

## EN BANC

[ G.R. No. 212953, August 05, 2014 ]

**JOSE TAPALES VILLAROSA, PETITIONER, VS. ROMULO DE MESA FESTIN AND COMMISSION ON ELECTIONS, RESPONDENT.**

### RESOLUTION

**VELASCO JR., J.:**

#### **Nature of the Case**

This treats of the Petition for Certiorari under Rule 64 in relation to Rule 65 of the Rules of Court assailing the Order<sup>[1]</sup> dated June 3, 2014 of public respondent Commission on Elections (COMELEC) in SPR (AEL) No. 04-2014.

#### **The Facts**

Petitioner Jose Tapales Villarosa (Villarosa) and respondent Romulo de Mesa Festin (Festin) were two of the four rival candidates for the mayoralty post in San Jose, Occidental Mindoro during the May 13, 2013 National and Local Elections. On May 15, 2013, private respondent was proclaimed the victor, having garnered 20,761 votes, edging out petitioner who obtained 19,557 votes.

With a difference of only 1,204 votes, petitioner filed a Petition for Protest Ad Cautelam before the Regional Trial Court (RTC) alleging irregularities attending the conduct of the elections. Specifically, petitioner brought to the attention of the court the complaints of various voters who claimed that several ballots were pre-marked or that the ovals appearing on the face of the ballots corresponding to the name of petitioner were embossed or waxed to prevent them from being shaded. As a consequence of the alleged massive electoral fraud and irregularities in the 92 clustered precincts of San Jose, Occidental Mindoro, private respondent, so petitioner claimed, was illegally proclaimed.

In his answer, private respondent Festin likewise impugned the election results in the precincts, particularly the number of votes credited to petitioner.

With both parties raising as principal issue the accuracy of the vote count, a physical recount of the ballots were conducted under the auspices of the RTC, Branch 46 in San Jose, Occidental Mindoro.

#### **Ruling of the RTC**

On November 7, 2013, the RTC rendered a Decision declaring the proclamation of respondent Festin void, viz:

**WHEREFORE**, premises considered, this Court hereby **DECLARES** the Protestant, **JOSE TAPALES VILLAROSA** as the duly elected mayor of San Jose, Occidental Mindoro during the May 13, 2013 National and Local Election and **VOIDS** the Proclamation of Protestee Romulo De Mesa Festin as elected Mayor by the Board of Election Inspectors of San Jose, Occidental Mindoro.<sup>[2]</sup>

The RTC justified its ruling by deducting 2,050 votes from private respondent that were allegedly pre-marked or tampered.

Following this development, petitioner filed a Motion for Execution Pending Appeal, which was granted by the RTC on January 15, 2014.<sup>[3]</sup> On January 23, 2014, respondent Festin's motion for reconsideration was denied.

Meanwhile, on February 3, 2014, private respondent Festin elevated the case to public respondent COMELEC via a Petition for Certiorari with prayer for injunctive relief. Petitioner immediately moved for its dismissal on the ground that the petition's verification is allegedly defective.

### **Ruling of the COMELEC**

Without yet ruling on the motion to dismiss, the COMELEC, acting through its First Division, on February 13, 2014, issued an Order requiring petitioner to file his answer to the petition. Through the same Order, the COMELEC issued a Temporary Restraining Order (TRO) to enjoin the RTC from implementing its Decision during the pendency of the case. Without waiving the grounds relied on his motion to dismiss, petitioner timely filed his answer to the petition.

To petitioner's surprise, on April 10, 2014, public respondent COMELEC granted private respondent's request for a preliminary injunction, enjoining the RTC Decision's execution pending appeal. What petitioner considered questionable was that the injunction was issued by a newly-constituted Special First Division, which was allegedly formed due to the absence of several COMELEC commissioners who, at that time, were personally attending to the concerns of the overseas absentee voters abroad. Petitioner points out that the special division was constituted only on April 8, 2014 through Resolution No. 9868 and was composed of only two members, Chairman Sixto S. Brillantes, Jr. and Commissioner Al A. Parreño, with the former presiding.

In response to the issuance of the injunction, petitioner filed an urgent motion praying for its quashal, which was denied by public respondent COMELEC First Division through the assailed June 3, 2014 Order. Thus, the instant petition.

### **The Issues**

In ascribing grave abuse of discretion on the part of public respondent COMELEC, petitioner relied on the following grounds:

1. Public respondent COMELEC (First Division) committed grave abuse of discretion amounting to lack or excess of jurisdiction when it did not find that

the Special First Division did not have jurisdiction to issue an injunction;

2. Public respondent COMELEC (First Division) committed grave abuse of discretion amounting to lack or excess of jurisdiction when it denied the urgent ex-parte motion to quash the writ of preliminary injunction.

Concisely stated, the issue in this case is the legality of the formation of the Special First Division and the validity of the Orders it issued, specifically the April 10, 2014 Order granting the issuance of a writ of preliminary injunction.

According to the petitioner, the COMELEC First Division acquired jurisdiction over the case on February 13, 2014 when it directed him to file an answer relative to the appeal filed by private respondent Festin, and when it issued a TRO enjoining the execution pending appeal. Thus, petitioner insists that this precluded the Special First Division from acquiring jurisdiction over the same case and, consequently, from issuing the writ of preliminary injunction. As argued by the petitioner, the mere absence of two of the commissioners in the division is not sufficient to oust it of jurisdiction and confer the same on a new one.

