

EN BANC

[G. R. No. 188308, October 15, 2009]

JOSELITO R. MENDOZA, PETITIONER, VS. COMMISSION ON ELECTIONS AND ROBERTO M. PAGDANGANAN, RESPONDENTS.

DECISION

BRION, J.:

The present case involves a clash between the power under the Philippine Constitution of the respondent Commission on Elections (*COMELEC*) in the handling of a provincial election contest, and the claimed due process rights of a party to the contest. The petitioner Joselito R. Mendoza (the *petitioner*) essentially asserts in his petition for *certiorari*^[1] that the COMELEC conducted proceedings in the election contest for the gubernatorial position of the Province of Bulacan, between him and the respondent Roberto M. Pagdanganan (*the respondent*), without due regard to his fundamental due process rights. The COMELEC, on the other hand, claims that its decision-making deliberations are internal, confidential and do not require notice to and the participation of the contending parties.

THE ANTECEDENTS

The petitioner and the respondent vied for the position of Governor of the Province of Bulacan in the May 14, 2007 elections. The petitioner was proclaimed winning candidate and assumed the office of Governor.

The respondent seasonably filed an election protest with the COMELEC, which was raffled to the Second Division and docketed as EPC No. 2007-44. Revision of ballots involving the protested and counter-protested precincts in Angat, Bocaue, Calumpit, Doña Remedios Trinidad, Guiginto, Malolos, Meycauayan, Norzagaray, Pandi, Paombong, Plaridel, Pulilan, San Rafael and San Jose del Monte soon followed. The revision was conducted at the COMELEC's office in Intramuros. After revision, the parties presented their other evidence, leading to the parties' formal offer of their respective evidence.

The COMELEC approved the parties' formal offer of evidence and then required the parties to submit their respective memoranda. The parties complied with the COMELEC's order. **The case was thereafter submitted for resolution.**

On March 2, 2009 the COMELEC transferred the Bulacan ballot boxes, including those involved in the provincial election contest, to the Senate Electoral Tribunal (*SET*) in connection with the protest filed by Aquilino Pimentel III against Juan Miguel Zubiri. In light of this development, the petitioner moved to suspend further proceedings. .

The COMELEC's Second Division denied the petitioner's motion in its Order of April

29, 2009, ruling that the COMELEC has plenary powers to find alternative methods to facilitate the resolution of the election protest; thus, it concluded that it would continue the proceedings after proper coordination with the SET. The petitioner moved to reconsider this Order, but the COMELEC's Second Division denied the motion in its Order of May 26, 2009. These inter-related Resolutions led to the COMELEC's continued action - **specifically, the appreciation of ballots** - on the provincial election contest at the SET offices.

Allegedly alarmed by information on COMELEC action on the provincial election contest *within the SET premises without notice to him and without his participation*, the petitioner's counsel wrote the SET Secretary, Atty. Irene Guevarra, a letter dated June 10, 2009 to confirm the veracity of the reported conduct of proceedings.^[2] The SET Secretary responded on June 17, 2009 as follows:

x x x please be informed that the conduct of proceedings in COMELEC EPC No. 2007-44 (Pagdanganan vs. Mendoza) within the Tribunal Premises was authorized by then Acting Chairman of the Tribunal, Justice Antonio T. Carpio, upon formal request of the Office of Commissioner Lucenito N. Tagle.

Basis of such grant is Section 3, Comelec Resolution No. 2812 dated 17 October 1995, stating that "(t)he Tribunals, the Commission and the Courts shall coordinate and make arrangement with each other so as not to delay or interrupt the revision of ballots being conducted. The synchronization of *revision of ballots* shall be such that the expeditious disposition of the respective protest case shall be the primary concern." *While the said provision speaks only of revision, it has been the practice of the Tribunal to allow the conduct of other proceedings in local election protest cases within its premises as may be requested.* [emphasis supplied]^[3]

THE PETITION

The SET Secretary's response triggered the filing of the present petition raising the following **ISSUES** -

