 July 2004.

On 3 August 2004, petitioners filed a petition for certiorari and prohibition with prayer for the issuance of a writ of preliminary injunction or temporary restraining order. Petitioners alleged that the Orders dated 26 June 2004 of the COMELEC First Division were issued with grave abuse of discretion amounting to lack or excess of jurisdiction. Petitioners maintain that the cash deposit of P454,020 to defray the expenses for the revision of the ballots for the First District of Muntinlupa should be paid jointly by all the protestants for the First District and that to require them to pay P454,020 each constitutes grave abuse of discretion. In the same manner, the cash deposit of P408,990 to defray the expenses for the revision of the ballots for the Second District of Muntinlupa should be paid jointly by all the protestants for the Second District and that to require them to pay P408,990 each constitutes grave abuse of discretion.

Meanwhile, on 31 May 2005, the COMELEC First Division issued another Order,[3] dismissing the protests and counter-protests in EPC Nos. 2004-36, 2004-37, 2004-38, 2004-39, 2004-40, 2004-41, 2004-42, 2004-43, 2004-44, and 2004-45 for failure of the protestants and protestees to pay the required cash deposits.

The Orders of the COMELEC First Division

The Order dated 26 June 2004 of the COMELEC First Division for EPC Nos. 2004-36, 2004-37, 2004-38, 2004-39, and 2004-40 states:

Considering the issues in this case were joined upon the filing of the answers with the counter-protests by the Protestees, and that the initial hearing in the instant case has already been made on 21 June 2004, the Commission, First Division, pursuant to the powers of the Commission prescribed under Section 6, Rule 20 of the Comelec Rules of Procedure, resolved as it hereby resolves to:

- a) DIRECT Protestant ISIDRO SORIANO to deposit before the Cash Division, Commission on Elections, the amount of FOUR HUNDRED EIGHT THOUSAND NINE HUNDRED NINETY PESOS (P408,990.00) within five (5) days from receipt of this Order to defray the expenses under Sec. 8, Rule 20 of the Comelec Rules, in the revision of FIVE HUNDRED TWENTY ONE (521) protested precincts in the [Second] District of Muntinlupa City and other incidental expenses such as supplies and the compensation/honoraria of the revision committees;
- b) DIRECT Protestant REYNALDO ABAS to deposit before the Cash Division, Commission on Elections, the amount of FOUR HUNDRED EIGHT THOUSAND NINE HUNDRED NINETY PESOS (P408,990.00) within five (5) days from receipt of this Order to defray the expenses under Sec. 8, Rule 20 of the Comelec Rules, in the revision of FIVE HUNDRED TWENTY ONE (521) protested precincts in the [Second] District of Muntinlupa City and other incidental expenses such as supplies and the compensation/honoraria of the revision committees;
- c) DIRECT Protestant DANTE S. ALMARIO to deposit before the Cash Division, Commission on Elections, the amount of FOUR HUNDRED EIGHT THOUSAND NINE HUNDRED NINETY PESOS (P408,990.00) within five (5) days from receipt of this Order to defray the expenses under Sec. 8, Rule 20 of the Comelec Rules, in the revision of FIVE HUNDRED TWENTY ONE (521) protested precincts in the [Second] District of Muntinlupa City and other incidental expenses such as supplies and the compensation/honoraria of the revision committees;
- d) DIRECT Protestant ALICIA G. LANDRITO to deposit before the Cash Division, Commission on Elections, the amount of FOUR HUNDRED EIGHT THOUSAND NINE HUNDRED NINETY PESOS (P408,990.00)

within five (5) days from receipt of this Order to defray the expenses under Sec. 8, Rule 20 of the Comelec Rules, in the revision of FIVE HUNDRED TWENTY ONE (521) protested precincts in the [Second] District of Muntinlupa City and other incidental expenses such as supplies and the compensation/honoraria of the revision committees;

e) DIRECT Protestant ALFREDO G. BUNYE [IV] to deposit before the Cash Division, Commission on Elections, the amount of FOUR HUNDRED EIGHT THOUSAND NINE HUNDRED NINETY PESOS (P408,990.00) within five (5) days from receipt of this Order to defray the expenses under Sec. 8, Rule 20 of the Comelec Rules, in the revision of FIVE HUNDRED TWENTY ONE (521) protested precincts in the [Second] District of Muntinlupa City and other incidental expenses such as supplies and the compensation/honoraria of the revision committees;

