

## EN BANC

[ G.R. No. 203833, March 19, 2013 ]

**MAMERTO T. SEVILLA, JR., PETITIONER, VS. COMMISSION ON ELECTIONS AND RENATO R. SO, RESPONDENTS.**

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

**BRION, J.:**

Before this Court is the petition for *certiorari*, with prayer for the issuance of a writ of Preliminary Injunction and/or Status Quo Ante Order,<sup>[1]</sup> filed by petitioner Mamerto T. Sevilla, Jr., to nullify the May 14, 2012 Resolution<sup>[2]</sup> of the Commission on Elections (*Comelec*) Second Division and the October 6, 2012 Resolution<sup>[3]</sup> of the *Comelec en banc* in SPR (BRGY-SK) No. 70-2011. These assailed Resolutions reversed and set aside the May 4, 2011 Order of the Muntinlupa City Metropolitan Trial Court, Branch 80 (*MeTC*), dismissing respondent Renato R. So's election protest against Sevilla.

#### The Facts

Sevilla and So were candidates for the position of Punong Barangay of Barangay Sucat, Muntinlupa City during the October 25, 2010 Barangay and Sangguniang Kabataan Elections. On October 26, 2010, the Board of Election Tellers proclaimed Sevilla as the winner with a total of 7,354 votes or a winning margin of 628 votes over So's 6,726 total votes. On November 4, 2010, So filed an election protest with the *MeTC* on the ground that Sevilla committed electoral fraud, anomalies and irregularities in all the protested precincts. So pinpointed twenty percent (20%) of the total number of the protested precincts. He also prayed for a manual revision of the ballots.<sup>[4]</sup>

Following the recount of the ballots in the pilot protested precincts, the *MeTC* issued an Order dated May 4, 2011 dismissing the election protest. On May 9, 2011, So filed a motion for reconsideration from the dismissal order instead of a notice of appeal; he also failed to pay the appeal fee within the reglementary period. On May 17, 2011, the *MeTC* denied the motion for reconsideration on the ground that it was a prohibited pleading pursuant to Section 1, Rule 6 of A.M. No. 07-04-15-SC.<sup>[5]</sup>

In response, So filed a petition for *certiorari* on May 31, 2011 with the *Comelec*, alleging grave abuse of discretion on the part of the *MeTC* Judge. So faults the *MeTC* for its non-observance of the rule that in the appreciation of ballots, there should be a clear and distinct presentation of the specific details of how and why a certain group of ballots should be considered as having been written by one or two persons.<sup>[6]</sup>

#### **The Comelec Second Division Ruling**

In its May 14, 2012 Resolution, the Comelec Second Division granted So's petition. The Comelec Second Division held that *certiorari* can be granted despite the availability of appeals when the questioned order amounts to an oppressive exercise of judicial authority, as in the case before it. It also ruled that the assailed Order was fraught with infirmities and irregularities in the appreciation of the ballots, and was couched in general terms: "these are not written by one person observing the different strokes, slant, spacing, size and indentation of handwriting and the variance in writing[.]"<sup>[7]</sup>

### ***The Comelec En Banc Ruling***

The Comelec *en banc*, by a vote of 3-3,<sup>[8]</sup> affirmed the Comelec Second Division's ruling in its October 6, 2012 Resolution whose dispositive portion reads:

WHEREFORE, premises considered, the Motion for Reconsideration is hereby DENIED for lack of merit. Respondent judge is directed to conduct another revision of the contested ballots in Election Protest Case No. SP-6719 with dispatch.<sup>[9]</sup>

It ruled that where the dismissal was capricious, *certiorari* lies as the petition challenges not the correctness but the validity of the order of dismissal. The Comelec *en banc* emphasized that procedural technicalities should be disregarded for the immediate and final resolution of election cases inasmuch as ballots should be read and appreciated with utmost liberality so that the will of the electorate in the choice of public officials may not be defeated by technical infirmities.

It found that the MeTC Judge committed grave abuse of discretion amounting to lack of jurisdiction when she did not comply with the mandatory requirements of Section 2(d), Rule 14 of A.M. No. 07-4-15-SC on the form of the decision in election protests involving pairs or groups of ballots written by two persons. It noted that based on the general and repetitive phraseology of the Order, the MeTC Judge's findings were "copy-pasted" into the decision and ran counter to the mandate of the aforementioned rule. Also, the MeTC Judge failed to mention in her appreciation of the ballots that she examined the Minutes of Voting and Counting to ascertain whether there were illiterate voters or assisted voters in the protested precincts.<sup>[10]</sup>

### ***Commissioner Lim's Dissent***<sup>[11]</sup>

The dissent posited that So's petition should be dismissed outright as it was mired in procedural errors. *First*, So should have filed an appeal within five (5) days from receipt of the MeTC's Order; a motion for reconsideration was improper as the Order amounted to the final disposition of the protest. *Second*, So should not have filed the motion for reconsideration even if he believed that the Order was interlocutory since a motion for reconsideration is a prohibited pleading. Also, he could have simply filed the petition for *certiorari* without the necessity of filing the motion for reconsideration. *Third*, the petition for *certiorari* cannot be a substitute for the lost appeal. The Comelec could not even treat the *certiorari* as an appeal since the petition was filed 25 days after So received the assailed Order; thus, the Order

already attained finality. *Finally*, procedural rules should not be lightly shunned in favor of liberality when, as in this case, So did not give a valid excuse for his errors.

