

MAYOR QUINTIN B. SALUDAGA, PETITIONER, VS. COMMISSION ON ELECTIONS AND ARTEMIO BALAG, RESPONDENTS.

G.R. Nos. 189431 & 191120. April 07, 2010

Ponente: VILLARAMA, JR., J.

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VILLARAMA, JR., J.:

The two (2) consolidated petitions for certiorari and prohibition before us arose from the election protest filed by respondent Artemio Balag against petitioner Quintin B. Saludaga which was docketed as EP Case No. A-88 before the Regional Trial Court (RTC) of Allen, Northern Samar, Branch 23.

The Petition[1] for Certiorari and Prohibition in G.R. No. 189431 seeks to nullify the September 4, 2009 Order[2] of the Second Division of the Commission on Elections (COMELEC) in EAC No. A-34-2008 granting respondent's Motion for Execution Pending Motion for Reconsideration.[3]

On the other hand, the Ad Cautelam Petition for Certiorari and Prohibition[4] in G.R. No. 191120 assails the January 20, 2010 Resolution[5] of the COMELEC en banc which (1) granted respondent's Manifestation and Motion to Dismiss[6] (2) denied petitioner's Verified Motion for Reconsideration[7] of the August 12, 2009 Resolution[8] of the COMELEC, Second Division; and (3) denied petitioner's Extremely Urgent Motion for Reconsideration[9] of the September 4, 2009 Order of the COMELEC, Second Division.

The facts are as follows.

Petitioner Quintin B. Saludaga and respondent Artemio Balag were candidates for Mayor of Lavezares, Northern Samar in the May 14, 2007 elections. On May 16, 2007, the Municipal Board of Canvassers proclaimed Saludaga as the duly elected Mayor with 5,913 votes. He won by a margin of 635 votes over Balag who obtained 5,278 votes.

On May 25, 2007, Balag filed an election protest against Saludaga, docketed as EP Case No. A-88 before the RTC of Allen, Northern Samar, Branch 23. Balag contested the results of the election in 18 precincts, essentially on grounds of massive terrorism and misappreciation of ballots. Saludaga, too, filed a counter-protest disputing the election results in nine (9) precincts on alleged irregularities and fraud committed by the Board of Election Inspectors therein and for misappreciation of ballots.

In a Decision[10] dated March 12, 2008, the RTC declared Balag as the winning mayoralty candidate of Lavezares, Northern Samar with 5,251 votes, 71 votes more than Saludaga's 5,180 votes. The trial court invalidated 733 of Saludaga's ballots: 698 of which were found to have been written by only one (1) person; 25, written by two (2) persons; while 10 were considered marked. Against Balag, the court discounted 27 marked ballots.

On March 26, 2008, Saludaga appealed the RTC Decision to the COMELEC. In the meantime, Balag moved for execution pending appeal, but the motion was denied in an Order[11] dated March 31, 2008. The trial court found no special reason to warrant execution pending appeal, opining that Balag's victory in the polls had not been

clearly established.

On August 12, 2009, the COMELEC, Second Division, affirmed with modification the Decision of the RTC.[12] It found that Balag won as Mayor of Lavezares, Northern Samar, by 127 votes with 5,276 votes compared to Saludaga's 5,149 votes. Balag again promptly moved for execution and filed a Motion for Execution Pending Motion for Reconsideration on August 13, 2009.[13] Saludaga, for his part, filed on August 17, 2009 a Verified Motion for Reconsideration of the August 12, 2009 COMELEC Resolution. On August 18, 2009, the Second Division directed Saludaga to file his Comment within five (5) days from notice. The latter complied therewith on September 1, 2009.

On September 4, 2009, the Second Division of COMELEC issued the first assailed Order,[14] signed solely by Presiding Commissioner Nicodemo T. Ferrer, granting Balag's Motion for Execution Pending Motion for Reconsideration. The order directed the Second Division clerk of court to issue a writ of execution ordering Saludaga to cease and desist from discharging the powers and duties of Mayor of Lavezares, Northern Samar and to relinquish said office in favor of Balag. The Order cited the briefness of the remaining term for Mayor as a good reason for immediate execution.

