

EN BANC

[G.R. No. 181478, July 15, 2009]

EDDIE T. PANLILIO, PETITIONER, VS. COMMISSION ON ELECTIONS AND LILIA G. PINEDA, RESPONDENTS.

D E C I S I O N

LEONARDO-DE CASTRO, J.:

Before us is a Petition for Certiorari under Rule 65, in relation to Rule 64 of the Rules of Court, seeking the nullification of the following issuances of the COMELEC:

(1) COMELEC Second Division Order^[1] dated July 23, 2007 giving due course to respondent Lilia G. Pineda's election protest and, *inter alia*, directing the revision of ballots of the protested precincts of the Province of Pampanga;

(2) COMELEC Second Division Order^[2] dated August 1, 2007 denying petitioner Governor Eddie T. Panlilio's motion for reconsideration of the aforesaid order; and

(3) COMELEC *En Banc* Order^[3] dated February 6, 2008 denying petitioner's omnibus motion to (a) certify his said motion for reconsideration to the COMELEC En Banc; and (b) stay Order dated August 7, 2007 directing the collection of ballot boxes in the contested precincts.

The parties herein were two of the contending gubernatorial candidates in the province of Pampanga during the May 14, 2007 national and local elections. On May 18, 2007, the Provincial Board of Canvassers of Pampanga proclaimed petitioner as the duly elected governor of Pampanga having garnered the highest number of votes of Two Hundred Nineteen Thousand Seven Hundred Six (219,706) votes^[4] with a winning margin of One Thousand One Hundred Forty-Seven (1,147) votes over the 218,559 votes of private respondent.

On May 25, 2007, private respondent filed an election protest^[5] against petitioner based on the following grounds:

a). Votes in the ballots lawfully and validly cast in favor of protestant were deliberately misread and/or mis-appreciated by the various chairmen of the different boards of election inspectors;

b). Thousands of votes of protestant such as "NANAY BABY", her

registered nickname were intentionally and/or erroneously not counted or tallied in the election returns as votes validly cast for the protestant;

c). Valid votes legally cast in favor of protestant were considered stray;

d). Ballots containing valid votes for protestant were intentionally and erroneously mis-appreciated or considered as marked and declared as null and void;

e). Ballots with blank spaces in the line for governor were just the same read and counted in favor of protestee;

f). Ballots prepared by persons other than the voters themselves and fake or unofficial ballots wherein the name of protestee was written illegally, read and counted in favor of the latter;

g). Groups of ballots prepared by one (1) person and/or individual ballots prepared by two (2) persons were purposely considered as valid ballots and counted in favor of protestee;

h). Votes that are void because the ballots containing them were pasted with stickers or because of pattern markings appearing in them or because of other fraud and election anomalies, were unlawfully read and counted in favor of the protestee; and,

i). Votes reported in numerous election returns were unlawfully increased in favor of the protestee, while votes in said election returns for the protestant were unlawfully decreased ("*dagdag-bawas*"), such that the protestee appeared to have obtained more votes than those actually cast in his favor, while the protestant appeared to have obtained less votes than the actually cast in her (protestant's) favor; and,

j). Moreover, buying of votes and other forms of vote-buying were resorted to by protestee in order to pressure voters to vote for him or not to cast their votes for the protestant herein.^[6]

On June 12, 2007, petitioner filed his answer with counter-protest and counterclaims.

On July 23, 2007, the COMELEC, Second Division, issued the first assailed order giving due course to private respondent's election protest and directed among others, the revision of ballots pertaining to the protested precincts of the Province of Pampanga.

Petitioner filed a motion for reconsideration of the aforesaid order but the same was denied by the same Division, in the second challenged Order dated August 1, 2007.

On August 1, 2007, private respondent filed her compliance stating that she deposited with the COMELEC Four Million Eight Hundred Eighty Six pesos (P4,000,886.00) pursuant to the July 23, 2007 Order.

On August 8, 2007, petitioner filed an Omnibus Motion (1) to certify his earlier motion for reconsideration at the COMELEC *En Banc*; and (2) to stay the COMELEC's order directing the collection of ballot boxes. Thereafter, on August 16, 2007, petitioner filed an urgent motion to hold in abeyance the retrieval and collection of ballot boxes.

On February 6, 2008, the COMELEC *En Banc* issued the third assailed Order, the dispositive portion of which reads:

WHEREFORE, premises considered, protestee Eddie Panlilio's Omnibus Motion dated August 7, 2007 is hereby DENIED for lack of merit. Consequently, the Order of the Commission (Second Division) dated August 16, 2007 ordering the Provincial Election Supervisor (PES) of Pampanga to defer the inventory, sealing and transmittal of the contested ballot boxes involved in this case is hereby LIFTED and SET ASIDE.