- A. WHETHER OR NOT THE COMELEC VIOLATED DUE PROCESS BY CONDUCTING PROCEEDINGS WITHOUT GIVING DUE NOTICE TO THE PETITIONER.**
- B. WHETHER OR NOT THE COMELEC GRAVELY ABUSED ITS DISCRETION TANTAMOUNT TO AN EXCESS OF JURISDICTION IN APPRECIATING BALLOTS WHICH ARE NOT IN ITS OFFICIAL CUSTODY AND ARE OUTSIDE ITS OWN PREMISES, AUTHORITY AND CONTROL.**

The petitioner argues that the election protest involves his election as Governor; thus, its subject matter involves him and the people of the Province of Bulacan who elected him. On this basis, he claims entitlement to notice and participation in all matters that involve or are related to the election protest. He further asserts that he had the legitimate expectation that no further proceedings would be held or conducted in the case after its submission for decision.

Citing the commentaries of Father Joaquin Bernas,^[4] the petitioner argues that the proceedings before the COMELEC in election protests are judicial in nature and character. Thus, the strictures of judicial due process - specifically, (a) opportunity to be heard and (b) that judgment be rendered only after lawful hearing - apply. Notices in judicial dispute, he claims, are not really just a matter of courtesy; they are elementary fundamental element of due process, they are part and parcel of a right of a party to be heard. He further cites Justice Isagani A. Cruz,^[5] who wrote:

x x x Every litigant is entitled to his day in court. He has a right to be notified of every incident of the proceeding and to be present at every stage thereof so that he may be heard by himself and counsel for the protection of his interest.

The petitioner claims that without notice to him of the proceedings, the due process element of the right to have judgment only after lawful hearing is absent. There is no way, he claims, that a judicial proceeding held without notice to the parties could be described as a lawful hearing, especially a proceeding which has as its subject matter the sovereign will of an entire province.

He was therefore denied his day in court, he claims, when the COMELEC conducted the examination and appreciation of ballots. The proceedings should be stopped and declared null and void; its future results, too, should be nullified, *as nothing derived from the anomalous and unconstitutional clandestine and unilateral proceedings should ever be part of any decision that the COMELEC may subsequently render. The poisonous fruits (derived from the proceedings) should have no part and should not be admitted for any purpose and/or in any judicial proceeding.*

Other than his due process concern, the petitioner takes issue with the COMELEC's appreciation of ballots even when the ballots and other election materials were no longer in its official custody and were outside its premises, authority and control. He asserts that an important element of due process is that the judicial body should have jurisdiction over the property that is the subject matter of the proceedings. In this case, the COMELEC has transferred possession, custody and jurisdiction over the ballots to the SET, a tribunal separate and independent from the COMELEC and over which the COMELEC exercises no authority or jurisdiction. For the COMELEC to still conduct proceedings on property, materials and evidence no longer in its custody violates the principle of separation of powers.

The petitioner also points out that the COMELEC's unilateral appreciation of the ballots in the SET premises deviates from the Commission's usual and time honored practice and procedure of conducting proceedings within its premises and while it has custody over the ballots. There is no precedent, according to the petitioner, for this deviation, nor is there any compelling reason to make the present case an exception. Citing *Cabagnot v. Commission on Elections* (G.R. No. 124383, August 9, 1996) which involves a transfer or change of venue of the revision of ballots, the petitioner alleges that this Court has been very emphatic in denouncing the COMELEC for its departure from its own rules and usual practice; while *Cabagnot* involves the issue of change of venue, the petitioner finds parallel applicability in the present case which also involves a deviation from COMELEC rules and usual practice. The petitioner adds that the act of the Second Division is effectively an arrogation of the authority to promulgate rules of procedure - a power that solely belongs to the COMELEC *en banc*.

After a *preliminary* finding of a genuine due process issue, we issued a Status Quo Order on July 14, 2009.

THE RESPONDENTS' COMMENTS

In his *Comment to the Petition with Extremely Urgent Motion to Lift/Dissolve Status Quo Ante Order*, the private respondent asserts that the petition contains deliberate falsehoods and misleading allegations that led the Court to grant the injunctive relief the petitioner had asked. He asserts that the "proceeding" the petitioner stated in his petition was actually the COMELEC's decision-making process, *i.e.*, the appreciation of ballots, which is a procedure internal to the Members of the Second Division of the COMELEC and their staff members; no revision of ballots took place as revision had long been finished. What was therefore undertaken within the SET's premises was unilateral COMELEC action that is exclusive to the COMELEC and an internal matter that is confidential in nature. In this light, no due process violation ever arose.