Aggrieved, Saludaga filed an Extremely Urgent Motion for Reconsideration with the COMELEC en banc on September 8, 2009. Later, on September 28, 2009, Saludaga also filed a Petition for Certiorari with this Court, docketed as G.R. No. 189431, challenging the September 4, 2009 Order of the COMELEC, Second Division. Thus, on October 28, 2009, Balag filed a Manifestation and Motion to Dismiss with the COMELEC en banc contending that Saludaga engaged in forum shopping. Balag in the meantime had taken his oath and assumed the post of Mayor of Lavezares, Northern Samar.

While the petition in G.R. No. 189431 was pending, the COMELEC en banc issued the assailed Resolution dated January 20, 2010 denying reconsideration to both the September 4, 2009 Order and August 12, 2009 Resolution of the Second Division, and granting Balag's motion to dismiss. The COMELEC en banc based its denials solely on a finding that Saludaga committed forum shopping when he filed a motion for reconsideration with the Second Division and a petition for certiorari in the Supreme Court, both to question the Order dated September 4, 2009.

Hence, the Ad Cautelam Petition for Certiorari and Prohibition in G.R. No. 191120.

On March 9, 2010, we issued a Resolution[15] consolidating the petition in G.R. No. 191120 with the earlier filed petition in G.R. No. 189431.

Petitioner Saludaga poses the following issues for our determination:

In G.R. No. 189431

WHETHER OR NOT THE PUBLIC RESPONDENT COMELEC SECOND DIVISION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR IN EXCESS OF JURISDICTION IN ISSUING THE QUESTIONED ORDER ON SEPTEMBER 4, 2009.[16]

In G.R. No. 191120

WHETHER OR NOT THE PUBLIC RESPONDENT COMELEC SECOND DIVISION & EN BANC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR IN EXCESS OF JURISDICTION IN ISSUING THE QUESTIONED RESOLUTIONS ON AUGUST 12, 2009 AND JANUARY 20, 2010.[17]

The Arguments of the Parties

G.R. No. 189431

Petitioner charges the Second Division of COMELEC with grave abuse of discretion for allowing execution during the pendency of the motion for reconsideration of its August 12, 2009 Resolution despite the clear provisions of Section 2,[18] Rule 19 of the COMELEC Rules of Procedure. In addition, petitioner faults the Second Division for not certifying and elevating the records of the case to the Commission en banc after the lapse of 10 days from the filing of the motion for execution as provided in Item 6(b)[19] of COMELEC Resolution No. 8654.[20] Saludaga further points out that the September 4, 2009 Order was signed by Presiding Commissioner Ferrer alone, contrary to the Second Division's duty as a collegial body. Petitioner maintains that there are no superior circumstances to justify execution during the pendency of the motion for reconsideration especially since respondent had not clearly established his victory in the polls.

To refute the allegation as regards his victory, respondent Balag invokes the March 12, 2008 RTC Decision and August 12, 2009 COMELEC Resolution, both of which affirmed his win over petitioner. This, along with the fact that only a short period remains of the term for Mayor, justifies execution pending resolution of the motion for reconsideration, respondent reasons.

Respondent also calls the Court's attention to various suspension orders against petitioner relative to pending criminal cases against him before the Sandiganbayan and the Department of Justice. Respondent believes that these will prevent petitioner from effectively discharging the duties of a mayor. He further accuses petitioner of forum shopping for allegedly assailing before this Court the Second Division's August 12, 2009 Resolution and September 4, 2009 Order, which are also the subjects of his motions for reconsideration before the COMELEC en banc.

G.R. No. 191120

In this Petition for Certiorari and Prohibition, petitioner ascribes grave abuse of discretion to both the Second Division of COMELEC and the COMELEC en banc for declaring respondent as the winning Mayor of Lavezares, Northern Samar. Petitioner makes issue of the discrepancy in the number of votes credited to each mayoralty candidate in four (4)[21] precincts by the RTC, which used the certificates of canvass, and the Second Division of the COMELEC, which based its tally on the election returns.

