

## EN BANC

[ G.R. No. 182374, November 11, 2008 ]

**JEREMIAS V. ESTEVES, PETITIONER, VS. RENE V. SARMIENTO, NICODEMO T. FERRER, IN THEIR RESPECTIVE CAPACITIES AS PRESIDING OFFICER AND MEMBER OF THE SECOND DIVISION COMELEC, MANILA AND REYNALDO TEH BITONG, RESPONDENTS.**

### DECISION

**TINGA, J.:**

This is a special civil action for certiorari and prohibition<sup>[1]</sup> under Rule 65 of the 1997 Rules of Civil Procedure, assailing the Resolution<sup>[2]</sup> of the Second Division of the Commission on Elections (COMELEC) in SPR No. 46-2007. Said resolution set aside the Order<sup>[3]</sup> dated 8 September 2007 issued by the Regional Trial Court (RTC), Branch 96, Baler, Aurora and consequently dismissed the election protest filed by herein petitioner Jeremias V. Esteves against private respondent Mayor Reynaldo Teh Bitong.

As culled from the records of the case, the following antecedent facts appear:

In the national and local elections conducted last 14 May 2007, petitioner and private respondent both ran for the position of municipal mayor of the Municipality of Casiguran, Aurora. On 15 May 2007, the Municipal Board of Canvassers proclaimed private respondent as the duly-elected Mayor of Casiguran on the basis of the results of the canvassing, which showed him having garnered 3,342 votes or with a margin of 48 votes over petitioner, who obtained 3,294 votes.<sup>[4]</sup>

On 25 May 2007, petitioner filed an election protest before the Regional Trial Court of Baler, Aurora. The protest was docketed as Election Protest Case (EPC) No. 99 and raffled to Branch 96 presided by Judge Corazon D. Soluren.<sup>[5]</sup>

The RTC then issued a precautionary protection order directing the Municipal Treasurer and Election Officer of Casiguran to take immediate steps to safeguard the integrity of all the ballot boxes, lists of voters and other paraphernalia used in the elections and thereafter directed that all the election paraphernalia, including the ballot boxes and lists of voters, subject of the protest be brought before the court.<sup>[6]</sup>

Private respondent then filed an answer, which the RTC admitted in an Order dated 2 August 2007. In the same order, the RTC denied the motion for reconsideration of the dismissal of private respondent's counter-protest on the ground of non-payment of filing fee. Thereafter, the RTC ordered the creation of the revision committees.<sup>[7]</sup>

On 6 September 2007, private respondent filed a motion to dismiss the election

protest, arguing that it was defective in form and substance as it did not specify the precincts where fraud and irregularities were committed. On 8 September 2007, the RTC issued the order denying private respondent's motion to dismiss for lack of merit.<sup>[8]</sup>

Thus, private respondent filed before the COMELEC a petition for certiorari and prohibition with application for temporary restraining order (TRO) and/or writ of preliminary injunction.<sup>[9]</sup> The petition sought to nullify the RTC Order dated 8 September 2007 denying private respondent's motion to dismiss. It also prayed that the election protest filed by petitioner be dismissed and the proceedings thereon enjoined on the ground that the election protest failed to comply with the requirements of Section 11(f), Rule 2<sup>[10]</sup> of A.M. No. 07-4-15-SC. Petitioner filed an answer on 5 December 2007.

After hearing private respondent's application, the COMELEC (Second Division) issued a temporary restraining order (TRO) on 06 December 2007, which directed Judge Soluren to desist from further proceeding with Election Protest Case No. 96 until further orders from the COMELEC.<sup>[11]</sup>

Thereafter, petitioner filed before this Court a special civil action for certiorari and prohibition with application for issuance of a temporary restraining order and/or writ of preliminary injunction. The petition, docketed as G.R. No. 180792, prayed that a temporary restraining order be issued enjoining the COMELEC (Second Division) from taking cognizance of SPR Case No. 46-2007 and that the TRO issued by the COMELEC be ordered lifted.

On 15 January 2008, the Court resolved to dismiss G.R. No. 180792 for failure of the petition to state the material dates showing that the petition was filed on time, failure to submit the required competent proof of identity in the verification/certification, failure to give an explanation why service was not personally made and failure to show that any grave abuse of discretion was committed by the COMELEC in rendering the challenged order.

On 29 February 2008, the COMELEC (Second Division) issued the assailed resolution penned by Commissioner Nicodemo T. Ferrer. The assailed resolution nullified the 8 September 2007 Order of the RTC and, accordingly, dismissed EPC No. 99.<sup>[12]</sup> The other member of the Second Division, Commissioner Rene V. Sarmiento, wrote a dissenting opinion.<sup>[13]</sup> It appears that before the issuance of the assailed resolution, the third member of the Second Division, Presiding Commissioner Florentino A. Tuazon, Jr. had retired from the service.

Hence, the instant petition, raising the following arguments: (1) the COMELEC (Second Division) has no jurisdiction to entertain special relief cases like petitions for certiorari, prohibition or mandamus; (2) the challenged resolution did not comply with the constitutional requirement that it must be decided by a majority vote of all the members; and (3) the challenged resolution negated the spirit and very purpose of A.M. No. 07-4-15-SC.

The Office of the Solicitor General (OSG) manifested that under Section 5, Rule 65 of the Rules of Court, only the private respondent is required to appear and defend the case, both on his own behalf and on behalf of the public respondent COMELEC,

and prayed that the COMELEC be excused from filing the required comment.<sup>[14]</sup> In a Resolution dated 12 August 2008, the Court granted the motion of the OSG.<sup>[15]</sup>

The petition deserves dismissal.

Section 3, Article IX-C of the Constitution expressly states:

Section 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*.

Also, Section 7, Article IX-A of the Constitution 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.

Under the aforementioned constitutional provisions, the requirement that an aggrieved party must first file a motion for reconsideration of a resolution of the Division to the COMELEC *en banc* is mandatory and jurisdictional in invoking the power of review of the Supreme Court. Failure to abide by this procedural requirement constitutes a ground for dismissal of the petition.<sup>[16]</sup>

All election cases, including pre-proclamation controversies, shall be decided by the COMELEC in division, and the motion for reconsideration shall be decided by the COMELEC *en banc*.<sup>[17]</sup> As held in *Ambil v. Commission on Elections*,<sup>[18]</sup> the power of review of the Supreme Court of the rulings of the COMELEC is limited only to the final decision or resolution of the COMELEC *en banc* and not the final resolution of its 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.

Moreover, pursuant to Section 5 (c), Rule 3<sup>[19]</sup> of the COMELEC Rules of Procedure, a resolution issued by a Division of the COMELEC must first be elevated to the COMELEC *en banc* by filing a motion for reconsideration.

The filing of a motion for reconsideration is mandatory because 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 64 of the Rules of Civil Procedure. It is settled that the filing of a motion for reconsideration of the order, resolution or decision of the tribunal, board or office is, subject to well-recognized exceptions, a condition *sine qua non* to the institution of a special civil action for *certiorari*. The rationale therefore is that the law intends to afford the tribunal, board