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

We dismiss the petition for lack of merit.

### **Propriety of certiorari in assailing COMELEC rulings**

Petitioner's recourse, aside from being unsound in substance, is procedurally infirm. The governing provision is Section 7, Article IX of the 1987 Constitution, which provides:

**Section 7.** Each **Commission** shall decide by a majority vote of all its Members any case or matter brought before it within sixty days from the date of its submission for decision or resolution. A case or matter is deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the rules of the Commission or by the Commission itself. Unless otherwise provided by this Constitution or by law, **any decision, order, or ruling** of each Commission may be brought to the Supreme Court on certiorari by the aggrieved party within thirty days from receipt of a copy thereof. (emphasis added)

In the instructive case of *Ambil v. Commission on Elections*,<sup>[4]</sup> We have interpreted the provision to limit the remedy of certiorari against **final orders, rulings and decisions** of the **COMELEC en banc** rendered in the exercise of its adjudicatory or quasi-judicial powers.<sup>[5]</sup> Certiorari will not generally lie against an order, ruling, or decision of a COMELEC division for being premature, taking into account the availability of the plain, speedy and adequate remedy of a motion for reconsideration. As elucidated in the case:

Rule 65, Section 1, 1997 Rules of Civil Procedure, as amended, requires that there be no appeal, or any plain, speedy and adequate remedy in the ordinary course of law. A motion for reconsideration is a plain and adequate remedy provided by law. Failure to abide by this procedural requirement constitutes a ground for dismissal of the petition.

**In like manner, a decision, order or resolution of a division of the Comelec must be reviewed by the Comelec en banc via a motion for reconsideration before the final en banc decision may be brought to the Supreme Court on certiorari. The pre-requisite filing of a motion for reconsideration is mandatory.**<sup>[6]</sup> (emphasis added)

The above doctrine further gained force when it was reiterated in Our recent ruling in *Cagas v. COMELEC*,<sup>[7]</sup> in which We held that a party aggrieved by an interlocutory order issued by a Division of the COMELEC in an election protest may not directly assail the said order in this Court through a special civil action for certiorari. The remedy is to seek the review of the interlocutory order during the appeal of the decision of the Division in due course.<sup>[8]</sup>

### **The exception in *Kho v. COMELEC* is inapplicable**

As an exception to the cases of *Ambil* and *Cagas*, We have ruled in *Kho vs. COMELEC*<sup>[9]</sup> that when it does not appear to be specifically provided under the COMELEC Rules of Procedure that the challenged final order or decision is one that the COMELEC *en banc* may sit and consider, the aggrieved party can, by necessity, directly resort to the Court as the proper forum for reviewing the ruling. Thus, We have granted, in the said case, the petition assailing an interlocutory order of a COMELEC division.

The exception, however, does not obtain herein. Noteworthy is that in 1997, when *Kho* was resolved, what was then in force was the COMELEC Rules of Procedure promulgated on February 15, 1993 (1993 COMELEC Rules). As expressly provided in Rule 3 of the 1993 COMELEC Rules:

Section 2. *The Commission en banc.* – The Commission shall sit en banc in cases hereinafter specifically provided, or in pre-proclamation cases upon a vote of a majority of the members of a commission, or in all other cases where a division is not authorized to act, or where, upon a unanimous vote of all the members of a Division, an interlocutory matter or issue relative an action or proceeding before it is decided to be referred to the commission en banc.

**x x x x**

### **Section 5. Quorum; Votes required. x x x**

**x 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.**

Patent in the above-cited provisions is that the COMELEC *en banc*, at that time, did not have the power to resolve motions for reconsideration with respect to interlocutory orders issued by a division. This circumstance was a controlling factor in Our ruling in *Kho*.

On the other hand, applicable in the instant petition is COMELEC Resolution No. 8804,<sup>[10]</sup> promulgated on March 22, 2010. As expressly provided:

### **Rule 20 Motion for Reconsideration**

**Section 1.** Grounds of Motion for Reconsideration. - A motion for reconsideration may be filed on the grounds that the evidence is insufficient to justify the decision, order or ruling; or that the said decision, is contrary to law.

x x x x

**Section 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 ECAD Clerk 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.**

x x x x

**Section 7.** Period to Decide by the Commission En Banc. - The motion for reconsideration shall be decided within fifteen (15) days from the date the case or matter is deemed submitted for decision, unless otherwise provided by law. (emphasis added)

Stark is the contrast between the two cited rules. To reiterate, under the 1993 COMELEC Rules, the COMELEC *en banc* is strictly prohibited from entertaining motions for reconsideration of interlocutory orders unless unanimously referred to the *en banc* by the members of the division that issued the same, whereas under COMELEC Resolution No. 8804, all motions for reconsideration filed with regard to decisions, resolutions, orders and rulings of the COMELEC divisions are automatically referred to the COMELEC *en banc*. Thus, in view of COMELEC Resolution No. 8804's applicability in the instant petition, a motion for reconsideration before the COMELEC *en banc* is available to petitioner herein unlike in *Kho*.

From the foregoing, petitioner's procedural lapse becomes manifest. With the availability of a plain, speedy, and adequate remedy at petitioner's disposal, his