

## EN BANC

[ G.R. No. 236573, August 14, 2018 ]

**BARANGAY CHAIRMAN HERBERT O. CHUA PETITIONER, VS. COMMISSION ON ELECTIONS, HON. MARIANITO C. SANTOS, IN HIS CAPACITY AS THE PRESIDING JUDGE OF METC, BRANCH 57, SAN JUAN CITY, AND SOPHIA PATRICIA K. GIL, RESPONDENTS.**

### DECISION

**REYES, JR., J:**

This is a petition for *certiorari* and prohibition filed by Herbert O. Chua (Chua), assailing the Resolutions dated April 7, 2017<sup>[1]</sup> and November 6, 2017<sup>[2]</sup> of the Commission on Elections in EAC (BRGY) No. 165-2014, which declared Sophia Patricia K. Gil (Gil) the duly-elected Punong Barangay of Barangay Addition Hills, San Juan City in the October 28, 2013 Barangay Elections.

#### Factual Antecedents

Chua and Gil were candidates for the position of Punong Barangay of Addition Hills, San Juan City in the October 28, 2013 Barangay Elections. After the canvassing of the votes, Chua was proclaimed the winner after obtaining 465 votes as against Gil's 460 votes.<sup>[3]</sup>

On May 7, 2013, Gil filed an election protest with the Metropolitan Trial Court (MeTC) of San Juan City, alleging that fraud and illegal acts marred the voting and counting thereof in all the fifteen (15) precincts of Barangay Addition Hills, San Juan City, which was docketed as EAC (BRGY) No. 165-2014. Specifically, she questioned (1) the presence of voters who are not residents of the barangay (2) that votes were erroneously counted in favor of Chua by the Chairmen of the Board of Election Tellers (BETs), and; (3) that ballots where the space provided for the Punong Barangay was left blank and her name was mistakenly written on the first line for Kagawad slots were not credited in her favor.<sup>[4]</sup>

In his Answer, Chua claimed that the Verification and Certification Against Forum Shopping attached to the election protest was defective thereby making the same a mere scrap of paper. He added that Gil's claims were based on mere hearsay and self-serving allegations.<sup>[5]</sup>

#### Ruling of the MeTC

On May 20, 2014, the MeTC rendered a Decision<sup>[6]</sup>, dismissing the election protest,

the dispositive portion of which reads as follows:

WHEREFORE, in light of the foregoing, this Court Resolved to DISMISS the instant election protest, including the parties' mutual claims for damages and attorney's fee; AFFIRM the proclamation of Protestee HERBERT O. CHUA; and DECLARE him to be the duly elected Barangay Captain of Barangay Addition Hills, San Juan City, for having obtained a plurality of 468 votes over the second placer Sophia Patricia K. Gil.

SO ORDERED.<sup>[7]</sup>

### **Ruling of the Comelec**

Unyielding, Gil filed an appeal of the decision of the MeTC with the Comelec, and it was raffled off to the First Division. Subsequently, on April 7, 2017, the Comelec First Division issued a Resolution,<sup>[8]</sup> reversing the Decision dated May 20, 2014 of the MeTC. The dispositive portion of the resolution reads, thus:

WHEREFORE, premises considered, the Commission (First Division) RESOLVED, as it hereby RESOLVES, to GRANT the appeal filed by Sophia Patricia K. Gil. The 20 May 2014 Decision of the Metropolitan Trial Court of San Juan City is hereby REVERSED and SET ASIDE. Sophia Patricia K. Gil is DECLARED to be the duly-elected Punong Barangay of Addition Hills, San Juan City in the 28 October 2013 Barangay Elections.

SO ORDERED.<sup>[9]</sup>

Dissatisfied, Chua filed a verified motion for reconsideration of the foregoing resolution to the Comelec *En Banc*. Thereafter, on November 6, 2017, the Comelec *En Banc* issued a Resolution,<sup>[10]</sup> affirming the Resolution dated April 7, 2017 of the Comelec First Division, disposing thus:

WHEREFORE, the instant MOTION FOR RECONSIDERATION is DENIED. The 07 April 2017 Resolution of the Comelec (First Division) is hereby AFFIRMED.

SO ORDERED.<sup>[11]</sup>

Thereafter, on November 10, 2017, Chua filed a Manifestation with Clarification and Motion to Stay Execution,<sup>[12]</sup> praying for the Comelec to hold in abeyance the entry of judgment and/or the issuance of a writ of execution on the ground that Gil has abandoned her election protest when she filed a certificate of candidacy for the

position of councilor for the second district of San Juan City on October 18, 2015.  
[13]

On January 19, 2018, the Comelec *En Banc* issued an Order,<sup>[14]</sup> denying the Manifestation with Clarification and Motion to Stay Execution filed by Chua. It ruled that the said manifestation is in the nature of a motion for reconsideration of the Comelec *En Banc's* resolution which is among the prohibited pleading enumerated in Section 1(d), Rule 13 of the Comelec Rules of Procedure.<sup>[15]</sup>

Meanwhile, pursuant to Section 13, paragraph (a) Rule 18 of the Comelec Rules of Procedure, the Electoral Contests Adjudication Department of the Comelec issued a Certificate of Finality<sup>[16]</sup> and the Resolution dated November 6, 2017 of the Comelec *En Banc* was recorded in the Book of Entries of Judgments<sup>[17]</sup> on January 23, 2018.