Petitioner insists that he did not engage in forum shopping to warrant the COMELEC en banc's outright denial of his Verified Motion for Reconsideration of the August 12, 2009 Resolution and his Extremely Urgent Motion for Reconsideration of the September 4, 2009 Order. According to petitioner, the only action he initiated to question the September 4, 2009 Order is the special civil action for certiorari in G.R. No. 189431, his motion for reconsideration of the same Order before the COMELEC being a mere incident of the election protest filed by respondent. Neither is there similarity in the subject matter involved and the parties concerned.

Also, petitioner contests the January 20, 2010 Resolution of the COMELEC en banc insofar as it granted respondent's Manifestation and Motion to Dismiss which is a prohibited pleading under Rule 13[22] of the Comelec Rules of Procedure.

I. The Court's Ruling in G.R. No. 189431

A. Whether petitioner violated the rule on forum shopping

Before we can proceed with a discussion of the contentious issues posed in these petitions, we must first determine whether petitioner indeed engaged in forum shopping.

Forum shopping is the institution of two (2) or more suits in different courts, either simultaneously or successively, in order to ask the courts to rule on the same or related causes and/or to grant the same or

substantially the same reliefs.[23] There is forum shopping when as a result of an adverse decision in one (1) forum, or in anticipation thereof, a party seeks favorable opinion in another forum through means other than appeal or certiorari.[24]

Under paragraph 2, Section 5,[25] Rule 7 of the 1997 Rules of Civil Procedure, as amended, if the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

In determining whether a party violated the rule against forum shopping, the most important factor to ask is whether the elements of *litis pendencia* are present, or whether a final judgment in one case will amount to *res judicata* in another.[26]

For the principle of *res judicata* to apply, the following elements must be present: (1) the judgment sought to bar the new action must be final; (2) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; (3) the disposition of the case must be a judgment on the merits; and (4) there must be as between the first and second actions, identity of parties, subject matter, and cause of action.[27]

In the present case, the second element is wanting.

Under Section 5(c), Rule 3 of the Comelec Rules of Procedure, 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.

When the COMELEC, Second Division issued the September 4, 2009 Order, the appeal of respondent's election protest was still pending resolution by the COMELEC en banc. Clearly, the September 4, 2009 Order of the COMELEC, Second Division granting execution pending resolution of the motion for reconsideration is in the nature of an interlocutory order - one which does not dispose of the case completely but leaves something to be decided upon.[28] Therefore, in accordance with the Comelec Rules of Procedure, any motion to reconsider such interlocutory order of the division shall be resolved by the division which issued it. Otherwise stated, the Extremely Urgent Motion for Reconsideration filed by petitioner to question the September 4, 2009 Order issued by the COMELEC, Second Division had to be resolved also by the Second Division, not by the COMELEC en banc.

Since the COMELEC en banc had no jurisdiction over petitioner's Extremely Urgent Motion for Reconsideration, its January 20, 2010 Resolution does not amount to *res judicata* in relation to the present petition.

Notably, in the certificate of forum shopping[29] of Saludaga's Petition before us, he disclosed that an Extremely Urgent Motion for Reconsideration of the September 4, 2009 Order is also pending before the COMELEC en banc. Even then, the mere filing of a separate case, as in the original action for certiorari and prohibition filed by petitioner in G.R. No. 189431, after filing a responsive pleading in the other case, does not necessarily constitute forum shopping. To reiterate, there is forum shopping when as a result of an adverse decision in one (1) forum, or in anticipation thereof, a party seeks favorable opinion in another forum through means other than appeal or certiorari. Clearly, there is no forum shopping in this case to warrant an outright dismissal of the petition in G.R. No. 189431.

B. Whether the September 4, 2009 Order granting execution pending resolution of the motion for reconsideration is void

We shall now turn to the main issue raised in the petition in G.R. No. 189431. Did the Second Division of

COMELEC commit grave abuse of discretion amounting to lack of or in excess of jurisdiction in granting respondent's motion for execution pending resolution of the motion for reconsideration?

Under Section 2, Rule 19 of the Comelec Rules of Procedure, a party may file a motion to reconsider a decision, resolution, order, or ruling of a division within five (5) days from the promulgation thereof. Such motion, if not pro forma, suspends the execution or implementation of the decision, resolution, order or ruling.

