

## EN BANC

[ G.R. No. 216572, April 19, 2016 ]

**FELICIANO LEGASPI, PETITIONER, VS. COMMISSION ON ELECTIONS, ALFREDO D. GERMAR, AND ROGELIO P. SANTOS, JR., RESPONDENTS.**

### R E S O L U T I O N

**VELASCO JR., J.:**

The opportunities for the Court to revisit its ruling in *Mendoza vs. COMELEC*<sup>[1]</sup> (*Mendoza*) are sparse. It is a rarity for us to be presented a case assailing the COMELEC *en banc*'s reversal of its division's ruling notwithstanding the former's failure to muster the four (4) votes required under our Constitution to do so. In fact, the September 1, 2015 Decision in the case at bench is only second to the seminal case of *Mendoza* to have resolved such an issue. The Court must, therefore, take advantage of this rare opportunity, on reconsideration, to modify the *Mendoza* doctrine before it further takes root, deeply entrenched in our jurisprudence.

The facts of this case are simple and undisputed.

To recapitulate, petitioner Feliciano Legaspi (Legaspi) and private respondent Alfredo D. Germar (Germar) both ran as mayoralty candidates in Norzagaray, Bulacan while private respondent Rogelio Santos (Santos) was a candidate for councilor in the May 13, 2013 elections.<sup>[2]</sup> On May 14, 2013 Legaspi filed a Petition for Disqualification against private respondents, docketed as SPA No. 13-353 (DC). There, petitioner averred that from May 11, 2013 until election day, private respondents engaged in massive vote-buying, using their political leaders as conduits. As per witness accounts, said political leaders, while camped inside the North Hills Village Homeowners Association Office in Brgy. Bitungol, Norzagaray, Bulacan, were distributing to voters envelopes containing Php 500.00 each and a sample ballot bearing the names of private respondents. Through military efforts, the vote-buying was foiled and the office, which served as the venue for distribution, padlocked. The newly-minted Chief of Police, P/Supt. Dale Soliba, and his subordinates then attempted to force open the office and retrieve from inside four (4) boxes containing the remaining undistributed envelopes with an estimated aggregate amount of Php800,000.00, but a group of concerned citizens were able to thwart their plan in *flagrante delicto* and intercept the said evidence of vote-buying.<sup>[3]</sup>

In answer, private respondents denied the allegations and raised the alibi that from 3:00 o'clock to 11:00 o'clock in the evening of May 11, 2013, they attended the Liberal Party's meeting *de avance* at the San Andres Parish church grounds, and that they did not go to nor visit the office of the Homeowner's Association of North Hills Village at the time the election offenses were allegedly committed.<sup>[4]</sup>

Giving due credence and consideration to the evidence adduced by petitioner,<sup>[5]</sup> the COMELEC Special First Division, by a 2-1 vote on October 3, 2013, disqualified private respondents from the 2013 electoral race. The dispositive portion of the COMELEC resolution<sup>[6]</sup> reads:

**WHEREFORE**, premises considered, the Commission **RESOLVED** as it hereby RESOLVES to:

(1) **DISQUALIFY** Respondents Alfredo M. Gesmar (sic) and Rogelio C. Santos, Jr. for the positions of Mayor and Councilor of Norzagaray, Bulacan;

(2) **REFER** the criminal aspect of this case against Germar (sic), Roberto Esquivel, Rogelio Santos, Jr., Dale Soliba, Dominador Rayo, Marivic Nunez, Adelaida Auza, Amelia Cruz, and Leonardo Ignacio to the Law Department for preliminary investigation; and

(3) **ORDER** the Regional Election Director of COMELEC Region III to implement this Resolution, following the rules on succession as provided in R.A. 7160.

**SO ORDERED.**

Thereafter, private respondents moved for reconsideration before the COMELEC *en banc* but the latter, through its July 10, 2014 Resolution,<sup>[7]</sup> resolved to deny private respondents' motion thusly:

**WHEREFORE**, premises considered, the Commission **RESOLVED**, as it hereby **RESOLVES** to **DENY** this Motion for Reconsideration for LACK OF MERIT. Consequently, the October 3, 2013 Resolution of the Special First Division (1) disqualifying respondents Alfredo M. Germar and Rogelio C. Santos, Jr. for the positions of Mayor and Councilor of Norzagaray, Bulacan; (2) referring the criminal aspect of this case against Alfredo M. Germar, Roberto Esquivel, Rogelio Santos, Jr., Dale Soliba, Dominador Rayo, Marivic Nunez, Adelaida Auza, Amelia Cruz and Leonardo Ignacio to the Law Department for preliminary investigation and (3) ordering the Regional Election Director of COMELEC Region III to implement this Resolution, following the Rules on Succession as provided under R.A. 7160 is hereby **AFFIRMED**.

