

EN BANC

[G.R. No. 216572, September 01, 2015]

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

DECISION

PEREZ, J.:

This is a Petition for *Certiorari*^[1] assailing the Order^[2] dated 28 January 2015 of respondent Commission on Elections (COMELEC) *en banc* in SPA No. 13-323 (DC).

The Parties

Respondents Alfredo Germar (Germar) and Rogelio P. Santos, Jr. (Santos), along with one Roberto C. Esquivel (Esquivel), were among the candidates fielded by the Liberal Party (LP) to vie for local elective posts in Norzagaray, Bulacan, during the 13 May 2013 elections. Germar ran for the position of mayor, Santos ran for the position of councilor, and Esquivel ran for the position of vice-mayor.

Petitioner Feliciano P. Legaspi, on the other hand, was the National Unity Party's (NUP's) bet for mayor of Norzagaray during the 2013 polls.

The Election Results and the Petition for Disqualification

After the votes cast by the Norzagaray electorate were tallied, Germar emerged as the highest vote getter in the mayoralty race. Santos, for his part, also appeared to have secured enough votes to be the second councilor of the municipality. Esquivel, though, failed in his bid to become vice-mayor of Norzagaray.

Upon learning about the results of the tally, petitioner immediately filed before the Municipal Board of Canvassers (MBC) of Norzagaray a motion to suspend the proclamation of Germar and Santos as winning candidates. Such motion, however, proved to be futile.

At exactly 7:45 a.m. on 14 May 2013, despite the petitioner's motion, the MBC proclaimed Germar and Santos as duly elected mayor and councilor of the municipality of Norzagaray, respectively.

A few hours^[3] after the said proclamation, petitioner filed before the COMELEC a *Petition for Disqualification* against Germar, Santos, and Esquivel. In it, petitioner accused Germar, Santos, and Esquivel of having engaged in rampant vote buying during the days leading to the elections.

The *Petition for Disqualification* was docketed as SPA No. 13-323 (DC) and was

assigned to the COMELEC First Division, then composed of Commissioners Lucenito N. Tagle (Commissioner Tagle), Christian Robert S. Lim (Commissioner Christian Lim) and Al A. Parreño (Commissioner Parreño).

COMELEC First Division and Special First Division

In due course, the COMELEC First Division took a vote on SPA No. 13-323 (DC). The vote of the division was an even 1-1 split, with Commissioner Tagle voting in favor of granting the petition for disqualification, but with Commissioner Christian Lim voting against it. The third member of the division, *i.e.*, Commissioner Parreño, was not able to provide the potential tie-breaking vote as he was then absent and attending to some other official business.

Due to the impasse created by the absence of one of its members, the COMELEC First Division called for the constitution of a *Special First Division* through which COMELEC Chairman Sixto S. Brillantes, Jr. sat in the First Division as acting member *vice* the absent Commissioner Parreño for purposes of SPA No. 13-323 (DC).^[4]

On 3 October 2013, the COMELEC Special First Division, by a 2 to 1 vote, rendered a resolution: (1) disqualifying Germar and Santos for the positions of mayor and councilor, respectively, of Norzagaray; and (2) referring the criminal aspect of SPA No. 13-323 (DC) to the COMELEC Law Department for preliminary investigation.^[5]

Germar, Santos, and Esquivel filed a motion for reconsideration with the COMELEC *en banc*.

The COMELEC En Banc and the Dismissal of the Electoral Aspect of SPA No. 13-323 (DC)

On 10 July 2004, the COMELEC *en banc* took a vote on the motion for reconsideration. At that time, the COMELEC *en banc* had six (6) incumbent members.^[6] Of the six (6), however, only five (5) members actually participated in the deliberations and casted votes. Commissioner Parreño opted to take no part and did not vote.

The following were the results of the voting:

1. As to the electoral aspect of SPA No. 13-323 (DC), the vote was 3-2, *i.e.*, 3 members voted in favor of the disqualification of Germar and Santos, and 2 dissented.^[7] Hence, a majority of at least four (4) votes was not reached with respect to the electoral aspect of the case.
2. As to the criminal aspect of SPA No. 13-323 (DC), the vote was 4-1, *i.e.*, 4 members voted in favor of the referral of the criminal aspect of the disqualification case to the COMELEC Law Department and 1 dissented.^[8] Hence, a majority was reached with respect to the criminal aspect of the case.

In view of the foregoing, the COMELEC *en banc* issued a resolution^[9] denying the

motion for reconsideration with respect to the criminal aspect of SPA No. 13-323 (DC), but ordering the conduct of a rehearing insofar as the electoral aspect of the case was concerned.

After the rehearing, the COMELEC *en banc* took another vote but it still failed to muster a majority consensus on the electoral aspect of SPA No. 13-323 (DC).^[10] The final vote of the COMELEC *en banc* on the matter remained at the exact 3-2 split that it was before the rehearing.^[11] Commissioner Parreño maintained his "no part" stance, while newly appointed Commissioner Arthur D. Lim also opted to take no part and did not vote.

Thus, on 28 January 2015, the COMELEC *en banc* issued an Order^[12] directing the dismissal of the electoral aspect of SPA No. 13-323 (DC) pursuant to Section 6, Rule 18 of the 1993 COMELEC Rules of Procedure^[13] (COMELEC Rules), to wit:

*Sec. 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 in all incidental matters, the petition or motion shall be denied. (Emphasis ours.)*

Unconvinced, petitioner filed the present petition^[14] before this Court.