f) DIRECT Protestees ELMER ESPELETA, FRANCIS IAN T. BAGATSING, MARISSA C. RONGAVILLA, LUCIO B. CONSTANTINO, MAMERTO T. SEVILLA, JR., and MARIO E. BUYAL, JR., to each deposit before the Cash Division, Commission on Elections, the amount of FOUR HUNDRED EIGHT THOUSAND NINE HUNDRED NINETY PESOS (P408,990.00) within five (5) days from receipt of this Order to defray the expenses under Sec. 8, Rule 20 of the Comelec Rules, in the revision of FIVE HUNDRED TWENTY ONE (521) counter-protested precincts in the Second District of Muntinlupa City and other incidental expenses such as supplies and the compensation/honoraria of the revision committees also within five (5) days from receipt of this Order;

FAILURE OF THE PROTESTANTS AND THE PROTESTEES TO COMPLY WITH THIS ORDER WITHIN THE PERIOD STATED SHALL BE A GROUND FOR THE DISMISSAL OF THEIR RESPECTIVE PROTEST AND COUNTER-PROTEST.

x x x x[4] (Emphasis in the original)

Similarly, the Order dated 26 June 2004 of the COMELEC First Division for EPC Nos. 2004-41, 2004-42, 2004-43, 2004-44, and 2004-45 states:

Considering the issues in this case were joined upon the filing of the answers with the counter-protests by the Protestees, and that the initial hearing in the instant case has already been made on 21 June 2004, the Commission, First Division, pursuant to the powers of the Commission prescribed under Section 6, Rule 20 of the Comelec Rules of Procedure, resolved as it hereby resolves to:

h) DIRECT Protestant NORBERTO ESPELETA to deposit before the Cash Division, Commission on Elections, the amount of FOUR HUNDRED FIFTY FOUR THOUSAND TWENTY PESOS (P454,020.00) within five (5) days from receipt of this Order to defray the expenses under Sec. 8, Rule 20 of the Comelec Rules, in the revision of SIX HUNDRED THREE (603) protested precincts in the FIRST District of Muntinlupa City and other incidental expenses such as supplies and the compensation/honoraria of the revision committees;

i) DIRECT Protestant JEFFREY L. AREVALO to deposit before the Cash Division, Commission on Elections, the amount of FOUR HUNDRED FIFTY FOUR THOUSAND TWENTY PESOS (P454,020.00) within five (5) days from receipt of this Order to defray the expenses under Sec. 8, Rule 20 of the Comelec Rules, in the revision of SIX HUNDRED THREE (603) protested precincts in the FIRST District of Muntinlupa City and other incidental expenses such as supplies and the compensation/honoraria of the revision committees;

j) DIRECT Protestant RODOLFO I. OLIQUINO to deposit before the Cash Division, Commission on Elections, the amount of FOUR HUNDRED FIFTY FOUR THOUSAND TWENTY PESOS (P454,020.00) within five (5) days from receipt of this Order to defray the expenses under Sec. 8, Rule 20 of the Comelec Rules, in the revision of SIX HUNDRED THREE (603) protested precincts in the FIRST District of

Muntinlupa City and other incidental expenses such as supplies and the compensation/honoraria of the revision committees;

k) DIRECT Protestant CECILIO E. MARCELINO to deposit before the Cash Division, Commission on Elections, the amount of FOUR HUNDRED FIFTY FOUR THOUSAND TWENTY PESOS (P454,020.00) within five (5) days from receipt of this Order to defray the expenses under Sec. 8, Rule 20 of the Comelec Rules, in the revision of SIX HUNDRED THREE (603) protested precincts in the FIRST District of Muntinlupa City and other incidental expenses such as supplies and the compensation/honoraria of the revision committees;

l) DIRECT Protestant NATHANIEL S. CALALANG to deposit before the Cash Division, Commission on Elections, the amount of FOUR HUNDRED FIFTY FOUR THOUSAND TWENTY PESOS (P454,020.00) within five (5) days from receipt of this Order to defray the expenses under Sec. 8, Rule 20 of the Comelec Rules, in the revision of SIX HUNDRED THREE (603) protested precincts in the FIRST District of Muntinlupa City and other incidental expenses such as supplies and the compensation/honoraria of the revision committees;

m) DIRECT Protestees RAUL R. CORRO, ALLAN REY A. CAMILON, MARIA LUISA B. ECHAVEZ, MELCHOR GASPAS R. TEVES, ALLEN F. AMPAYA, and ICASIANO M. DELA REA to each deposit before the Cash division, Commission on Elections, the amount of FOUR HUNDRED FIFTY FOUR THOUSAND TWENTY PESOS (P454,020.00) within five (5) days from receipt of this Order to defray the expenses under Sec. 8, Rule 20 of the Comelec Rules, in the revision of SIX HUNDRED THREE (603) counter-protested precincts in the FIRST District of Muntinlupa City and other incidental expenses such as supplies and the compensation/honoraria of the revision committees;

