

## EN BANC

[ G.R. No. 194139, January 24, 2012 ]

**DOUGLAS R. CAGAS, PETITIONER, VS. THE COMMISSION ON ELECTIONS, AND CLAUDE P. BAUTISTA, RESPONDENTS.**

### DECISION

**BERSAMIN, J.:**

A party aggrieved by an interlocutory order issued by a Division of the Commission on Elections (COMELEC) in an election protest may not directly assail the 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.

For resolution is the petition for *certiorari* brought under Rule 64 of the *Rules of Court*, assailing the order dated August 13, 2010 (denying the affirmative defenses raised by the petitioner),<sup>[1]</sup> and the order dated October 7, 2010 (denying his motion for reconsideration),<sup>[2]</sup> both issued by the COMELEC First Division in EPC No. 2010-42, an election protest entitled *Claude P. Bautista, protestant v. Douglas R. Cagas, protestee*.<sup>[3]</sup>

### Antecedents

The petitioner and respondent Claude P. Bautista (Bautista) contested the position of Governor of the Province of Davao del Sur in the May 10, 2010 automated national and local elections. The fast transmission of the results led to the completion by May 14, 2010 of the canvassing of votes cast for Governor of Davao del Sur, and the petitioner was proclaimed the winner (with 163,440 votes), with Bautista garnering 159,527 votes.<sup>[4]</sup>

Alleging fraud, anomalies, irregularities, vote-buying and violations of election laws, rules and resolutions, Bautista filed an electoral protest on May 24, 2010 (EPC No. 2010-42).<sup>[5]</sup> The protest was raffled to the COMELEC First Division.

In his answer submitted on June 22, 2010,<sup>[6]</sup> the petitioner averred as his special affirmative defenses that Bautista did not make the requisite cash deposit on time; and that Bautista did not render a detailed specification of the acts or omissions complained of.

On August 13, 2010, the COMELEC First Division issued the first assailed order denying the special affirmative defenses of the petitioner,<sup>[7]</sup> viz:

After careful examination of the records of the case, this Commission (First Division) makes the following observation:

1. Protestant paid the cash deposit amounting to one hundred thousand pesos (P100,000.00) on June 3, 2010 as evidenced by O.R. No. 1118105; and
2. **Paragraph nos. 9 to 28 of the initiatory petition filed by the Protestant set forth the specific details of the acts and omissions complained of against the Protestee.**

It is therefore concluded that the payment by the Protestant on June 3, 2010 is a substantial compliance with the requirement of COMELEC Resolution No. 8804, taking into consideration Section 9(e), Rule 6 of said Resolution. Furthermore, **the Protestant has likewise essentially complied with Section 7(g), Rule 6 of the above-mentioned Resolution.**

In view of the foregoing, this Commission (First Division) RESOLVES to DENY the Protestee's special affirmative defenses.

SO ORDERED.<sup>[8]</sup>

The petitioner moved to reconsider on the ground that the order did not discuss whether the protest specified the alleged irregularities in the conduct of the elections, in violation of Section 2, paragraph 2,<sup>[9]</sup> Rule 19 of COMELEC Resolution No. 8804,<sup>[10]</sup> requiring all decisions to clearly and distinctly express the facts and the law on which they were based; and that it also contravened Section 7(g),<sup>[11]</sup> Rule 6 of COMELEC Resolution No. 8804 requiring a detailed specification of the acts or omissions complained of. He prayed that the matter be certified to the COMELEC *en banc* pursuant to Section 1,<sup>[12]</sup> Section 5,<sup>[13]</sup> and Section 6,<sup>[14]</sup> all of Rule 20 of COMELEC Resolution No. 8804.

The petitioner insisted that COMELEC Resolution No. 8804 had introduced the requirement for the "detailed specification" to prevent "shotgun fishing expeditions by losing candidates;"<sup>[15]</sup> that such requirement contrasted with Rule 6, Section 1 of the 1993 COMELEC *Rules of Procedure*,<sup>[16]</sup> under which the protest needed only to contain a "concise statement of the ultimate facts" constituting the cause or causes of action; that Bautista's protest did not meet the new requirement under COMELEC Resolution No. 8804; and that in *Peña v. House of Representatives Electoral Tribunal*,<sup>[17]</sup> the Court upheld the dismissal of a protest by the House of Representatives Electoral Tribunal (HRET) for not specifically alleging the electoral anomalies and irregularities in the May 8, 1995 elections.

In his opposition,<sup>[18]</sup> Bautista countered that the assailed orders, being merely interlocutory, could not be elevated to the COMELEC *en banc* pursuant to the ruling in *Panlilio v. COMELEC*;<sup>[19]</sup> that the rules of the COMELEC required the initiatory petition to specify the acts or omissions constituting the electoral frauds, anomalies

and election irregularities, and to contain the ultimate facts upon which the cause of action was based; and that *Peña v. House of Representatives Electoral Tribunal* did not apply because, firstly, *Peña* had totally different factual antecedents than this case, and, secondly, the omission of material facts from *Peña's* protest prevented the protestee (Alfredo E. Abueg, Jr.) from being apprised of the issues that he must meet and made it eventually impossible for the HRET to determine which ballot boxes had to be collected.