On January 31, 2018, Chua filed the instant Petition for *Certiorari* and Prohibition under Rule 64, in relation to Rule 65 of the Rules of Court, with an Urgent Application for Temporary Restraining Order (TRO) and/or Preliminary Injunction.<sup>[18]</sup> He alleged that the Comelec gravely abused its discretion when it did not rule on the supposed mootness of Gil's election protest.

On March 5, 2018 and April 5, 2018, respectively, counsel for Gil filed his Entry of Appearance as Collaborating Counsel for Private Respondent with Comment,<sup>[19]</sup> while the Office of the Solicitor General (OSG) filed its Comment<sup>[20]</sup> on the petition.

### **Ruling of this Court**

The petition is dismissed.

At the outset, the petition was filed out of time. The Rules of Court and the Comelec Rules of Procedure are clear on the manner and period of appealing or challenging the decisions, resolutions or orders of the Comelec *En Banc*. Section 3, Rule 64 of the Rules of Court states:

**Section 3. Time to file petition.** — The petition shall be filed within thirty (30) days from notice of the judgment or final order or resolution sought to be reviewed. The filing of a motion for new trial or reconsideration of said judgment or final order or resolution, if allowed under the procedural rules of the Commission concerned, shall interrupt the period herein fixed. If the motion is denied, the aggrieved party may file the petition within the remaining period, but which shall not be less than five (5) days in any event, reckoned from notice of denial.

Concomitantly, Section 13, paragraph (a), Rule 18 of the Comelec Rules of Procedure provides:

Sec. 13. *Finality of Decisions or Resolutions.* - (a) In ordinary actions, special proceedings, provisional remedies and special reliefs a decision or resolution of the Commission en banc shall become final and executory after thirty (30) days from its promulgation.

Appeals from decisions of the MeTC in election protest cases are classified as ordinary actions under the Comelec Rules of Procedure. As such, decisions or resolutions pertaining to the same shall become final and executory after thirty (30) days from promulgation. The concerned party, however, may file a petition for *certiorari* with this Court to interrupt the period and challenge the ruling on the ground of grave abuse of discretion.

The records bear out, however, that Chua failed to take the proper legal remedy in questioning the ruling of Comelec *En Banc* within the reglementary period. He received a copy of the Resolution dated April 7, 2017 of the Comelec First Division on April 11, 2017.<sup>[21]</sup> Six (6) days thereafter, on April 17, 2017, he filed a motion for reconsideration which the Comelec *En Banc* denied in its Resolution dated November 6, 2017. He received a notice of the said denial on November 9, 2017, thereby giving him twenty-four (24) days to file a petition for *certiorari* with this Court. Instead of filing a petition for *certiorari*, however, Chua filed a Manifestation with Clarification and Motion to Stay Execution, alleging a matter that he failed to raise during the pendency of the proceedings. He particularly pointed out that Gil should be considered to have abandoned her election protest when she filed a certificate of candidacy for the position of councilor of the City of San Juan for the May 2016 elections and prayed that, in the meantime, the issuance of a writ of execution and entry of judgment be held in abeyance.<sup>[22]</sup> A reading of the allegations in the manifestation shows that it is in the nature of a motion for reconsideration which is a prohibited pleading under Section 1(d), Rule 13 of the Comelec Rules of Procedure which states, thus:

Section 1. *What Pleadings are not Allowed* - The following pleadings are not allowed:

- (a) motion to dismiss;
- (b) motion for a bill of particulars;
- (c) motion for extension of time to file memorandum or brief;
- (d) motion for reconsideration of an en banc ruling, resolution, order or decision except in election offense cases;**
- (e) motion for re-opening or re-hearing of a case;
- (f) reply in special actions and in special cases; and
- (g) supplemental pleadings in special actions and in special cases.

"Under the COMELEC Rules of Procedure, a motion for reconsideration of its *en banc* ruling is prohibited except in a case involving an election offense."<sup>[23]</sup> A prohibited pleading does not produce any legal effect and may be deemed not filed at all. In *Landbank of the Philippines vs. Ascot Holdings and Equities, Inc.*,<sup>[24]</sup> the Court emphasized that "a prohibited pleading cannot toll the running of the period to appeal since such pleading cannot be given any legal effect precisely because of its