

EN BANC

[G.R. No. 190526, February 17, 2010]

SANDRA Y. ERIGUEL, PETITIONER, VS. COMMISSION ON ELECTIONS AND MA. THERESA DUMPIT-MICHELENA, RESPONDENTS.

D E C I S I O N

VILLARAMA, JR., J.:

May a division of the Commission on Elections (COMELEC) elevate an appeal to the Commission *en banc* without first resolving it? And in connection with the said appeal, may the COMELEC *en banc* legally proceed with a fresh appreciation of the contested ballots without first ascertaining that the same have been kept inviolate? These are the two (2) important issues raised in this petition for *certiorari* filed under Rule 64 in relation to Rule 65 of the 1997 Rules of Civil Procedure, as amended.

First, the facts.

Petitioner Sandra Eriguel (Eriguel) and private respondent Ma. Theresa Dumpit-Michelena (Dumpit) were mayoralty candidates in Agoo, La Union during the May 14, 2007 elections.

On May 18, 2007, after the canvassing and counting of votes, Eriguel was proclaimed as the duly elected mayor of the Municipality of Agoo. Eriguel received 11,803 votes against Dumpit's 7,899 votes, translating to a margin of 3,904 votes.

On May 28, 2007, Dumpit filed an Election Protest *Ad Cautelam* ^[1] before the Regional Trial Court (RTC) of Agoo, La Union contesting the appreciation and counting of ballots in 152 precincts in Agoo. Dumpit alleged that some of the ballots cast in favor of Eriguel were erroneously counted and appreciated in the latter's favor despite containing markings and identical symbols. Dumpit also alleged that while a number of ballots containing Eriguel's name were written by only one (1) person, the same were still counted in the latter's favor. ^[2]

Initially, the RTC dismissed the election protest on May 31, 2007 due to Dumpit's failure to specify the number of votes credited to the parties per proclamation as required by Section 11(c), Rule 2 of A.M. No. 07-4-15-SC. ^[3] The protest was, however, reinstated following Dumpit's filing of a motion for reconsideration.

Preliminary conference was then conducted on June 15, 2007. Revision of ballots followed shortly thereafter and was completed on July 18, 2007. ^[4] The results of the revision showed that Eriguel had 11,678 votes against Dumpit's 7,839 votes, or a lead of 3,839 votes.

On Dumpit's motion, the RTC conducted a technical examination of the ballots. Senior Document Examiner Antonio Magbojos of the National Bureau of Investigation (NBI) Questioned Documents Division conducted the technical examination for Dumpit, while Chief Inspector Jose Wacangan of the Regional Crime Laboratory Office No.1 of the Philippine National Police (PNP) conducted the examination for Eriguel. [5] Eight (8) other witnesses for Dumpit also testified during the trial. [6]

On December 7, 2007, the trial court issued a decision upholding Eriguel's proclamation. [7] The pertinent portion of the RTC decision reads:

A perusal of all the testimonies of the witnesses and all other evidences presented by the Protestant are not substantial enough to persuade the Judge of this Court to rule in favor of Protestant.

The Judge of this Court had gone over reading the Minutes of Voting and Counting of Votes but could not find any alleged irregularity recorded nor any protest entered in said Minutes of Voting and Counting of Votes.

x x x x

While witnesses (Ligaya Mutia, Elmer Tamayo, Melita Genove, and Ma. Victoria Japson) were presented and testified that there were irregularities or protests made but were not duly recorded by the BEI Chairman either intentionally or unintentionally, still the same did not or is not enough to overcome such presumption. Granting without concluding (*sic*) that such were the case, their testimonies are merely confined to the precincts in which they served as poll watcher[s] and does not affect other precincts where the conduct of the election were generally peaceful. The same is not enough to overcome the margin of more than three thousand votes lead of the Protestee.

The Judge had even observed in the course of his scanning the Minutes of Voting and Counting of Votes that the Protestant or the Political Party to which she belongs has four (4) watchers in some precincts, three (3), two (2) and one (1) in other precincts. In other words, the Protestant or KAMPI had a number of watchers who were in the voting precincts during the May 14, 2007 elections. Poll watchers are the eyes and ears of the candidates. They are trained/oriented (or supposed to be) in such a way that they would be able to perform their tasks of seeing to it that the votes cast for the candidate they are serving will be counted and to file a protest should any sign of irregularity be observed.