**SO ORDERED.**

The adverted Resolution had a vote of **3-2-1-1**, as follows: three (3) commissioners, namely Chairman Sixto S. Brillantes, Jr. and commissioners Lucenito N. Tagle and Elias R. Yusoph, voted for the denial of the motion, while two (2) commissioners, Christian Robert S. Lim and Luie Tito F. Guia, dissented. Commissioner Al A. Parreno took no part in the deliberations and Commissioner Maria Grace Cielo M. Padaca did not vote as her *ad interim* appointment had already expired, vacating a seat in the electoral tribunal.<sup>[8]</sup>

Since the Resolution was not concurred in by four (4) votes or a majority of all the

members of the COMELEC, a re-deliberation of the administrative aspect of the case was conducted pursuant to Sec. 6, Rule 18 of the COMELEC Rules of Procedure. The re-deliberation resulted in the issuance of the assailed Order<sup>[9]</sup> dated January 28, 2015 with a 3-2-2 vote: the previously voting commissioners maintained their respective positions while then newly-appointed commissioner Arthur D. Lim took no part in the deliberations and abstained from voting.<sup>[10]</sup> Citing the same procedural rule, the COMELEC *en banc* dismissed the original Petition for Disqualification filed by Legaspi in the following wise:

**WHEREFORE**, premises considered, the Commission **RESOLVED**, as it hereby **RESOLVES** to **DISMISS** the administrative aspect of this Petition for Disqualification for **FAILURE TO OBTAIN THE NECESSARY MAJORITY VOTES AFTER RE-DELIBERATION/REHEARING** by the members of the Commission *en banc*.

**SO ORDERED.**

Perplexed as to how he who prevailed before the COMELEC Special First Division can face defeat before the COMELEC *en banc* when three (3) commissioners voted to deny private respondents' motion for reconsideration and only two (2) commissioners voted to reverse the judgment in his favor, Legaspi launched a Rule 64 petition assailing the January 28, 2015 COMELEC *en banc* Order before this Court. Regrettably, the Court, on September 1, 2015, voted to dismiss the petition.

From the September 1, 2015 Decision, petitioner Legaspi interposed the instant motion for reconsideration. Hence, the Court is faced once again with the issue on how to treat the rulings of the COMELEC *en banc* when less than four (4) votes were cast to either grant or deny the motion for reconsideration pending before it.

### **The Court's Ruling**

The Court **GRANTS** petitioner's motion for reconsideration. The September 1, 2015 Decision in the case at bar is hereby **REVERSED** and **SET ASIDE**, and the instant petition is **GRANTED**.

Primarily, the Court is called to interpret Sec. 6, Rule 18 of the COMELEC Rules on Procedure. The provision reads:

**Section 6. Procedure if Opinion is Equally Divided.** - When the Commission *en banc* is equally divided in opinion, or the necessary majority cannot be had, the case shall be reheard, and if on rehearing no decision is reached, the action or proceeding shall be dismissed if originally commenced in the Commission; in appealed cases, the judgment or order appealed from shall stand affirmed; **and all incidental matters, the petition or motion shall be denied.**" (emphasis added)

As framed in the September 1, 2015 Decision, the afore-cited provision outlines the

effects of the COMELEC *en banc*'s failure to decide:

1. If the action or proceeding is *originally commenced* in the COMELEC, **such action or proceeding shall be dismissed;**
2. In *appealed cases*, **the judgment or order appealed from shall stand affirmed;** or
3. In *incidental matters*, **the petition or motion shall be denied.**

In dismissing Legaspi's petition on September 1, 2015, the Court first categorized SPA No. 13-353 (DC) as an action "*originally commenced with the Commission*" warranting the entire case's dismissal should the *en banc* fail to reach the required majority vote, regardless of the COMELEC division's ruling. This, according to the *ponencia*, is the first effect of Sec. 6, Rule 18 of the COMELEC Rules of Procedure, as previously applied in *Mendoza*.

