

## EN BANC

[ G.R. No. 194143, October 04, 2011 ]

**SALVADOR D. VIOLAGO, SR., PETITIONER, VS. COMMISSION ON ELECTIONS AND JOAN V. ALARILLA, RESPONDENTS.**

### DECISION

**PERALTA, J.:**

Before the Court is a special civil action for *certiorari* under Rule 65 of the Rules of Court seeking to set aside the August 12, 2010 Order of the 2<sup>nd</sup> Division of the Commission on Elections (COMELEC) and the Order of the COMELEC *en banc* dated September 21, 2010 in EPC No. 2010-23. The August 12, 2010 Order dismissed the election protest filed by herein petitioner against herein private respondent, while the September 21, 2010 Order denied petitioner's Motion for Reconsideration.

The factual and procedural antecedents of the case are as follows:

Herein petitioner and private respondent were candidates for the mayoralty race during the May 10, 2010 elections in the City of Meycauayan, Bulacan. Private respondent was proclaimed the winner.

On May 21, 2010, petitioner filed a Petition<sup>[1]</sup> with the COMELEC questioning the proclamation of private respondent on the following grounds: (1) massive vote-buying; (2) intimidation and harassment; (3) election fraud; (4) non-appreciation by the Precinct Count Optical Scan (PCOS) machines of valid votes cast during the said election; and, (5) irregularities due to non-observance of the guidelines set by the COMELEC.

On June 15, 2010, private respondent filed her Answer with Motion to Set for Hearing Affirmative Defenses in the Nature of a Motion to Dismiss for Being Insufficient in Form and Substance. <sup>[2]</sup>

Thereafter, on July 16, 2010, the COMELEC 2<sup>nd</sup> Division issued an Order <sup>3</sup> setting the preliminary conference on August 12, 2010 and directing the parties to file their Preliminary Conference Briefs at least one (1) day before the scheduled conference.

On August 11, 2010, private respondent filed her Preliminary Conference Brief. <sup>[4]</sup>

Petitioner, on the other hand, filed his Brief <sup>[5]</sup> on the day of the scheduled preliminary conference. He, likewise, filed an Urgent Motion to Reset Preliminary Conference on the ground that he did not receive any notice and only came to know of it when he inquired with the COMELEC a day before the scheduled conference. Petitioner also claimed that on the date set for the preliminary conference, his counsel and his associate were scheduled to appear before different tribunals in

connection with other cases they were handling. [6] Subsequently, petitioner and his counsel failed to appear during the actual conference on August 12, 2010. On even date, private respondent's counsel moved for the dismissal of the case.

In its assailed Order [7] dated August 12, 2010, the COMELEC 2<sup>nd</sup> Division dismissed petitioner's protest on the ground that the latter belatedly filed his Brief in violation of the COMELEC rule on the filing of briefs.

On August 19, 2010, petitioner filed a Motion for Reconsideration 8 with the COMELEC *en banc* contending that it was only on August 16, 2010 that he received a copy of the Order of the COMELEC which set the preliminary conference on August 12, 2010.

In its second assailed Order [9] dated September 21, 2010, the COMELEC *en banc* denied petitioner's Motion for Reconsideration on the ground that petitioner failed to file a verified motion in violation of Section 3, Rule 19 of the COMELEC Rules of Procedure.

Hence, the present petition based on the following grounds:

1. No notice of preliminary conference hearing was sent to petitioner before the August 12, 2010 hearing.
2. The COMELEC did not exercise sound judicial discretion when it denied the Motion for Reconsideration.
3. Petitioner is totally blameless and the COMELEC committed undue haste and speed in disposing the case.
4. The denial of the MR, although within the discretion of the COMELEC, was not based on sound judicial discretion. [10]

Petitioner's basic contention is that the COMELEC 2<sup>nd</sup> Division and the COMELEC *en banc* committed grave abuse of discretion in dismissing his electoral protest and in denying his motion for reconsideration, respectively.

The Court finds the petition meritorious.

The COMELEC 2<sup>nd</sup> Division's reason for dismissing petitioner's election protest is the latter's failure to timely file his Preliminary Conference Brief.

However, a perusal of the records of the instant case would show that petitioner was able to present a copy of the Certification [11] issued by the Postmaster of Meycauayan City, Bulacan, attesting to the fact that the Order sent by the COMELEC to petitioner's counsel informing the latter of the scheduled hearing set on August 12, 2010 and directing him to file his Preliminary Conference Brief was received only on August 16, 2010. Petitioner likewise submitted an advisory issued by the Chief of the Operations Division of the TELECOM Office in Meycauayan that the telegraph service in the said City, through which the COMELEC also supposedly sent petitioner a notice through telegram, has been terminated and the office permanently closed and transferred to Sta. Maria, Bulacan as of April 1, 2009. [12] Respondent did not question the authenticity of these documents.

On the basis of the abovementioned documents, the Court finds no justifiable reason why the COMELEC 2<sup>nd</sup> Division hastily dismissed petitioner's election protest. There is no indication that the COMELEC 2<sup>nd</sup> Division made prior verification from the proper or concerned COMELEC department or official of petitioner's allegation that he did not receive a copy of the subject Order. In fact, it was only on the day following such dismissal that the Electoral Contests Adjudication Department, through the 2<sup>nd</sup> Division Clerk, sent a letter to the Postmaster of Meycauayan City, Bulacan requesting for a certification as to the date of receipt of the said Order stating therein that the "certification is urgently needed for the proper and appropriate disposition" [13] of petitioner's election protest. Fairness and prudence dictate that the COMELEC 2<sup>nd</sup> Division should have first waited for the requested certification before deciding whether or not to dismiss petitioner's protest on technical grounds.

Petitioner should not be penalized for belatedly filing his Preliminary Conference Brief. While it may be argued that petitioner acquired actual knowledge of the scheduled conference a day prior to the date set through means other than the official notice sent by the COMELEC, the fact remains that, unlike his opponent, he was not given sufficient time to thoroughly prepare for the said conference. A one-day delay, as in this case, does not justify the outright dismissal of the protest based on technical grounds where there is no indication of intent to violate the rules on the part of petitioner and the reason for the violation is justifiable. Thus, the COMELEC 2<sup>nd</sup> Division committed grave abuse of discretion in dismissing petitioner's protest.

With respect to the COMELEC *en banc's* denial of petitioner's Motion for Reconsideration, it is true that Section 3, Rule 20 of the COMELEC Rules of Procedure on Disputes in an Automated Election System, [14] as well as Section 3, Rule 19 of the COMELEC Rules of Procedure, clearly require that a motion for reconsideration should be verified. However, the settled rule is that the COMELEC Rules of Procedure are subject to liberal construction.

In *Quintos v. Commission on Elections*, [15] this Court held that "the alleged lack of verification of private respondent's Manifestation and Motion for Partial Reconsideration is merely a technicality that should not defeat the will of the electorate. The COMELEC may liberally construe or even suspend its rules of procedure in the interest of justice, including obtaining a speedy disposition of all matters pending before the COMELEC." [16]

In the same manner, this Court, in the case of *Panlilio v. Commission on Elections*, [17] restated the prevailing principle that the COMELEC's rules of procedure for the verification of protests and certifications of non-forum shopping should be liberally construed.

In *Pacanan v. Commission on Elections*, [18] this Court, in clarifying the mandated liberal construction of election laws, held thus:

x x x An election contest, unlike an ordinary civil action, is clothed with a public interest. The purpose of an election protest is to ascertain whether