

## EN BANC

[ G.R. NO. 174263, January 24, 2007 ]

**JOSE TORRES, PETITIONER, VS. ABELARDO M. ABUNDO, SR. AND  
COMMISSION ON ELECTIONS, RESPONDENTS.**

### ***DECISION***

**YNARES-SANTIAGO, J.:**

This is a petition for certiorari of the Commission on Elections ("COMELEC") En Banc's Resolution<sup>[1]</sup> dated August 18, 2006 denying petitioner Jose Torres' motion for reconsideration of the COMELEC First Division's Resolution dated May 6, 2006. <sup>[2]</sup> The COMELEC First Division's Resolution dismissed Torres' petition and lifted its Order<sup>[3]</sup> dated January 13, 2006 directing Torres to continue performing his functions as Mayor of the Municipality of Vega, Catanduanes.

The following are the facts:

Petitioner Jose Torres and respondent Abelardo Abundo, Sr. were candidates for mayor of Vega, Catanduanes in the May 10, 2004 elections. On May 11, 2004, the Municipal Board of Canvassers proclaimed Torres as the duly elected mayor.

Claiming that irregularities attended the canvassing of ballots in 17 precincts, respondent filed an election protest docketed as Election Case No. 48<sup>[4]</sup> in the Regional Trial Court, Branch 42, Virac, Catanduanes. Petitioner, who also claimed that canvassing irregularities prejudiced him, filed a counter-protest in the same case impugning the results in 12 precincts.

On November 14, 2005, the trial court rendered judgment<sup>[5]</sup> in favor of respondent. It found that respondent obtained 4,230 votes over petitioner's 4,121 votes. Thus, the trial court declared respondent the elected mayor of Vega, Catanduanes and annulled the earlier proclamation of petitioner. The dispositive portion of the Decision provides:

WHEREFORE, the Court finds that the protestant ABELARDO M. ABUNDO, SR., garnered a total of 4, 230 votes while the protestee garnered a total of only 4, 121 votes during the May 10, 2004 elections for Mayor of Vega, Catanduanes and that therefore, protestant ABELARDO M. ABUNDO, SR., was the duly elected Mayor of Vega, Catanduanes with a margin of 109 votes over the protestee. Accordingly, the protestee JOSE TORRES is hereby directed to VACATE and RELINQUISH said position to the protestant ABELARDO ABUNDO, SR.

SO ORDERED.<sup>[6]</sup>

Petitioner appealed to the COMELEC (EAC Case No. A-01- 2006). Respondent, for his part, filed with the trial court a motion<sup>[7]</sup> for execution of the judgment pending appeal. In its Order of December 12, 2005, the trial court granted respondent's motion, subject to the filing of a P100,000 bond, to wit:

This Court hereby grants the protestant's motion for execution pending appeal based on the following good reasons:

1. The Court has established the protestant's right to the Office of the Mayor of Vega, Catanduanes. Having been declared by the Court as the duly elected Mayor of Vega, Catanduanes with a margin of 109 votes over the protestee, the protestant has the right to assume the Office of the Municipal Mayor of Vega, Catanduanes.
2. Barely eighteen (18) months is left to the tenure of the mayor of Vega, Catanduanes and the people have the right to be governed by the true winner of the election and their chosen official.<sup>[8]</sup>

x x x x

WHEREFORE, the Motion for Execution pending appeal is GRANTED. Let a writ of execution issue upon the posting of a bond by the protestant in the amount of P100,000.00.

SO ORDERED.<sup>[9]</sup>

A writ<sup>[10]</sup> was issued and served on petitioner who, without filing a motion for reconsideration of the trial court's Order, filed a petition for certiorari with prayer for temporary restraining order/writ of preliminary injunction before the COMELEC. In an Order dated December 21, 2005, the COMELEC's-First Division granted petitioner's prayer for the issuance of a Temporary Restraining Order, thus:

In the interest of justice and so as not to render moot and academic the serious issues raised in the petition, a **TEMPORARY RESTRAINING ORDER** is hereby issued effective immediately enjoining public respondent Honorable Genie G. Gapas-Agbada, Presiding Judge of Branch 42, Regional Trial Court of Virac, Catanduanes, his agents or representatives or any one acting for and in his behalf from executing the December 12, 2005 Order of the court a quo in Election Protest Case No. 49 entitled Abelardo M. Abundo, Sr. vs. Jose Torres, granting private respondent's Motion for Execution Pending Appeal as well as the Writ of Execution issued on the same day, pending consideration of the instant petition. In the event that Abelardo M. Abundo, Sr. had already assumed office as Municipal Mayor of Vega, Catanduanes and commenced to perform his function pursuant to the assailed order, a **STATUS QUO ANTE ORDER** is likewise issued directing the parties to observe the status prior to the promulgation or issuance of the said Order. Accordingly, private respondent Abelardo M. Abundo, [Sr.] shall forthwith vacate the post in favor of petitioner Jose Torres who shall continue to function as Mayor of Vega, Catanduanes until further orders from this Commission (First Division).<sup>[11]</sup>

After due proceedings, the COMELEC's First Division issued an Order<sup>[12]</sup> dated January 13, 2006 granting petitioner Torres' application for the issuance of a writ of preliminary injunction and forthwith issued the same, directing him to continue performing his functions as mayor of Viga, Catanduanes until final orders. On May 6, 2006, the COMELEC's First Division issued the Resolution<sup>[13]</sup> dismissing the petition, thus:

The instant petition should be dismissed.

Sec. 2 Rule 28 of the COMELEC Rules of Procedure provides for the manner of filing a petition for certiorari in this wise:

Sec. 2. Petition for Certiorari or Prohibition. –

When any court or judge hearing election cases has acted without or in excess of its or his jurisdiction or with grave abuse of discretion and **there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law**, a person aggrieved thereby may file a petition for certiorari or prohibition with the Commission alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings, as the law requires, of such court or judge, or commanding it or him to desist from further proceeding with the action or matter specified therein, as the case may be.

The petition shall be accompanied by a **certified true copy of the judgment or order subject thereof**, together with all pleadings and documents relevant and pertinent thereto. (Emphasis supplied)

The first paragraph requires that resort to a petition for certiorari can be made if there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law; and the second calls for the attachment to the petition of a certified true copy of the order sought to be reversed or set aside. The herein petition did not meet both requirements.

First of all, the petitioner failed to fulfill an important procedural pre-requisite, which is the filing of a motion for reconsideration of the assailed order.

A motion for reconsideration is a condition *sine qua* non for the filing of a petition for certiorari. Without said motion, the petition cannot simply prosper. x x x

x x x x

For sure the rule above-cited is not without exceptions. The aggrieved party is not obliged to first file a motion for reconsideration of the assailed resolution before filing a petition under Rule 65 of the Rules of Court, as amended where, (1) the question is purely legal, (2) judicial intervention is urgent; (3) its application may cause great and irreparable

damage; and (4) the controversial acts violate due process. x x x

The herein petitioner, however, did not invoke any of these exceptions. x  
x x

x x x x

The petitioner, in contravention of the second paragraph of Section 2, Rule 28 of the COMELEC Rules of Procedure, failed to attach to the petition a certified true copy or even just a copy of the order granting execution of the decision pending appeal, which is ought to be set aside or nullified.

x x x x

In a long line of cases, the Supreme Court has ruled that where the petitioner failed to attach to his petition for certiorari the certified true copies of the assailed judgment or order, the said petition should be dismissed. x x x

The same is true of the present petition.

x x x x

WHEREFORE, premises considered, the Commission (First Division) RESOLVED as it hereby RESOLVES to DISMISS the herein petition.

ACCORDINGLY, the Order of the Commission First Division dated 13 January 2006 directing the petitioner Jose Torres to continue performing his functions as mayor of the municipality of Viga, Catanduanes until final orders from this Commission is hereby LIFTED.

SO ORDERED.<sup>[14]</sup>

Petitioner filed a motion for reconsideration but it was denied by the COMELEC *En Banc* in the assailed Resolution dated August 18, 2006. Hence this petition raising the following issues:

- I. THE HONORABLE COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT FAILED TO CONSIDER THAT PETITIONER'S FAILURE TO FILE THE MOTION FOR RECONSIDERATION IS DUE TO THE EXTREME URGENCY OF THE MATTER BROUGHT ABOUT BY PRIVATE RESPONDENT'S DESPERATE MOVE TO ASSUME THE POST AT ALL COST
- II. THE HONORABLE COMMISSION GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DISMISSED THE PETITION ON TECHNICAL GROUND WHEN IT HAS GIVEN DUE COURSE TO PETITIONER'S PRAYER FOR TEMPORARY RESTRAINING ORDER AND INJUNCTION