To summarize *Mendoza*, therein petitioner Joselito R. Mendoza (Mendoza) was proclaimed winner of the 2007 gubernatorial election for the province of Bulacan, besting respondent Roberto M. Pagdanganan (Pagdanganan). On June 1, 2007, Pagdanganan filed an election protest that the COMELEC Second Division eventually granted, thereby annulling Mendoza's proclamation. Aggrieved, Mendoza moved for reconsideration with the *en banc*, but the COMELEC failed to reach a majority vote to either grant or deny the motion. Pursuant to its rules, the COMELEC *en banc* reheard the case but was, nevertheless, unsuccessful in obtaining the required majority vote to render a valid ruling. Thus, in a **3-1** vote, with three votes denying the motion, the COMELEC *en banc* sustained the ruling of its Second Division.<sup>[11]</sup>

On petition with the Court, Mendoza pointed out that because the necessary majority vote of four (4) was not obtained by the COMELEC *en banc*, Pagdanganan's election protest ought to be dismissed. Agreeing, the Court, on March 25, 2010, ruled for Mendoza and explained that as an original action before the Commission, failure to muster the required majority vote on reconsideration would lead to the election protest's dismissal, not just of the motion for reconsideration.<sup>[12]</sup>

Aside from relying on the *Mendoza* ruling, the September 1, 2015 Decision discussed that a motion for reconsideration lodged with the COMELEC *en banc* is not an "*action or proceeding*" within the contemplation of the rules; that the phrase ought to be construed as pertaining to Part V of the COMELEC Rules of Procedure, denominated as "*Particular Actions or Proceedings*" and covering Rules 20-34. Thus, the Court applied the first effect and ordered that Legaspi's Petition for Disqualification, the alleged "*action or proceeding*" in this case, be dismissed in its entirety.

***The interpretation of Sec. 6, Rule 18  
of the COMELEC Rules of Procedure in Mendoza  
and in the September 1, 2015 Decision  
renders the rule unconstitutional***

The *Mendoza* doctrine, as reiterated in the September 1, 2015 Decision, deviated from the 1987 Constitution. Not only does it circumvent the four-vote requirement under Sec. 7, Art. IX-A of the Constitution, it likewise diminishes the adjudicatory

powers of the COMELEC Divisions under Sec. 3, Article IX-C.<sup>[14]</sup>

Under Sec. 3, Article IX-C of the 1987 Constitution,<sup>[15]</sup> the COMELEC Divisions are granted adjudicatory powers to decide election cases, provided that the COMELEC *en banc* shall resolve motions for reconsideration of the division rulings. Further, under Sec. 7, Article IX-A of the Constitution,<sup>[16]</sup> four (4) votes are necessary for the COMELEC *en banc* to decide a case. Naturally, the party moving for reconsideration, as the party seeking affirmative relief, carries the burden of proving that the division committed reversible error. The movant then shoulders the obligation of convincing four (4) Commissioners to grant his or her plea.<sup>[17]</sup>

**This voting threshold, however, is easily rendered illusory by the application of the *Mendoza* ruling, which virtually allows the grant of a motion for reconsideration even though the movant fails to secure four votes in his or her favor, in blatant violation of Sec. 7, Art. IX-A of the Constitution.** In this case, in spite of securing only two (2) votes to grant their motion for reconsideration, private respondents were nevertheless declared the victors in the January 28, 2015 COMELEC *en banc* Resolution.<sup>[18]</sup>

To exacerbate the situation, the circumvention of the four-vote requirement, in turn, trivializes the proceedings before the COMELEC divisions and presents rather paradoxical scenarios, to wit:<sup>[19]</sup>

- i. The failure of the COMELEC *en banc* to muster the required majority vote only means that it could not have validly decided the case. Yet curiously, it managed to reverse the ruling of a body that has properly exercised its adjudicatory powers; and
- ii. A motion for reconsideration may be filed on the ground that the evidence is insufficient to justify the decision, order or ruling; or that the said decision, order or ruling is contrary to law. If the COMELEC *en banc* does not find that either ground exists, there would be no cogent reason to disturb the ruling of the COMELEC division. Otherwise stated, failure to muster four votes to sustain the motion for reconsideration should be understood as tantamount to the COMELEC *en banc* finding no reversible error attributable to its division's ruling. Said decision, therefore, ought to be affirmed, not reversed nor vacated.

These resultant paradoxes have to be avoided. Under the prevailing interpretation of Sec. 6, Rule 18 of the COMELEC Rules of Procedure, a movant, in situations such as this, need not even rely on the strength of his or her arguments and evidence to win a case, and may, instead, choose to rest on inhibitions and abstentions of COMELEC members to produce the same result. To demonstrate herein, it is as though the two (2) abstention votes were counted in favor of the private respondents to reach the majority vote of four (4). This impedes and undermines the adjudicatory powers of the COMELEC divisions by allowing their rulings to be overruled by the *en banc* without the latter securing the necessary number to decide the case.<sup>[20]</sup>

From the foregoing disquisitions, it is then difficult to see how the *Mendoza* doctrine