FAILURE OF THE PROTESTANTS AND THE PROTESTEES TO COMPLY WITH THIS ORDER WITHIN THE PERIOD STATED SHALL BE A GROUND FOR THE DISMISSAL OF THEIR RESPECTIVE PROTEST AND COUNTER-PROTEST.

x x x x[5] (Emphasis in the original)

In denying petitioners' partial motion for reconsideration, the COMELEC First Division held that Rule 40 of the COMELEC Rules of Procedure explicitly states that filing fees shall be paid for each interest. According to the COMELEC First Division, the requirement of payment per interest also applies to all other fees including cash deposit per ballot box.

The Issues

The issues raised are:

- Whether a writ of certiorari will lie in this case; and
- Whether the COMELEC First Division committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the Orders dated 26 June 2004.

The Court's Ruling

The petition has no merit.

Respondents contend that petitioners should have filed first with the COMELEC En Banc a motion for reconsideration of the assailed Orders of the COMELEC First Division before filing the petition for certiorari. Citing Section 3, Article IX-C of the Constitution, respondents allege that the COMELEC En Banc has the sole authority to resolve motions for reconsideration of decisions or rulings of a COMELEC Division. Respondents assert that only decisions, orders, or rulings of the COMELEC En Banc may be brought to this Court on certiorari.

Section 3, Article IX-C of the Constitution reads:

Section 3. The Commission on Elections may sit en banc or in two divisions, and shall promulgate its rules of procedure in order to expedite disposition of election cases, including pre-proclamation controversies. All such election cases shall be heard and decided in division, provided that motions for reconsideration of decisions shall be decided by the Commission en banc. (Emphasis supplied)

In accordance with this constitutional provision, the COMELEC Rules of Procedure provides:

Rule 19 — Motions 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, order or ruling is contrary to law.

Sec. 2. Period for Filing Motions for Reconsideration. — A motion to reconsider a decision, resolution, order, or ruling of a Division shall be filed within five (5) days from the promulgation thereof. Such motion, if not pro-forma, suspends the execution for implementation of the decision, resolution, order and ruling.

x x x x

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.

Sec. 6. Duty of Clerk of Court of Commission to Calendar Motion for Resolution. — The Clerk of Court concerned shall calendar the motion for reconsideration for the resolution of the Commission en banc within ten (10) days from certification thereof. (Emphasis supplied)

However, for interlocutory orders, the COMELEC Rules of Procedure provides:

Rule 3 — How the Commission Transacts Business

Section 1. How Business is Transacted. — In the exercise of its Constitutional or statutory powers, functions, and duties, the Commission may sit en banc or in two Divisions.

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.

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

x x x x

Sec. 5. Quorum; Votes Required. — 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. (Emphasis supplied)

Thus, the rule is that a motion to reconsider a decision, resolution, order, or ruling of a COMELEC Division shall

be elevated to the COMELEC En Banc. However, a motion to reconsider an interlocutory order of a COMELEC Division shall be resolved by the division which issued the interlocutory order, except when all the members of the division decide to refer the matter to the COMELEC En Banc.

Let us examine the cases regarding interlocutory orders of a COMELEC Division. In the 1993 case of *Bulaong v. Comelec, First Division*,^[6] the issue was whether the First Division of the COMELEC committed grave abuse of discretion when it refused to refer the motion for reconsideration to the COMELEC En Banc. In *Bulaong*, the COMELEC Division denied the motion for reconsideration of an interlocutory order and subsequently denied the motion to elevate the matter to the COMELEC En Banc. The Court held that a COMELEC Division is not mandated to refer all pending motions for reconsideration to the COMELEC En Banc, thus:

We vote to dismiss the instant petition. It is not mandatory on the part of a division of the COMELEC to refer all pending motions for reconsideration to the COMELEC en banc.

Admittedly, the order regarding the revision of ballots is an interlocutory order because it still requires a party to perform certain acts leading to the final adjudication of a case. The order in the case at bar is for the Provincial Election Supervisor of Camarines Sur to transfer the ballot boxes from Camarines Sur to Manila for a recount and revision of ballots, for the purpose of determining who won the gubernatorial race in Camarines Sur.