On October 7, 2010, the COMELEC First Division issued its second assailed order,<sup>[20]</sup> denying the petitioner's motion for reconsideration for failing to show that the first order was contrary to law, to wit:

The Protestee's August 28, 2010 "Motion for Reconsideration with Prayer to Certify the Case to the Commission En Banc" relative to the Order issued by the Commission (First Division) dated August 13, 2010 is hereby DENIED for failure to show that the assailed order is contrary to law

**Without going into the merits of the protest, the allegations in the protestant's petition have substantially complied with the requirements of COMELEC Resolution No. 8804 that will warrant the opening of the ballot boxes in order to resolve not only the issues raised in the protest but also those set forth in the Protestee's answer. When substantial compliance with the rules is satisfied, allowing the protest to proceed is the best way of removing any doubt or uncertainty as to the true will of the electorate. All other issues laid down in the parties' pleadings, including those in the Protestee's special and affirmative defenses and those expressed in the preliminary conference brief, will best be threshed out in the final resolution of the instant case.**

**The prayer to elevate the instant Motion for Reconsideration to the Commission En Banc is DENIED considering that the 13 August 2010 Order is merely interlocutory and it does not dispose of the instant case with finality, in accordance with Section 5(c), Rule 3 of the COMELEC Rules of Procedure.**

SO ORDERED.

Not satisfied, the petitioner commenced this special civil action directly in this Court.

### **Issue**

The petitioner submits that:—

THE RESPONDENT COMELEC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN REFUSING TO DISMISS THE PROTEST FOR INSUFFICIENCY IN FORM AND CONTENT.

The petitioner argues that Section 9,<sup>[21]</sup> Rule 6 of COMELEC Resolution No. 8804 obliged the COMELEC First Division to summarily dismiss the protest for being insufficient in form and content; and that the insufficiency in substance arose from the failure of the protest to: (a) specifically state how the various irregularities and anomalies had affected the results of the elections; (b) indicate in which of the protested precincts were “pre-shaded bogus-ballots” used; (c) identify the precincts where the PCOS machines had failed to accurately account for the votes in favor of Bautista; and (d) allege with particularity how many additional votes Bautista stood to receive for each of the grounds he protested. He concludes that the COMELEC First Division gravely abused its discretion in allowing the protest of Bautista despite its insufficiency.

Moreover, the petitioner urges that the protest be considered as a mere fishing expedition to be outrightly dismissed in light of the elections being held under an automated system. In support of his urging, he cites *Roque, Jr. v. Commission on Elections*,<sup>[22]</sup> where the Court took judicial notice of the accuracy and reliability of the PCOS machines and CCS computers, such that allegations of massive errors in the automated counting and canvassing had become insufficient as basis for the COMELEC to entertain or to give due course to defective election protests.<sup>[23]</sup> He submits that a protest like Bautista’s cast doubt on the automated elections.

On the other hand, the Office of the Solicitor General (OSG) and Bautista both posit that the COMELEC had the power and prerogative to determine the sufficiency of the allegations of an election protest; and that *certiorari* did not lie because the COMELEC First Division acted within its discretion. Additionally, the OSG maintains that the assailed orders, being interlocutory, are not the proper subjects of a petition for *certiorari*.

As we see it, the decisive issue is whether the Court can take cognizance of the petition for *certiorari*.

### **Ruling**

We dismiss the petition for lack of merit.

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.

This provision, although it confers on the Court the power to review any decision,

order or ruling of the COMELEC, limits such power to a *final* decision or resolution of the COMELEC *en banc*, and does not extend to an interlocutory order issued by a Division of the COMELEC. Otherwise stated, the Court has no power to review on *certiorari* an interlocutory order or even a final resolution issued by a Division of the COMELEC. The following cogent observations made in *Ambil v. Commission on Elections*<sup>[24]</sup> are enlightening, viz:

To begin with, the power of the Supreme Court to review decisions of the Comelec is prescribed in the Constitution, as follows:

“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 supplied]

**“We have interpreted this provision to mean *final orders, rulings and decisions* of the COMELEC rendered in the exercise of its adjudicatory or quasi-judicial powers.” This decision must be a *final decision or resolution* of the Comelec *en banc*, *not of a division*, certainly not an interlocutory order *of a division*. The Supreme Court has no power to review *via certiorari*, an interlocutory order or even a final resolution of a Division of the Commission on Elections.**

The mode by which a decision, order or ruling of the Comelec *en banc* may be elevated to the Supreme Court is by the special civil action of *certiorari* under Rule 65 of the 1964 Revised Rules of Court, now expressly provided in Rule 64, 1997 Rules of Civil Procedure, as amended.

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.**xxx<sup>[25]</sup>