The Comelec Rules of Procedure does not contain an express provision on execution pending appeal or resolution of the motion for reconsideration. In the past, this hiatus was conveniently addressed by Section 1, Rule 41 of said Rules, thus:

SECTION 1. The Rules of Court. - In the absence of any applicable provision in these Rules, the pertinent provisions of the Rules of Court in the Philippines shall be applicable by analogy or in suppletory character and effect.

Pertinently, Section 2 (a), Rule 39 of the 1997 Rules of Civil Procedure, as amended, provides:

SEC. 2. Discretionary execution. -

(a) Execution of a judgment or final order pending appeal. - On motion of the prevailing party with notice to the adverse party filed in the trial court while it has jurisdiction over the case and is in possession of either the original record or the record on appeal, as the case may be, at the time of the filing of such motion, said court may, in its discretion, order execution of a judgment or final order even before the expiration of the period to appeal.

After the trial court has lost jurisdiction, the motion for execution pending appeal may be filed in the appellate court.

Discretionary execution may only issue upon good reasons to be stated in a special order after due hearing.

On May 3, 2007, the Supreme Court promulgated A.M. No. 07-4-15-SC or the Rules of Procedure in Election Contests Before the Courts Involving Elective Municipal and Barangay Officials. Section 11(a), Rule 14 of said rules sets the criteria for execution pending appeal as follows:

SEC. 11. Execution pending appeal. - On motion of the prevailing party with notice to the adverse party, the court, while still in possession of the original records, may, at its discretion, order the execution of the decision in an election contest before the expiration of the period to appeal, subject to the following rules:

(a) There must be a motion by the prevailing party with three-day notice to the adverse party. Execution pending appeal shall not issue without prior notice and hearing. There must be good reasons for the execution pending appeal. The court, in a special order, must state the good or special reasons justifying the execution pending appeal. Such reasons must:

(1) constitute superior circumstances demanding urgency that will outweigh the injury or damage should the losing party secure a reversal of the judgment on appeal; and

(2) be manifest, in the decision sought to be executed, that the defeat of the protestee or the victory of the protestant has been clearly established.

By analogy, this standard is also applicable in the grant of execution pending resolution of the motion for reconsideration of a decision, resolution, order or ruling of a division of the COMELEC.

Petitioner assails the September 4, 2009 Order for three (3) reasons. First, the Second Division of the COMELEC failed to certify and elevate the records of the case upon the lapse of ten (10) days in accordance with Item 6(b) of

Comelec Resolution No. 8654. Second, the September 4, 2009 Order was signed by the Presiding Commissioner alone. Lastly, respondent's Motion for Execution Pending Motion for Reconsideration does not satisfy the criteria in A.M. No. 07-4-15-SC.

We shall tackle each objection separately.

On August 4, 2009, the COMELEC promulgated COMELEC Resolution No. 8654 for the purpose of adopting rules on the payment of COMELEC appeal fees and on the disposition of motions for reconsideration of decisions, resolutions and orders on election protest cases, appeal cases and special relief cases of a division to conform to our ruling in *Aguilar v. COMELEC and Insoy*.^[30]

Item 6 of Comelec Resolution No. 8654 provides:

6. If a motion for the execution of the decision or resolution of the Division is filed prior to the filing of a Motion for Reconsideration, or within two days after the filing of the Motion for Reconsideration and the case was not yet certified to or elevated to the Commission en banc, the Division may, at its own discretion:

a. Certify and elevate the case, together with the Motion for Execution as part of the records of the case, to the Commission En Banc within the two day period as prescribed in Section 5, Rule 19 of the Rules of Court.

b. Stay for a period of not more than ten (10) days from the filing of the Motion for Execution, the elevation of the case to the Commission En Banc, in order to resolve said Motion for Execution. Upon the expiration of the ten-day period, the Division shall immediately certify and elevate the case, together with all the records, to the Commission En Banc for appropriate action. (Emphasis supplied).