SO ORDERED.

In arriving at such a disposition, the COMELEC *En Banc* ratiocinated that the assailed orders of the COMELEC Second Division were interlocutory orders, which are not one of the orders required by Section 5 (C) Rule 3 and Section 5 Rule 19 of the COMELEC Rules of Procedure to be certified to the Commission *en banc* for resolution.

Aggrieved, petitioner filed the instant petition for certiorari contending that the COMELEC acted with grave abuse of discretion amounting to lack or excess of jurisdiction in denying his omnibus motion and in failing to dismiss the alleged sham election protest filed by private respondent against him:

I

PUBLIC RESPONDENT COMELEC (*EN BANC*) COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DENYING PETITIONER'S OMNIBUS MOTION ON THE BASIS OF SECTION 5 (C), RULE 3 IN RELATION TO SECTION 5, RULE 19 OF THE COMELEC RULES OF PROCEDURE

II

PUBLIC RESPONDENT COMELEC (*EN BANC*) COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DENYING PETITIONER'S OMNIBUS MOTION DESPITE THE SERIOUS IRREGULARITIES WHICH ATTENDED THE ISSUANCE OF PUBLIC RESPONDENT COMELEC (SECOND DIVISION) OF THE ASSAILED ORDER DATED 1 AUGUST 2007, DENYING HIS MOTION FOR RECONSIDERATION, AND WHICH RENDERED DOUBTFUL THE PROPRIETY OF SUCH DENIAL

III

PUBLIC RESPONDENT COMELEC (*EN BANC*) COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DENYING PETITIONER'S OMNIBUS MOTION AND REFUSING TO RULE ON PETITIONER'S MOTION FOR RECONSIDERATION ON THE BASIS THAT SUCH WILL BE TANTAMOUNT TO SANCTIONING A SECOND MOTION FOR RECONSIDERATION

IV

PUBLIC RESPONDENT COMELEC (*EN BANC*) AND SECOND DIVISION) COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN FAILING TO DISMISS OUTRIGHT PRIVATE RESPONDENT'S SHAM PROTEST BELOW

The petition is without merit.

Petitioner insists that the COMELEC *En Banc* gravely abused its discretion when it denied his omnibus motion to certify his earlier motion for reconsideration and to stay the order directing the collection of ballot boxes of the contested precincts in the province of Pampanga. He argues that Section 5, Rule 19 of the COMELEC Rules of Procedure, on which the omnibus motion was anchored, clearly mandates the Presiding Commissioner of the Division of the COMELEC to certify the case to the COMELEC *En Banc* once a motion for reconsideration is filed, regardless of whether the order or resolution sought to be reconsidered is an interlocutory order or a final one.

This issue has been squarely addressed in *Repol v. COMELEC*,^[7] where the Court has declared that the remedy to assail an interlocutory order of the COMELEC in Division, which allegedly was issued with grave abuse of discretion or without or in excess of jurisdiction, is provided in Section 5(c), Rule 3 of the 1993 COMELEC Rules of Procedure, which pertinently reads:

Section 5. Quorum; Votes Required. -

(a) x x x.

(b) 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.

In *Repol*, the Court held that since the COMELEC's Division issued the interlocutory Order, the same COMELEC Division should resolve the motion for reconsideration of the Order. The remedy of the aggrieved party is neither to file a motion for

reconsideration for certification to the COMELEC *En Banc* nor to elevate the issue to this Court *via* a petition for certiorari under Rule 65 of the Rules of Civil Procedure. In the same case the Court added that:

Section 5, Rule 19 of the 1993 COMELEC Rules of Procedure governs motions for reconsideration of decisions of a COMELEC Division, as follows:

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

In *Gementiza v. Commission on Elections*, the Court explained the import of this rule in this wise:

Under the above-quoted rule, the acts of a Division that are subject of a motion for reconsideration must have a character of finality before the same can be elevated to the COMELEC en banc. The elementary rule is that an order is final in nature if it completely disposes of the entire case. But if there is something more to be done in the case after its issuance, that order is interlocutory.

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.

It is clear from the foregoing constitutional provision that the COMELEC *En Banc* shall decide motions for reconsideration only of "decisions" of a Division, meaning those acts having a final character. Here, the assailed Second Division order did not completely dispose of the case, as there was something more to be done, which was to decide the election protest. Being interlocutory, the assailed Second Division orders may not be resolved by the COMELEC *En Banc*.

Furthermore, the present controversy does not fall under any of the instances of which the COMELEC *En Banc* can take cognizance. Section 2, Rule 3 of the 1993