The Present Petition

Petitioner claims that COMELEC *en banc* gravely abused its discretion when it dismissed the electoral aspect of SPA No. 13-323 (DC). He protests that the dismissal was occasioned by a "misapplication" by the COMELEC *en banc* of Section 6, Rule 18 of the COMELEC Rules.^[15]

OUR RULING

We dismiss the present petition.

I

Let us start with the basics.

Section 7 of Article 1X-A of the Constitution obliges the COMELEC, like the other constitutional commissions, to decide all cases or matters before it by a "*majority vote of all its [m]embers.*"^[16] When such majority vote cannot be mustered by the COMELEC *en banc*, Section 6, Rule 18 of the COMELEC Rules provides the mechanism to avert a non-decision. Thus:

Sec. 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 in all incidental matters, the petition or motion shall be denied.

Verily, under the cited provision, the COMELEC *en banc* is first required to rehear the case or matter that it cannot decide or resolve by the necessary majority. When a majority still cannot be had after the rehearing, however, there results a failure to decide on the part of the COMELEC *en banc*. The provision then specifies 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.**

As can be gleaned above, the effects of the COMELEC *en banc*'s failure to decide vary depending on the *type of case or matter* that is before the commission. Thus, under the provision, the **first effect** (*i.e.*, the dismissal of the action or proceeding) only applies when the type of case before the COMELEC is an action or proceeding "*originally commenced in the commission*"; the **second effect** (*i.e.*, the affirmance of a judgment or order) only applies when the type of case before the COMELEC is an "*appealed case*"; and the **third effect** (*i.e.*, the denial of the petition or motion) only applies when the case or matter before the COMELEC is an "*incidental matter*."

Mendoza v. Commission on Elections, et al.^[17] gives us a key illustration of an application of the first effect under Section 6, Rule 18 of the COMELEC Rules.

Mendoza involved an electoral protest that was originally filed before the COMELEC and which was raffled to one of its divisions. The COMELEC division to which the electoral protest was assigned granted that protest, prompting the protestee to file a motion for reconsideration with the COMELEC *en banc*. When the COMELEC *en banc* took a vote on the motion for reconsideration, however, it failed to obtain the necessary majority vote. Consequently, the COMELEC *en banc* reheard the matter and then took another vote. However, the second vote also lacked the necessary majority. The final vote of the COMELEC *en banc* was 3-1 (*i.e.*, 3 in support of granting the protest and 1 dissent), with 3 members taking no part.^[18] On the basis of the foregoing, the COMELEC *en banc* issued a resolution denying the motion for reconsideration (in effect sustaining the division's decision). The protestee challenged the foregoing resolution on the strength of the argument that the failure of the COMELEC *en banc* to obtain the necessary majority should have resulted in the dismissal of the election protest case itself pursuant to the first effect under Section 6, Rule 18 of the COMELEC Rules.

When that dispute reached this Court in *Mendoza*, we sustained the protestee. We held that the first effect applied because the case before the COMELEC *en banc* was an electoral protest that was "*originally commenced*" in the commission. We noted that while the electoral protest only reached the COMELEC *en banc* through the motion for reconsideration of the decision of a division, the same did not change the nature of the case before it; the motion for reconsideration not being an appeal.^[19] Thus, we held that the failure of the COMELEC *en banc* to decide the motion for reconsideration would result—not in the denial of the said motion or the affirmance of the division's decision—but in the dismissal of the electoral protest itself, pursuant to the first effect under Section 6, Rule 18 of the COMELEC Rules.^[20]

Guided by the foregoing precepts, we shall now address the issues at hand.

II

The main thrust of petitioner's challenge is the supposed error of the COMELEC *en banc* in applying the first effect under Section 6, Rule 18 of the COMELEC Rules (by dismissing the electoral aspect of SPA No. 13-323 [DC]) when it was unable to reach a majority vote after the rehearing.^[21] According to petitioner, the COMELEC *en banc* erred in treating SPA No. 13-323 (DC) as an action that was "*originally commenced in the commission*" under the said provision.^[22] As petitioner argues, an action can only be considered as having been "*originally commenced in the commission*" under Section 6, Rule 18 of the COMELEC Rules when that action was originally filed before the COMELEC *en banc* itself and, as such, is the very matter pending before it.^[23]

Petitioner then points out that, in this case, what was before the COMELEC *en banc* was not the main petition itself but only a motion for reconsideration of the decision of the division in SPA No. 13-323 (DC). Hence, petitioner submits, the failure of the COMELEC *en banc* to reach a majority vote in this case should result, not in the dismissal of the electoral aspect of SPA No. 13-323 (DC), but merely in the denial of the motion for reconsideration and the affirmance of the division's decision.^[24]

We do not agree.

The COMELEC *en banc* did not err when it dismissed the electoral aspect of SPA No. 13-323 (DC) when it was unable to reach a majority vote after the rehearing. Contrary to what petitioner asserts, SPA No. 13-323 (DC) is most definitely an action that was filed originally before the COMELEC within the contemplation of the said provision. While SPA No. 13-323 (DC) reached the COMELEC *en banc* only through a motion for reconsideration of the decision of the Special First Division, its character as an original case filed before the commission remains the same. Hence, the failure of COMELEC *en banc* to decide in this case properly results in the application of the first effect of Section 6, Rule 18 of the COMELEC Rules.

***SPA No. 13-323 (DC) is an
Action "Originally Commenced in
the Commission" Under Section 6,
Rule 18 of the COMELEC Rules***