The private respondent also asserts that the petitioner cannot claim that he was not notified of and denied participation in the revision proceedings, as the petitioner himself is fully aware that the revision of the ballots was completed as early as July 28, 2008 and the petitioner was present and actively participated in the entire proceedings, all the way to the filing of the required memoranda. Thus, the petitioner's right to due process was duly satisfied.

The private respondent implores us to commence contempt proceedings against the petitioner who, the respondent claims, has not been forthright in his submissions and was not guided by the highest standards of truthfulness, fair play and nobility in his conduct as a party and in his relations with the opposing party, the other counsel and the Court.

Lastly, the private respondent posits that the present petition was filed out of time - *i.e.*, beyond the reglementary period provided under Rule 64. **All these reasons, the petitioner argues, constitute sufficient basis for the lifting of the status quo order and the dismissal of the petition.**

Public respondent COMELEC, for its part, claims that the petition is without basis in fact and in law and ought to be dismissed outright. Given the possibility of simultaneous election contests involving national and local officials, it has institutionalized an **order of preference** in the custody and **revision of ballots** in contested ballot boxes. The established order of preference is not without exception, as the expeditious disposition of protest cases is a primary concern. Additionally, the order of preference does not prevent the COMELEC from proceeding with pending protest cases, particularly those already submitted for decision. It claims that it has wide latitude to employ means to effectively perform its duty in safeguarding the sanctity of the elections and the integrity of the ballot.

The COMELEC further argues that in the absence of a specific rule on whether it can conduct **appreciation of ballots** outside its premises or official custody, the issue boils down to one of discretion - the authority of the COMELEC to control as it deems fit the processes or incidents of a pending election protest. Under Section 4 of the COMELEC Rules of Procedure, the COMELEC may use all auxiliary writs,

processes and other means to carry into effect its powers or jurisdiction; if the procedure to be followed in the exercise of such power or jurisdiction is not specifically provided for by law or the Rules of Procedure, any suitable process or proceeding not prohibited by law or by its rules may be adopted.

The COMELEC lastly submits that while due process requires giving the parties an opportunity to intervene in all stages of the proceedings, the COMELEC in the present case is not actually conducting further proceedings requiring notice to the parties; there is no revision or correction of the ballots, as the election protest had already been submitted for resolution. When the COMELEC coordinated with the SET, it was simply for purposes of resolving the submitted provincial election contest before it; the parties do not take part in this aspect of the case which necessarily requires utmost secrecy. On the whole, the petitioner was afforded every opportunity to present his case. To now hold the election protest hostage until the conclusion of the protest pending before the SET defeats the COMELEC's mandate of ensuring free, orderly and honest election.

THE COURT'S RULING

We review the present petition on the basis of the combined application of Rules 64 and 65 of the Rules of Court. While COMELEC jurisdiction over the Bulacan election contest is not disputed, the legality of subsequent COMELEC action is assailed for having been undertaken with grave abuse of discretion amounting to lack or excess of jurisdiction. Thus, our standard of review is "grave abuse of discretion," a term that defies exact definition, but generally refers to "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility."^[6] Mere abuse of discretion is not enough; the abuse must be grave to merit our positive action.^[7]

After due consideration, we find the petition devoid of merit.

The petition is anchored on the alleged conduct of proceedings in the election protest - following the completed revision of ballots - at the SET premises without notice to and without the participation of the petitioner. Significantly, "the conduct of proceedings" is confirmed by the SET Secretary in the letter we quoted above.^[8] As the issues raised show - the petitioner's focus is not really on the COMELEC Orders denying the suspension of proceedings when the ballot boxes and other election materials pertinent to the election contest were transferred to the SET; *the focus is on what the COMELEC did after to the issuance of the Resolutions*. We read the petition in this context as these COMELEC Orders are now unassailable as the period to challenge them has long passed.^[9]

The substantive issue we are primarily called upon to resolve is whether there were proceedings within the SET premises, entitling the petitioner to notice and participation, which were denied to him; in other words, the issue is whether the petitioner's right to due process has been violated. A finding of due process violation, because of the inherent arbitrariness it carries, necessarily amounts to grave abuse of discretion.