Prior to the filing of a motion for reconsideration of a decision or resolution issued by a division of the COMELEC or during the pendency of such motion for reconsideration but before the case is certified or elevated to the COMELEC en banc, the motion for execution may be acted upon by the division that issued the decision or resolution. Under Item 6(a), a division of the COMELEC may choose to elevate both the main action and the motion for execution to the COMELEC en banc. Item 6(b), on the other hand, contemplates a situation where the division decides to rule on the motion for the execution of its decision or resolution. In the latter, the division may defer the elevation of the case to the Commission en banc in order to resolve the motion. After the lapse of ten (10) days from the filing of the motion for execution, however, the division shall immediately certify and elevate the case, together with all the records - including the motion for execution - to the Commission en banc for appropriate action. This describes the second scenario when the COMELEC en banc may rule on a motion for execution pending the resolution of the motion for reconsideration of a decision or resolution of a division.

In the case at hand, respondent filed a motion for execution of the Resolution dated August 12, 2009 on August 13, 2009. Thus, the Second Division of COMELEC had only until August 23, 2009 to resolve the same. In the Order dated September 4, 2009, Presiding Commissioner Ferrer, acting for the Second Division, justifies the delay in the resolution of the motion for execution by saying that it was in the interest of fair play that he required petitioner to file a comment. The Presiding Commissioner posits that the 10-day period is reckoned from the day the Second Division received petitioner's comment on September 1, 2009.

We cannot agree.

In accordance with the express provision of the law, the ten (10) days within which a division of the COMELEC may suspend elevating the case to the Commission en banc is to be counted from the filing of the motion for execution. The language of the law is clear, plain and too simple to invite a different interpretation. Moreover, nowhere in COMELEC Resolution No. 8654 does it say that a comment is required, much less, indispensable before the division may rule on a motion for execution.

After the lapse of the 10-day period, the only power (and duty) that a division has is to certify and elevate the case, together with all the records, to the Commission en banc, for appropriate action. Hence, upon the lapse of the 10-day period or after August 23, 2009, the Second Division no longer had jurisdiction to rule on respondent's motion for execution. Having done so, the September 4, 2009 Order is void for having been issued by the COMELEC, Second Division without jurisdiction.

Indeed, even if said Order was promulgated within 10 days from the filing of the motion for execution, it would still be void because Presiding Commissioner Ferrer alone signed it.

To justify the Presiding Commissioner's action, public respondent COMELEC invokes Section 6 (d), Rule 2 of the Comelec Rules of Procedure which provides,

SEC. 6. Powers and Duties of the Presiding Commissioner.-The powers and duties of the Presiding Commissioner of a Division when discharging its functions in cases pending before the Division shall be as follows:

x x x x

(d) To sign interlocutory resolutions, orders or rulings and temporary restraining orders in cases already assigned to the Division;

x x x x.

However, this provision has been qualified by the amendment introduced by the Commission en banc as reflected in the Excerpts[31] of its regular en banc meeting held on December 5, 1996. The relevant portion of the Excerpts reads:

3) The ponente in the preceding two paragraphs shall prepare interlocutory orders for signature of the Chairman or Division Chairman. Orders of substance, however, shall be referred to the Division/En Banc for clearance. (Emphasis supplied.)

An order resolving a motion for execution is one (1) such order of substance that requires more than the lone imprimatur of the Division Chairman. This is so because execution pending resolution of the motion for reconsideration may issue only upon good or special reasons contained in a special order. To reiterate, such reasons must: (1) constitute superior circumstances demanding urgency that will outweigh the injury or damage should the losing party secure a reversal of the judgment on appeal; and (2) be manifest, in the decision sought to be executed, that the defeat of the protestee or the victory of the protestant had been clearly established. These stringent requirements demand more than a cursory evaluation of a motion for execution pending reconsideration. Hence, the need to refer such order for clearance by the Division or the COMELEC en banc, as the case may be.

This amendment is reflected in Item 6, COMELEC Resolution No. 8654 which identifies the division as the one (1) in possession of the discretion to either: (1) certify and elevate the case, together with the motion for execution, to the Commission en banc within the two-day period prescribed in Section 5,[32] Rule 19 of the Comelec Rules of Procedure, or (2) stay, for a period of not more than ten (10) days from the filing of a motion for execution, the elevation of the case to the Commission en banc, in order to resolve said motion. Alternatively, upon the expiration of the 10-day period, the decision may immediately certify and elevate the case, together with all the records, to the Commission en banc for appropriate action.