Being an interlocutory matter, the question now before us is whether or not the First Division of the COMELEC committed grave abuse of discretion in refusing to refer petitioner's motion for reconsideration to the COMELEC en banc. It is our opinion that the COMELEC did not commit grave abuse of discretion. For said motion to be considered en banc, it requires the unanimous vote of the members of the division as mandated by Section 2 of Rule 3 of the COMELEC Rules. In the case at bar, there was an absence of such vote. Instead of withholding its decision on such interlocutory matter, the First Division of the COMELEC decided to exercise its power under Section 6 of Rule 20 of the COMELEC Rules which states:

"When the allegation in a protest or counter-protest so warrant, or whenever in the opinion of the Commission or Division the interest of justice so demands, it shall immediately order the ballot boxes containing ballots and their keys, list of voters with voting records, book of voters and other documents used in the election to be brought before the Commission, and shall order the revision of the ballots. x x x

The revision of ballots shall be made in the Office of the Clerk of Court concerned or at such places as the Commission or Division shall designate, and shall be completed within three (3) months from the date of the order, unless otherwise directed by the Commission."^[7] (Italicization provided)

The ruling in *Bulaong* was reiterated in the 1997 case of *Kho v. Comelec*.^[8] In *Kho*, it was alleged that the COMELEC First Division committed grave abuse of discretion in issuing an interlocutory order admitting an answer with counter-protest which was filed beyond the reglementary period. *Kho* moved to reconsider the interlocutory order, which the COMELEC First Division denied. *Kho* then filed a motion to elevate the case to the COMELEC En Banc, which the COMELEC First Division likewise denied. The Court held that the interlocutory order was clearly void for having been issued without jurisdiction. On the procedural issue, the Court held that the COMELEC First Division was correct in refusing to refer the case to the COMELEC En Banc because what was involved was merely an interlocutory order of the division which should be resolved by the division itself. The Court held:

As to the issue of whether or not the case should be referred to the COMELEC en banc, this Court finds the respondent COMELEC First Division correct when it held in its order dated February 28, 1996 that no final decision, resolution or order has yet been made which will necessitate the elevation of the case and its records to the Commission en banc. No less than the Constitution requires that the election cases must be heard and

decided first in division and any motion for reconsideration of decisions shall be decided by the commission en banc. Apparently, the orders dated July 26, 1995, November 15 1995 and February 28, 1996 and the other orders relating to the admission of the answer with counter-protest are issuances of a commission in division and are all interlocutory orders because they merely rule upon an incidental issue regarding the admission of Espinosa's answer with counter-protest and do not terminate or finally dispose of the case as they leave something to be done before it is finally decided on the merits. In such a situation, the rule is clear that the authority to resolve incidental matters of the case pending in a division, like the questioned interlocutory orders, falls on the division itself, and not on the Commission en banc. Section 5 (c), Rule 3 of the COMELEC Rules of procedure explicitly provides for this,

"Section 5. Quorum; Votes Required. xxx

xxx

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

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

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

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

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

Nevertheless, the resolution of this second issue is not decisive in the disposition of the instant case. What we considered here is the fact that the respondent COMELEC First Division committed grave abuse of discretion tantamount to lack of jurisdiction in admitting the belatedly filed answer with counter-protest of private respondent Espinosa.[9] (*Emphasis supplied*)

However, in the succeeding 2000 case of *Ambil, Jr. v. Comelec*,^[10] the Court dismissed the petition for prematurity. In *Ambil*, a petition for certiorari was filed with this Court questioning the interlocutory order of a COMELEC Division setting the date for the promulgation of a resolution. In *Ambil*, the petitioner did not move to reconsider the interlocutory order but instead filed directly with this Court a petition for certiorari. The Court held:

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

of the court, it is a pre-condition that he should have availed of all the means of administrative processes afforded him. Hence, if a remedy within the administrative machinery can still be resorted to by giving the administrative officer concerned every opportunity to decide on a matter that comes within his jurisdiction, then such remedy should be exhausted first before the court's judicial power can be sought. The premature invocation of court's intervention is fatal to one's cause of action." [11] (Emphasis supplied)

In both the cases of Bulaong and Kho, the petitioners filed with the COMELEC Division a motion to reconsider the interlocutory orders. In Ambil, the petitioner did not file a motion to reconsider the interlocutory order of the COMELEC Division but instead filed directly with this Court a petition for certiorari. The different circumstances in the three cases explain the variance in the rulings of the Court.

