

EN BANC

[G.R. No. 201796, January 15, 2013]

GOVERNOR SADIKUL A. SAHALI AND VICE-GOVERNOR RUBY M. SAHALL, PETITIONERS, VS. COMMISSION ON ELECTIONS (FIRST DIVISION), RASHIDIN H. MATBA AND JILKASI J. USMAN, RESPONDENTS.

R E S O L U T I O N

REYES, J.:

This is a Petition for *Certiorari* under Rule 65 in relation to Rule 64 of the Rules of Court filed by Sadikul A. Sahali (Sadikul) and Ruby M. Sahali (Ruby), assailing the Order^[1] dated May 3, 2012 issued by the First Division of the Commission on Elections (COMELEC) in EPC Nos. 2010-76 and 2010-77.

During the May 10, 2010 elections, Sadikul and private respondent Rashidin H. Matba (Matba) were two of the four candidates who ran for the position of governor in the Province of Tawi-Tawi while Ruby and private respondent Jilkasi J. Usman (Usman) ran for the position of Vice-Governor.^[2]

On May 14, 2010, the Provincial Board of Canvassers (PBOC) proclaimed petitioners Sadikul and Ruby as the duly elected governor and vice-governor, respectively, of the province of Tawi-Tawi. In the statement of votes issued by the PBOC, petitioner Sadikul garnered a total of 59,417 as against private respondent Matba's 56,013,^[3] while petitioner Ruby prevailed over private respondent Usman, with votes of 61,005 and 45,127, respectively.^[4]

Alleging that the said elections in the Province of Tawi-Tawi were attended by massive and wide-scale irregularities, Matba filed an Election Protest *Ad Cautelam*^[5] with the COMELEC. Matba contested the results in 39 out of 282 clustered precincts that functioned in the province of Tawi-Tawi. The said election protest filed by Matba was raffled to the First Division of the COMELEC and was docketed as EPC No. 2010-76.

Usman also filed an Election Protest *Ad Cautelam*^[6] with the COMELEC, contesting the results in 39 out of the 282 clustered precincts in the Province of Tawi-Tawi. Usman's election protest was likewise raffled to the First Division of the COMELEC and was docketed as EPC No. 2010-77. The respective election protests filed by private respondents Matba and Usman prayed, *inter alia*, for the technical examination of the ballots, Election Day Computerized Voters List (EDCVL), the Voters Registration Record (VRR), and the Book of Voters in all the protested precincts of the province of Tawi-Tawi.^[7]

After Sadikul filed his Answer^[8] with counter-protest, a preliminary conference was

conducted by the COMELEC in EPC No. 2010-76. On November 24, 2011, the COMELEC issued a Preliminary Conference Order^[9] in EPC No. 2010-76. Thereafter, the COMELEC issued an Order^[10] dated November 23, 2011 which directed the retrieval and delivery of the 39 ballot boxes containing the ballots in the 39 protested clustered precincts as well as the election paraphernalia therein.

Meanwhile, in EPC No. 2010-77, the COMELEC, after Ruby's filing of her Answer^[11] with counter-protest, conducted a preliminary conference on January 4, 2012. On January 20, 2012, the COMELEC issued its Preliminary Conference Order^[12] in the said case.

On January 17, 2012, the COMELEC resolved to consolidate EPC No. 2010-76 and EPC No. 2010-77.

On February 9, 2012, the retrieval and delivery of the ballot boxes and other election documents from the 39 protested precincts were completed. On February 20, 2012, the COMELEC First Division ordered the recount of the contested ballots, directing the creation of five recount committees for the said purpose.^[13]

On February 24, 2012, Matba and Usman filed a Manifestation and *Ex-Parte* Motion (Re: Order Dated 20 February 2012), requesting that they be allowed to secure photocopies of the contested ballots. Further, they moved for a technical examination of the EDCVL, the VRR and the Book of Voters for the contested precincts in the province of Tawi-Tawi by comparing the signature and the thumbmarks appearing on the EDCVL as against those appearing on the VRRs and the Book of Voters.^[14]

Private respondents Matba and Usman averred that, instead of recounting the ballots in the pilot precincts constituting 20% of the protested precincts, the COMELEC First Division should order the technical examination of the said election paraphernalia from the 38 clustered precincts that are the subject of both election protests filed by them.

On March 5, 2012, the COMELEC First Division issued an Order^[15] which granted the said *ex-parte* motion filed by Matba and Usman. Thus, the COMELEC First Division directed its Election Records and Statistics Department (ERSD) to conduct a technical examination of the said election paraphernalia by comparing the signature and thumbmarks appearing on the EDCVL as against those appearing on the VRRs and the Book of Voters.