The discretion to allow execution pending reconsideration belongs to the division that rendered the assailed decision, order or resolution, or the COMELEC en banc, as the case may be - not to the Presiding Commissioner. To be sure, a writ of execution pending resolution of the motion for reconsideration of a decision of the division is not granted as a matter of right such that its issuance becomes a ministerial duty that may be dispensed even just

by the Presiding Commissioner.

II. The Court's Ruling in G.R. No. 191120

Prescinding from our finding that petitioner did not commit forum shopping, the COMELEC en banc erred in denying outright petitioner's Verified Motion for Reconsideration of the August 12, 2009 Resolution.

Moreover, we agree with petitioner that the COMELEC en banc also erred in granting the Manifestation and Motion filed by respondent. Under Section 1(a),^[33] Rule 13 of the Comelec Rules of Procedure, a motion to dismiss is among the pleadings which are not allowed in the proceedings before the Commission.

Finally, in his Verified Motion for Reconsideration, petitioner raised factual issues, specifically, on the appreciation of votes and the discrepancy in the number of votes credited to each candidate in four (4) precincts. However, the appreciation of contested ballots and election documents involves a question of fact best left to the determination of the COMELEC, a specialized agency tasked with the supervision of elections all over the country. After all, it is the constitutional commission vested with the exclusive original jurisdiction over election contests involving regional, provincial and city officials, as well as appellate jurisdiction over election protests involving elective municipal and barangay officials.^[34] Hence, we deem it proper to remand this case to the COMELEC en banc, in order that it may resolve petitioner's motion for reconsideration of the Resolution dated August 12, 2009 on the merits.

WHEREFORE, the petition in G.R. No. 189431 is GRANTED. The September 4, 2009 Order of the COMELEC, Second Division, in EAC No. A-34-2008 is ANNULLED.

The petition in G.R. No. 191120 is PARTLY GRANTED. The January 20, 2010 Resolution of the COMELEC en banc in EAC No. A-34-2008 is SET ASIDE insofar as it granted the Manifestation and Motion to Dismiss filed by respondent Artemio H. Balag.

Respondent Artemio H. Balag is ordered to CEASE AND DESIST from performing the functions of Mayor of Lavezares, Northern Samar, effective immediately. Petitioner Quintin B. Saludaga is REINSTATED to the position of Mayor of Lavezares, Northern Samar pending final determination by the COMELEC en banc of the merits of petitioner's Verified Motion for Reconsideration of the August 12, 2009 Resolution of the COMELEC, Second Division.

Let this case be REMANDED to the COMELEC en banc for adjudication on the merits of petitioner's Verified Motion for Reconsideration of the August 12, 2009 Resolution of the COMELEC, Second Division.

This Decision is IMMEDIATELY EXECUTORY.

SO ORDERED.

Puno, C.J., Carpio, Corona, Carpio Morales, Velasco, Jr., Nachura, Leonardo-De Castro, Brion, Peralta, Bersamin, Del Castillo, Perez, and Mendoza, JJ., concur.

Abad, J., on official business.

[1] Rollo (G.R. No. 189431), pp. 3-47.

[2] Id. at 48-51.

[3] Id. at 246-257.

[4] Rollo (G.R. No. 191120), pp. 17-44.

[5] Id. at 155-166.

[6] Id. at 155. (Cited in the COMELEC Resolution dated January 20, 2010.)

[7] Id. at 132-152.

[8] Id. at 48-131.

[9] Supra, note 6.

[10] Rollo (G.R. No. 189431), pp. 61-101.

[11] Id. at 190-192.

[12] Id. at 102-105.

[13] Id. at 246-257.

[14] Id. at 48-51.

[15] Rollo (G.R. No. 191120), p. 169.

[16] Rollo (G.R. No. 189431), p. 30.

[17] Rollo (G.R. No. 191120), p. 35.

[18] 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 or implementation of the decision, resolution, order or ruling. (Emphasis supplied.)