In the 2004 case of Repol v. Commission on Elections, [12] the Court cited Ambil and held that this Court has no power to review via certiorari an interlocutory order or even a final resolution of a division of the COMELEC. However, the Court held that an exception to this rule applies where the commission of grave abuse of discretion is apparent on its face. In Repol, what was assailed was a status quo ante Order without any time limit, and more than 20 days had lapsed since its issuance without the COMELEC First Division issuing a writ of preliminary injunction. The Court held that the status quo ante Order of the COMELEC First Division was actually a temporary restraining order because it ordered Repol to cease and desist from assuming the position of municipal mayor of Pagsanghan, Samar and directed Ceracas to assume the post in the meantime. Since the status quo ante Order, which was qualified by the phrase "until further orders from this Commission," had a lifespan of more than 20 days, this Order clearly violates the rule that a temporary restraining order has an effective period of only 20 days and automatically expires upon the COMELEC's denial of preliminary injunction. The Court held:

Only final orders of the COMELEC in Division may be raised before the COMELEC en banc. Section 3, Article IX-C of the 1987 Constitution mandates that only motions for reconsideration of final decisions shall be decided by the COMELEC en banc, thus:

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 supplied)

Under this constitutional provision, the COMELEC en banc shall decide motions for reconsideration only of "decisions" of a Division, meaning those acts having a final character. Clearly, the assailed status quo ante Order, being interlocutory, should first be resolved by the COMELEC First Division via a motion for reconsideration.

Furthermore, the present controversy does not fall under any of the instances over which the COMELEC en banc can take cognizance of the case. Section 2, Rule 3 of the 1993 COMELEC Rules of Procedure provides:

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.

The present case is not one of the cases specifically provided under the COMELEC Rules of Procedure in which the COMELEC may sit en banc. Neither is this case one where a division is not authorized to act nor a case where the members of the First Division unanimously voted to refer the issue to the COMELEC en banc. Thus, the COMELEC en banc is not even the proper forum where Repol may bring the assailed interlocutory Order for resolution.

We held in *Ambil, Jr. v. Commission on Elections* that —

Under the existing Constitutional scheme, a party to an election case within the jurisdiction of the COMELEC in division can not dispense with the filing of a motion for reconsideration of a decision, resolution or final order of the Division of the Commission on Elections because the case would not reach the *Comelec en banc* without such motion for reconsideration having been filed x x x.

Repol went directly to the Supreme Court from an interlocutory order of the COMELEC First Division. Section 7, Article IX of the 1987 Constitution prescribes the power of the Supreme Court to review decisions of the COMELEC, as follows:

Section 7. Each commission shall decide by a majority vote of all its members any case or matter brought before it within sixty days from the date of its submission for decision or resolution. A case or matter is deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the rules of the commission or by the commission itself. Unless otherwise provided by this constitution or by law, any decision, order, or ruling of each commission may be brought to the Supreme Court on certiorari by the aggrieved party within thirty days from receipt of a copy thereof.

We have interpreted this constitutional provision to mean final orders, rulings and decisions of the COMELEC rendered in the exercise of its adjudicatory or quasi-judicial powers. The decision must be a final decision or resolution of the COMELEC *en banc*. The Supreme Court has no power to review via certiorari an interlocutory order or even a final resolution of a Division of the COMELEC. Failure to abide by this procedural requirement constitutes a ground for dismissal of the petition.

However, this rule is not ironclad. In *ABS-CBN Broadcasting Corporation v. COMELEC*, we stated —

This Court, however, has ruled in the past that this procedural requirement [of filing a motion for reconsideration] may be glossed over to prevent a miscarriage of justice, when the issue involves the principle of social justice or the protection of labor, when the decision or resolution sought to be set aside is a nullity, or when the need for relief is extremely urgent and certiorari is the only adequate and speedy remedy available.

The Court further pointed out in *ABS-CBN* that an exception was warranted under the peculiar circumstances of the case since there was hardly enough opportunity to move for a reconsideration and to obtain a swift resolution in time for the 11 May 1998 elections. The same can be said in Repol's case. We rule that direct resort to this Court through a special civil action for certiorari is justified under the circumstances obtaining in the present case.[13] (Emphasis supplied)

The most recent case involving interlocutory orders of a COMELEC Division is the 2007 case of *Rosal v. Commission on Elections*.^[14] In *Rosal*, the Court allowed the petition for certiorari assailing the interlocutory orders rendered by a COMELEC Division. It should be emphasized that the *Rosal* case is unusual because while the petition for certiorari questioning the interlocutory order of a COMELEC Division was pending before this Court, the main case which was meanwhile decided by the COMELEC *En Banc* was likewise elevated to this Court. Thus, we have a situation where the petition for certiorari questioning the interlocutory orders of the COMELEC Division and the petition for certiorari and prohibition assailing the Resolution of the COMELEC *En Banc* on the main case were consolidated. The issues raised in the petition for certiorari were also raised in the main case and therefore there was actually no need to resolve the petition assailing the interlocutory orders.

