

TEODORO M. JUMAMIL, GRACIANO CENTINO, ANICETO CASTILLO, ORLANO MILLANO, AND FAUSTINO FRANCISCO, PETITIONERS, VS. COMMISSION ON ELECTIONS, NICOLAS PUROG, JR., DOLORES ORQUIN-VERD...

G.R. NOS. 167989-93. March 06, 2007

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Before Us are consolidated Petitions for Certiorari, Prohibition and Mandamus, with prayer for the issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction, filed under Rules 64 and 65 of the Rules of Court, as amended; the Petitions seek the nullification of the 12 February 2005 Order issued by public respondent Commission on Elections (COMELEC) in COMELEC Case SPR Nos. 64-2004, 65-2004, 66-2004, 67-2004 and 68-2004, which granted the motion of private respondents Nicolas C. Purog, Jr. (Purog), Dolores Orquin-Verde (Verde), Arturo Aliluyah (Aliluyah), John A. Medice (Medice), Rufino A. Subiaga (Subiaga) and Felix G. Aucente, Jr. (Aucente), for the issuance of a Writ of Preliminary Injunction against the Regional Trial Court (RTC) - Branch 23, Allen, Northern Samar. In granting the writ prayed for, the COMELEC effectively enjoined and prohibited the RTC from proceeding with the trial of the election protest cases filed by petitioners Teodoro M. Jumamil (Jumamil), Graciano Centino (Centino), Aniceto Castillo (Castillo), Orlano Millano (Millano) and Faustino Francisco (Francisco).

The present petition stemmed from several election protest cases individually instituted by petitioners Jumamil, et al., against private respondents Purog, et al.

The facts, as gathered from the records, are:

Petitioner Jumamil and private respondent Purog both ran as candidates for the position of Mayor of the Municipality of Victoria, Northern Samar, during the 10 May 2004 synchronized national and local elections. Petitioner Centino and private respondent Verde were vice mayoralty candidates therein; whilst petitioners Castillo, Millano and Francisco and private respondents Aliluyah, Medice, Subiaga and Aucente all ran for slots as Board Members of the Sangguniang Bayan of Victoria, Northern Samar.

On 11 August 2004, private respondents Purog, et al., were all proclaimed the winning candidates in the respective positions they ran for.

Contending an assortment of election anomalies, irregularities and fraud alleged to have been committed by respondents Purog, et al., petitioners Jumamil, et al., individually filed election protest cases on 24 August 2004, which were later on consolidated, before the RTC of Allen, Northern Samar, Branch 23, docketed as EPC Nos. A-82 to A-86. Therein complainants cast doubt on the results of the just concluded elections, particularly respecting 7 out of the 36 functioning precincts in the subject municipality.

As expected, private respondents Purog, et al., moved for the dismissal of the cases. Aside from the foregoing

motion, they included in their Answer with Affirmative Defense and Counter-Protest/Counter-Claim a prayer for the conduct of a hearing and pre-trial prior to the commencement of the revision process.

On 9 November 2004, acting on the aforementioned Answer, the RTC issued a Resolution basically denying the motion to have the cases dismissed for lack of cause of action as well as the prayer that a hearing or pre-trial be required before the revision of the challenged ballots. The dispositive part of said Resolution reads:

Premises considered, and in view of the foregoing consideration, the instant manifestation and prayer for dismissal of the case is DENIED for lack of merit. Let revision of ballots proceed as ordered earlier by this court.

Their Motion for Reconsideration having been denied by the RTC in its Order of 16 November 2004, stating, to wit:

Premises considered, the court is inclined to DENY and hereby denies the instant motion for reconsideration for being bereft of merit and almost a rehash of the previous pleading filed by protestees' counsel. Revision of ballots should continue as hereby ordered until ordered otherwise.

private respondents Purog, et al., elevated to the COMELEC, via a Petition for Certiorari, the denial of their motion to dismiss and to conduct hearing, as well as pre-trial, prior to the commencement of the revision of the ballots. Private respondents Purog, et al., likewise asked for the issuance of a Temporary Restraining Order and/or the issuance of a Writ of Preliminary Injunction in order to suspend the revision proceedings ordered by the RTC.

In an Order dated 12 February 2005, the First Division of the COMELEC issued the writ prayed for.

Hence, these Petitions for Certiorari, under Rules 64 and 65 of the Rules of Court, as amended, founded on the basic premise that public respondent COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction when it effectively enjoined the RTC from proceeding with the conduct of the case while the former deliberates on the outcome of the Petitions for Certiorari filed before it by private respondent Purog, et al.