[19] 6. If a motion for the execution of the decision or resolution of the Division is filed prior to the filing of a Motion for Reconsideration, or within two days after the filing of the Motion for Reconsideration and the case was not yet certified to or elevated to the Commission en banc, the Division may, at its own discretion:

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(b) Stay for a period of not more than ten (10) days from the filing of the Motion for Execution, the elevation of the case to the Commission En Banc, in order to resolve said Motion for Execution. Upon the expiration of the ten-day period, the Division shall immediately certify and elevate the case, together with all the records, to the Commission En Banc for appropriate action.

[20] in the matter of adopting rules of procedure on the payment of the comelec appeal fees and on the disposition of motions for reconsideration of decisions, resolutions and orders on election protest cases (epc), election appeal cases (eac) and special relief cases (spr) of a division of the commission on elections to conform with the supreme court decision in jerry b. aguilar v. commission on elections and romulo r. insoy (g.r. no. 185140), promulgated on june 30, 2009.

[21] Precincts 26A [E.R. No. 5400942], 37A [5401000], 68A/B [E.R. No. 5400959] and 71A/B [E.R. No. 5400995].

[22] Section 1. What Pleadings are not Allowed.-The following pleadings are not allowed:

(a) motion to dismiss;

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(g) supplemental pleadings in special actions and in special cases.

[23] *Young v. Keng Seng*, G.R. No. 143464, March 5, 2003, 398 SCRA 629, 636-637.

[24] *National Electrification Administration (NEA) v. Buenaventura*, G.R. No. 132453, February 14, 2008, 545 SCRA 277, 288.

[25] SEC. 5. Certification against forum shopping.- The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions. (Emphasis supplied.)

[26] *Young v. Keng Seng*, *supra* at 638.

[27] *Republic v. Yu*, G.R. No. 157557, March 10, 2006, 484 SCRA 416, 421.

[28] *City of Naga v. Asuncion*, G.R. No. 174042, July 9, 2008, 557 SCRA 528, 541.

[29] *Rollo* (G.R. No. 189431), p. 46.

[30] G.R. No. 185140, June 30, 2009, 591 SCRA 491.

[31] EXCERPTS FROM THE MINUTES OF THE REGULAR EN BANC MEETING OF THE COMMISSION ON ELECTIONS HELD ON DECEMBER 5, 1996.

Present:

Chairman Bernardo P. Pardo

Commissioner Regalado E. Maambong

Commissioner Julio F. Desamito

Commissioner Teresita Dy-Liacco Flores

Commissioner Japal M. Guiani

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In the matter of the Memorandum dated November 27, 1996 of Commissioner Teresita Dy-Liacco Flores re certain amendments to the Commissioner's Rule of Procedure,

RESOLVED TO ADOPT THE FOLLOWING AMENDMENTS:

- 1) All cases within the original jurisdiction of the Commission En Banc, if not yet assigned or consulted upon, shall be assigned to a ponente whose name shall be kept confidential;
- 2) All incoming cases on appeal from rulings of courts of primary jurisdiction shall be raffled by the Chairman three (3) at a time so that each commissioner will have an involvement;
- 3) The ponente in the preceding two paragraphs shall prepare interlocutory orders for signature of the Chairman or Division Chairman. Orders of substance, however, shall be referred to the Division/En Banc for clearance.
- 4) Certiorari petitions shall be referred to the Chairman, who shall have the same raffled for study and recommendation to the Commission en banc;
- 5) Cases related to a previous case may be assigned to the same ponente;
- 6) There shall be equitable distribution of cases.

Accordingly, the Election Contests Adjudication Department shall incorporate the foregoing amendments in the Rules of Procedure of the Commission.

RESOLVED, moreover, to temporarily suspend the implementation of the Rules of Procedure until the same is revised, per the forgoing amendments or the caseload substantially reduced.

Let the election Contests Adjudication Department, and the Office of the Clerk of the Commission, implement this resolution.

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This is to certify that the foregoing is a true and correct excerpt from the minutes of the Special en banc meeting of the Commission on Elections held on December 5, 1996.

(Sgd.) MA. JOSEFINA E. DELA CRUZ
Officer-in-Charge
Office of the COMELEC Secretary

[32] 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.

[33] Supra, note 22.

[34] Flauta, Jr. v. Commission on Elections, G.R. No. 184586, July 22, 2009, 593 SCRA 504, 521.

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