

EN BANC

[G.R. No. 182084, October 06, 2008]

LIBRADO M. CABRERA, PETITIONER, VS. THE COMMISSION ON ELECTIONS AND MICHAEL D. MONTENEGRO, RESPONDENTS.

D E C I S I O N

NACHURA, J.:

The petitioner in this case seeks from this Court the issuance of a *certiorari* writ to annul and modify, for having been issued allegedly with grave abuse of discretion, the November 20, 2007 Resolution^[1] of the Commission on Elections (COMELEC) First Division in SPR No. 18-2007, and the March 12, 2008 Resolution^[2] of the COMELEC *en banc* affirming the said division ruling.

The relevant antecedent facts and proceedings follow.

Dissatisfied with the results of the mayoralty race in Taal, Batangas during the May 14, 2007 National and Local Elections, petitioner Librado M. Cabrera (Cabrera), the candidate who placed second with 10,272 votes, filed an election protest against private respondent Michael D. Montenegro (Montenegro), the winning candidate who garnered 10,742 votes. The case was docketed as Election Case No. 1-2007 with the Regional Trial Court (RTC) of Taal, Batangas, Branch 86.^[3]

Following Montenegro's filing of an answer with counterclaim, the trial court set the case for preliminary conference and required the parties to submit their respective preliminary conference briefs. On June 12, 2007, the parties filed the requisite pleadings.^[4]

Finding fatal defects in Cabrera's preliminary conference brief, Montenegro, on June 15, 2007, moved for the dismissal of the protest on the following grounds: (1) Cabrera did not serve a copy of his preliminary conference brief to Montenegro at least one day before the scheduled conference; and (2) Cabrera did not comply with Rule 9, Section 4 of A.M. No. 07-4-15-SC or the **Rules of Procedure in Election Contests Before the Courts Involving Elective Municipal and *Barangay* Officials**,^[5] particularly on the required contents of the preliminary conference brief.^[6]

Unconvinced by Montenegro's contention, the trial court denied the motion to dismiss, and his subsequent motion for reconsideration.^[7] This prompted him to bring the issue to the COMELEC via a petition for *certiorari* and prohibition in SPR No. 18-2007.^[8]

In the assailed November 20, 2007 Resolution,^[9] the First Division of the Commission granted Montenegro's petition, annulled and set aside the orders of the

trial court denying the motion to dismiss, directed it to cease and desist from continuing with the proceedings in the election protest and consequently to dismiss the same. The First Division ruled that Rule 9 of the aforementioned Rules of Procedure in Election Contests, providing for the dismissal of the protest in case of failure to state in the preliminary conference brief its required contents, was mandatory in character and would leave no room for the exercise of discretion on the part of the trial judge. Given that Cabrera admitted his failure to include the following in the Protestant's Brief for Preliminary Conference^[10]--(1) a manifestation of his having availed, or his intention to avail, of discovery procedures or referral to commissioners; (2) a manifestation of withdrawal of certain protested or counter-protested precincts, if such is the case; and (3) in case the election protest or counter-protest seeks the examination, verification or re-tabulation of election returns, the procedure to be followed - the trial court gravely abused its discretion in denying the motion to dismiss. Mere substantial compliance would not suffice to cure the obvious omissions because the rules demand strict compliance.^[11]

Aggrieved, Cabrera moved for the reconsideration of the division ruling. The COMELEC *en banc*, however, denied his motion in the further challenged March 12, 2008 Resolution.^[12] Left with no other recourse, he instituted the instant petition for *certiorari* before this Court on the following grounds:

5.1.The Commission on Elections (First Division) and the En Banc grievously erred in their Resolutions of November 20, 2007 and March 12, 2008, respectively, when they dismissed the election protest case pending before the Regional Trial Court, Branch 86, Taal, Batangas, without taking into consideration the fact that proceedings in said protest case had already gone halfway with protestee/private respondent actively participating therein.

5.2.The Commission (First Division) and the En Banc, in rendering the Resolutions of November 20, 2007 and March 12, 2008, respectively, committed grave abuse of discretion tantamount to lack of, or excess of jurisdiction when they resolved to consider as ground for the dismissal of the election protest case, the omission in Petitioner's Preliminary Conference Brief of matters which even the New Rules of Procedure allows the exercise of option either to include or omit.^[13]

We dismiss the petition.

In applying for a *certiorari* writ, it is imperative for the petitioner to show that caprice and arbitrariness characterized the act of the court or agency whose exercise of discretion is being assailed. This is because "grave abuse of discretion" is the capricious and whimsical exercise of judgment that amounts to lack of jurisdiction. It contemplates a situation where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility--so patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform the duty enjoined by, or to act at all in contemplation of, law. "Grave abuse of discretion" arises when a lower court or tribunal violates the Constitution, the law or existing jurisprudence.^[14]

In the instant case, the petitioner has utterly failed to show to the Court that the COMELEC, in issuing the assailed resolutions, acted capriciously, whimsically and arbitrarily, such that its act is annulable by the extraordinary writ of *certiorari*.

The nullification by the COMELEC of the RTC's orders and the consequent dismissal of Election Case No. 1-2007 are in accordance with the express mandate of the **Rules of Procedure in Election Contests Before the Courts Involving Elective Municipal and *Barangay* Officials** (A.M. No. 07-4-15-SC),^[15] Rule 9, Sections 4, 5 and 6 of which provide as follows:

SEC. 4. Preliminary conference brief.--The parties shall file with the court and serve on the adverse party, in such manner as shall ensure their receipt at least one day before the date of the preliminary conference, their respective briefs which shall contain the following:

1. A summary of admitted facts and proposed stipulation of facts;
2. The issues to be tried or resolved;
3. The pre-marked documents or exhibits to be presented, stating their purpose;
4. **A manifestation of their having availed or their intention to avail themselves of discovery procedures or referral to commissioners;**
5. The number and names of the witnesses, their addresses, and the substance of their respective testimonies. The testimonies of the witnesses shall be by affidavits in question and answer form as their direct testimonies, subject to oral cross examination;
6. **A manifestation of withdrawal of certain protested or counter-protested precincts, if such is the case;**
7. The proposed number of revision committees and names of their revisors and alternate revisors; and
8. **In case the election protest or counter-protest seeks the examination, verification or re-tabulation of election returns, the procedure to be followed.**

SEC. 5. Failure to file brief.-- **Failure to file the brief or to comply with its required contents shall have the same effect as failure to appear at the preliminary conference.**

SEC. 6. Effect of failure to appear.--The failure of the protestant or counsel to appear at the preliminary conference **shall be cause for dismissal, motu proprio, of the protest or counter-protest.** The failure of the protestee or counsel to appear at the preliminary conference shall have the same effect as provided in Section 4(c), Rule 4 of these Rules, that is, the court may allow the protestant to present