On 13 November 2006, public respondent COMELEC filed its Comment to the subject Petitions. In said pleading, the Commission argues that the assailed Order is not the kind contemplated by Section 2 of Rule 64 of the Rules of Court, as amended. The particular provision provides that:

SEC. 2. Mode of review. - A judgment or final order or resolution of the Commission on Elections and the Commission on Audit may be brought by the aggrieved party to the Supreme Court on certiorari under Rule 65, except as hereinafter provided.

An examination of the records of the subject Petitions undeniably demonstrates that the assailed Order of public respondent COMELEC is not the kind contemplated by the aforementioned rule. In the case of *Ambil v. COMELEC*,^[1] this Court took great pains to elucidate the meaning of "final order or resolution" contemplated by the pertinent provision of the Rules of Court. We said:

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

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

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

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

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. (Citation omitted.) Failure to abide by this procedural requirement constitutes a ground for dismissal of the petition. (Citation omitted.)[2]

In any event, as further manifested in its Comment, the reliefs prayed for in the instant Petitions[3] have already been addressed by public respondent COMELEC in various Resolutions. The Petitions for Certiorari filed by herein private respondents Purog, et al., have not only been dismissed for lack of merit, the former also lifted the writs of preliminary injunction it had earlier issued. Accordingly, the RTC was unequivocally directed to proceed with deliberate dispatch with the revision of the contested and counter-protested ballots in the subject election protest cases. In particular, in a 1) Resolution dated 3 April 2006, the 1st Division of public respondent COMELEC dismissed SPR No. 65-2004, the Petition for Certiorari filed by herein private respondents Aliluyah, et al. against herein petitioner Millano, for lack of merit;[4] 2) Resolution dated 12 July 2005, the 1st Division of public respondent COMELEC dismissed SPR No. 66-2004, the Petition for Certiorari filed by herein private respondents Aliluyah, et al. against herein petitioner Francisco, for lack of merit;[5] 3) Resolution dated 17 July 2006, the 1st Division of public respondent COMELEC dismissed SPR No. 67-2004, the Petition for Certiorari filed by herein private respondent Purog against herein petitioner Jumamil, for lack of merit;[6] 4) Resolution dated 31 March 2006, the 1st Division of public respondent COMELEC dismissed SPR No. 68-2004, the Petition for Certiorari filed by herein private respondent Verde against herein petitioner Centino, for lack of merit;[7] and 5) Resolution dated 28 August 2006, the 1st Division of public respondent COMELEC dismissed SPR No. 64-2004, the Petition for Certiorari filed by herein private respondents Aliluyah, et al. against Castillo, for lack of merit.[8]

NOW, THEREFORE, BE IT RESOLVED, as it is hereby Resolved, in accordance with the foregoing discussion, to DISMISS herein consolidated Petitions for Certiorari for utter lack of merit, over and above the fact that they have already become moot. No costs.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Tinga, Garcia, and Velasco, JJ., concur.

Callejo, Sr., J., on leave.

Azcuna, J., on official leave.

Nachura, J., no part.

[1] 398 Phil. 257 (2000).

[2] Id. at 274-275.

[3] WHEREFORE, it is most respectfully prayed that on Order, Resolution or Decision be issued:

(a) Annulling or nullifying the subject Orders and Writs of Preliminary Prohibitory Injunction of the public respondent Commission on Elections, First Division, dated February 14, 2005;

(b) Prohibiting the said public respondent from entertaining and resolving the petition for certiorari before it, except to dismiss the same; and

(c) Commanding the said public respondent to dismiss the said petition for certiorari, thereby allowing the trial court to continue the proceedings before it.

[4] Such resolution became final and executory on 16 August 2006 as evidenced by its entry in the Book of Entries of Judgment.

[5] Such Resolution was affirmed by the COMELEC En Banc in a Resolution dated 17 October 2005. The latter became final and executory on 21 November 2005 and was entered in the Book of Entries of Judgment on 16 August 2006.

[6] Such Resolution was declared final and executory on 3 August 2006 and was entered in the Book of Entries of Judgment on 16 August 2006.

[7] Such Resolution was declared final and executory on 19 April 2006 and was entered in the Book of Entries of Judgment on 16 August 2006.

[8] In a Certification dated 13 November 2006, the Chief of the Judicial Records Division of public respondent COMELEC certified that no Motion for Reconsideration was filed respecting subject Resolution.

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