Mr. Antonio Magbojos gave his expert handwriting testimony on the entries written on the ballots for the Protestee, however, these are mere opinions and speculations which were not substantiated by any strong, direct and convincing evidence on how such entries were written by one person for a particular set or group of ballots in a particular precinct. [8]

Unsatisfied with the findings, Dumpit appealed to the COMELEC. The case was

docketed as EAC No. A-01-2008, and was initially assigned to the Special Second Division composed of Presiding Commissioner Rene V. Sarmiento and Commissioner Nicodemo T. Ferrer. Commissioner Ferrer, however, decided to inhibit himself. This prompted Presiding Commissioner Sarmiento to issue an Order dated July 22, 2009 elevating the appeal to the Commission *en banc*. [9] The transfer of the case to the Commission *en banc* was apparently made pursuant to Section 5(b), Rule 3 of the COMELEC Rules of Procedure, which states,

Sec. 5. *Quorum; Votes Required.* - (a) x x x

(b) When sitting in Divisions, two (2) Members of a Division shall constitute a quorum to transact business. The concurrence of at least two (2) Members of a Division shall be necessary to reach a decision, resolution, order or ruling. If this required number is not obtained, the case shall be automatically elevated to the Commission *en banc* for decision or resolution. [10]

Thereafter, the Commission *en banc* proceeded to conduct a fresh appreciation of the contested ballots. [11] On December 9, 2009, after an exhaustive appreciation of all the contested ballots, [12] the Commission *en banc* promulgated a resolution nullifying 3,711 ballots cast in favor of Eriguel after finding the same to have been written by only one (1) or two (2) persons. The following figures were thus derived: [13]

	Dumpit	Eriguel
Total number of votes per physical count after revision	7,839	11,678
ADD claimed/credited ballots	35	41
LESS ballots INVALIDATED after appreciation	14	4,026
Total No. of votes AFTER Comelec appreciation	7,860	7,693

On this note, the Commission *en banc* set aside the RTC's decision and declared Dumpit as the duly elected mayor of Agoo, La Union, for having garnered 167 more votes than Eriguel. [14]

Aggrieved, Eriguel now comes before us *via* a petition for *certiorari*.

Eriguel essentially raises the following two issues: (1) procedurally, whether the Special Second Division of the COMELEC gravely abused its authority when it automatically elevated Dumpit's appeal to the Commission *en banc* after only one commissioner was left to deal with the case; and (2) substantively, whether the COMELEC *en banc*'s fresh appreciation of the contested ballots without first ascertaining the integrity thereof violated the doctrine enunciated in *Rosal v. Commission on Elections*. [15]

We find the petition meritorious.

I. Automatic elevation of the appeal to the Commission *en banc* is invalid

The COMELEC, in the exercise of its quasi-judicial functions, is bound to follow the provision set forth in Section 3, Article IX-C of the 1987 Constitution, which reads:

Sec. 3. The Commission on Elections may sit *en banc* or in two divisions, and shall promulgate its rules of procedure in order to expedite disposition of election cases, including pre-proclamation controversies. **All such election cases shall be heard and decided in division, provided that motions for reconsideration of decisions shall be decided by the Commission *en banc*.** [16]

It therefore follows that when the COMELEC is exercising its quasi-judicial powers such as in the present case, the Commission is constitutionally mandated to decide the case first in division, and *en banc* only upon motion for reconsideration. [17]

Indeed, it is a basic doctrine in procedural law that the jurisdiction of a court or an agency exercising quasi-judicial functions (such as the COMELEC) over the subject-matter of an action is conferred only by the Constitution or by law. Jurisdiction cannot be fixed by the agreement of the parties; it cannot be acquired through, or waived, enlarged or diminished by, any act or omission of the parties. [18] Neither can it be conferred by the acquiescence of the court, [19] more particularly so in election cases where the interest involved transcends those of the contending parties.

This being so, the Special Second Division of the COMELEC clearly acted with grave abuse of discretion when it immediately transferred to the Commission *en banc* a case that ought to be heard and decided by a division. Such action cannot be done without running afoul of Section 3, Article IX-C of the 1987 Constitution. Instead of peremptorily transferring the case to the Commission *en banc*, the Special Second Division of COMELEC, should have instead assigned another Commissioner as additional member of its Special Second Division, not only to fill in the seat temporarily vacated by Commissioner Ferrer, but more importantly so that the required *quorum* may be attained.

Emphasis must be made that it is the COMELEC division that has original appellate jurisdiction to resolve an appeal to an election protest decided by a trial court. Conclusively, the Commission *en banc* acted without jurisdiction when it heard and decided Dumpit's appeal.

Any one (1) among the parties should have moved for a reconsideration of the July 22, 2009 Order before the Special Second Division since what was involved was an interlocutory order. [20] The Special Second Division may, however, opt to refer the resolution of the motion to the Commission *en banc*, but only upon a unanimous vote by all of the Division members. [21] If the motion is still denied by the COMELEC *en banc*, the aggrieved party may thereafter seek recourse to this Court *via* a petition for *certiorari* under Rule 65. [22]