The general rule is that a decision or an order of a COMELEC Division cannot be elevated directly to this Court through a special civil action for certiorari. Furthermore, a motion to reconsider a decision, resolution, order, or ruling of a COMELEC Division shall be elevated to the COMELEC *En Banc*. However, a motion to reconsider an interlocutory order of a COMELEC Division shall be resolved by the division which issued the interlocutory order, except when all the members of the division decide to refer the matter to the COMELEC *En Banc*.

Thus, in general, interlocutory orders of a COMELEC Division are not appealable, nor can they be proper subject of a petition for certiorari. To rule otherwise would not only delay the disposition of cases but would also unnecessarily clog the Court docket and unduly burden the Court. This does not mean that the aggrieved party is without recourse if a COMELEC Division denies the motion for reconsideration. The aggrieved party can still assign as error the interlocutory order if in the course of the proceedings he decides to appeal the main case to the COMELEC En Banc. The exception enunciated in *Kho and Repol* is when the interlocutory order of a COMELEC Division is a patent nullity because of absence of jurisdiction to issue the interlocutory order, as where a COMELEC Division issued a temporary restraining order without a time limit, which is the *Repol* case, or where a COMELEC Division admitted an answer with counter-protest which was filed beyond the reglementary period, which is the *Kho* case.

This Court has already ruled in *Reyes v. RTC of Oriental Mindoro*,^[15] that "it is the decision, order or ruling of the COMELEC En Banc that, in accordance with Section 7, Art. IX-A of the Constitution,^[16] may be brought to the Supreme Court on certiorari." The exception provided in *Kho and Repol* is unavailing in this case because unlike in *Kho and Repol*, the assailed interlocutory orders of the COMELEC First Division in this case are not a patent nullity. The assailed orders in this case involve the interpretation of the COMELEC Rules of Procedure. Neither will the *Rosal* case apply because in that case the petition for certiorari questioning the interlocutory orders of the COMELEC Second Division and the petition for certiorari and prohibition assailing the Resolution of the COMELEC En Banc on the main case were already consolidated.

The Court also notes that the COMELEC First Division has already issued an Order dated 31 May 2005 dismissing the protests and counter-protests in EPC Nos. 2004-36, 2004-37, 2004-38, 2004-39, 2004-40, 2004-41, 2004-42, 2004-43, 2004-44, and 2004-45 for failure of the protestants and protestees to pay the required cash deposits.^[17] Thus, we have this peculiar situation where the interlocutory order of the COMELEC First Division is pending before this Court but the main case has already been dismissed by the COMELEC First Division. This situation is precisely what we are trying to avoid by insisting on strict compliance of the rule that an interlocutory order cannot by itself be the subject of an appeal or a petition for certiorari.

WHEREFORE, we DISMISS the petition and DENY the prayer for the issuance of a writ of preliminary injunction or temporary restraining order.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., Azcuna, Tinga, Chico-Nazario, Garcia, Velasco, Jr., and Nachura, JJ., concur.

[1] Under Rule 65 of the 1997 Rules of Civil Procedure.

[2] The Order mistakenly stated First District instead of Second District of Muntinlupa.

[3] *Rollo*, pp. 169-176.

[4] *Id.* at 42-43.

[5] *Id.* at 47-48.

[6] G.R. No. 107987, 31 March 1993, 220 SCRA 745.

[7] *Id.* at 749-750.

[8] 344 Phil. 878 (1997).

[9] Id. at 886-888.

[10] 398 Phil. 257 (2000).

[11] Id. at 282.

[12] G.R. No. 161418, 28 April 2004, 428 SCRA 321.

[13] Id. at 328-331.

[14] G.R. Nos. 168253 & 172741, 16 March 2007.

[15] 313 Phil. 727, 734 (1995).

[16] Section 7, Article IX-A of the Constitution reads:

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.

[17] According to respondents' memorandum filed on 8 September 2005, petitioners moved to reconsider the Order dated 31 May 2005, which was elevated to the COMELEC En Banc.

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