### **The Petition**

#### ***The Comelec gravely abused its discretion when it gave due course to the petition for certiorari***

Sevilla argues that the Comelec gravely abused its discretion when it entertained So's petition despite its loss of jurisdiction to entertain the petition after the court a *quo's* dismissal order became final and executory due to So's wrong choice of remedy. Instead of filing an appeal within five (5) days from receipt of the Order and paying the required appeal fee, So filed a motion for reconsideration – a prohibited pleading that did not stop the running of the prescriptive period to file an appeal. Sevilla also emphasizes that So's petition for *certiorari* should not have been given due course since it is not a substitute for an appeal and may only be allowed if there is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law.<sup>[12]</sup>

#### ***The dismissal of the election protest was proper***

Sevilla also contends that the dismissal was not tainted with grave abuse of discretion since the MeTC Judge complied with the rules; she made clear, specific and detailed explanations pertaining to the specific strokes, figures or letters showing that the ballots had been written by one person. Granting that the decision was tainted with errors, *certiorari* would still not lie because a mere error of judgment is not synonymous with grave abuse of discretion. Lastly, a liberal application of the rules cannot be made to a petition which offers no explanation for the non-observance of the rules.<sup>[13]</sup>

On November 13, 2012,<sup>[14]</sup> the Court resolved to require the Comelec and the respondent to comment on the petition and to observe the *status quo* prevailing before the issuance of the assailed Comelec Second Division's Resolution of May 14, 2012 and the Comelec *en banc's* Resolution of October 6, 2012.<sup>[15]</sup>

In his Comment, the respondent contends that the petition was filed prematurely. He emphasizes that the October 6, 2012 Resolution of the Comelec *en banc* was not a majority decision considering that three Commissioners voted for the denial of the motion for reconsideration and the three others voted to grant the same. So notes that the assailed October 6, 2012 Resolution was deliberated upon only by six (6) Commissioners because the 7<sup>th</sup> Commissioner had not yet been appointed by the President at that time. Considering that the October 6, 2012 Resolution was not a majority decision by the Comelec *en banc*, So prays for the dismissal of the petition so that it can be remanded to the Comelec for a rehearing by a full and complete Commission.<sup>[16]</sup>

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

**We resolve to DISMISS the petition for having been prematurely filed with this Court, and remand the case to the COMELEC for its appropriate action.**

***The October 6, 2012 Comelec  
en banc's Resolution lacks legal  
effect as it is not a majority decision  
required by the Constitution and by  
the Comelec Rules of Procedure***

Section 7, Article IX-A of the Constitution requires that "[e]ach 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."<sup>[17]</sup> Pursuant to this Constitutional mandate, the Comelec provided in Section 5(a), Rule 3 of the Comelec Rules of Procedure the votes required for the pronouncement of a decision, resolution, order or ruling when the Comelec sits *en banc*, viz.:

Section 5. *Quorum; Votes Required.* - (a) When sitting *en banc*, four (4) Members of the Commission shall constitute a quorum for the purpose of transacting business. The **concurrence of a majority of the Members of the Commission** shall be necessary for the pronouncement of a decision, resolution, order or ruling. [italics supplied; emphasis ours]

We have previously ruled that a **majority vote requires a vote of four members** of the Comelec *en banc*. In *Marcoleta v. Commission on Elections*,<sup>[18]</sup> we declared "that Section 5(a) of Rule 3 of the Comelec Rules of Procedure and Section 7 of Article IX-A of the Constitution require that a **majority vote of all the members** of the Comelec [*en banc*], and not only those who participated and took part in the deliberations, is necessary for the pronouncement of a decision, resolution, order or ruling."

In the present case, while the October 6, 2012 Resolution of the Comelec *en banc* appears to have affirmed the Comelec Second Division's Resolution and, in effect, denied Sevilla's motion for reconsideration, the equally divided voting between three Commissioners concurring and three Commissioners dissenting is not the majority vote that the Constitution and the Comelec Rules of Procedure require for a valid pronouncement of the assailed October 6, 2012 Resolution of the Comelec *en banc*.

In essence, based on the 3-3 voting, the Comelec *en banc* did not sustain the Comelec Second Division's findings on the basis of the three concurring votes by Commissioners Tagle, Velasco and Yusoph; conversely, it also did not overturn the Comelec Second Division on the basis of the three dissenting votes by Chairman Brillantes, Commissioner Sarmiento and Commissioner Lim, as either side was short of one (1) vote to obtain a majority decision. Recall that under Section 7, Article IX-A of the Constitution, a majority vote of all the members of the Commission *en banc* is necessary to arrive at a ruling. In other words, the vote of four (4) members must always be attained in order to decide, irrespective of the number of Commissioners in attendance. Thus, for all intents and purposes, the assailed October 6, 2012 Resolution of the Comelec *en banc* had no legal effect whatsoever except to convey that the Comelec failed to reach a decision and that further action is required.

***The October 6, 2012 Comelec en banc's  
Resolution must be reheard pursuant to***