On March 9, 2012, Sadikul and Ruby jointly filed with the COMELEC First Division a Strong Manifestation of Grave Concern and Motion for Reconsideration (Of the Order Dated March 5, 2012)^[16]. They asserted that the March 5, 2012 Order issued by the COMELEC First Division, insofar as it directed the technical examination of the EDCVL, the VRR and the Book of Voters, should be reversed on account of the following: *first*, the said Order was issued without due process since the COMELEC First Division did not allow them to oppose the said *ex-parte* motion; *second*, the COMELEC First Division cannot just order a technical examination in the absence of published rules on the matter; and *third*, the COMELEC First Division could not just examine the said election paraphernalia without violating the Precautionary

Protection Order issued by the Presidential Electoral Tribunal in the protest case between Manuel Roxas and Jejomar Binay.

On March 15, 2012, Matba and Usman filed with the COMELEC First Division their counter-manifestation^[17] to the said manifestation and motion for reconsideration filed by Sadikul and Ruby. They asserted therein that Sadikul and Ruby were not deprived of due process when the COMELEC First Division issued its March 15, 2012 Order. They averred that their respective election protests and the Preliminary Conference Orders issued by the COMELEC First Division all indicated that they would move for the technical examination of the said election paraphernalia. Nonetheless, they pointed out that Sadikul and Ruby failed to express any objection to their intended motion for technical examination of the said election paraphernalia.

Further, Matba and Usman claimed that said motion for technical examination is not a contentious motion since the intended technical examination would not prejudice the rights of Sadikul and Ruby considering that the same only included the EDCVL, the VRR and the Book of Voters, and not the ballots.

On March 23, 2012, Sadikul and Ruby then filed with the COMELEC First Division their Reply^[18] to the counter-manifestation filed by Matba and Usman. In turn, Matba and Usman filed with the COMELEC First Division their Rejoinder^[19] on March 30, 2012.

On May 3, 2012, the COMELEC First Division issued the herein assailed Order^[20] which denied the said motion for reconsideration of the March 5, 2012 Order filed by Sadikul and Ruby. The COMELEC First Division maintained that Sadikul and Ruby were not deprived of due process. It pointed out that the intention of Matba and Usman to ask for the technical examination of the said election documents had always been apparent from the filing of their separate election protests, preliminary conference briefs and their intention to offer as evidence all election documents and paraphernalia such as the EDCVL, VRRs and Book of Voters on the protested precincts.

Further, the COMELEC First Division opined that the insinuation asserted by Sadikul and Ruby that there are no published rules governing the technical examination of election paraphernalia is untenable. It pointed out that the technical examination of election paraphernalia is governed by Section 1, Rule 18 of COMELEC Resolution No. 8804. As to the Precautionary Protection Order issued in the protest case between Manuel Roxas and Jejomar Binay, the COMELEC First Division averred that it would request a clearance from the Presidential Electoral Tribunal for the conduct of said technical examination.

Hence, petitioners Sadikul and Ruby filed the instant petition with this Court essentially asserting that the COMELEC First Division committed grave abuse of discretion amounting to lack or excess of jurisdiction when: *first*, it did not give them the opportunity to oppose the motion for technical examination filed by Matba and Usman; and *second*, it ordered the technical examination of the said election paraphernalia despite the lack of sanction and published rules governing such examination.

The petition is denied.

The petitioners' resort to the extraordinary remedy of *certiorari* to assail an interlocutory order issued by the COMELEC First Division is amiss. "A party aggrieved by an interlocutory order issued by a Division of the COMELEC in an election protest may not directly assail the order in this Court through a special civil action for *certiorari*. The remedy is to seek the review of the interlocutory order during the appeal of the decision of the Division in due course."^[21]

Under the Constitution, the power of this Court to review election cases falling within the original exclusive jurisdiction of the COMELEC only extends to final decisions or resolutions of the COMELEC *en banc*, not to interlocutory orders issued by a Division thereof. Section 7, Article IX of the Constitution mandates:

Sec. 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.** (Emphasis ours)

In *Ambil, Jr. v. COMELEC*,^[22] this Court elucidated on the import of the said provision in this wise:

We have interpreted this provision to mean **final orders, rulings and decisions** of the COMELEC rendered in the exercise of its adjudicatory or quasi-judicial powers." This decision must be a **final decision or resolution** of the Comelec ***en banc*, not of a division**, certainly not an interlocutory order **of a 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.

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 65 of the 1964 Revised Rules of Court, now expressly provided in Rule 64, 1997 Rules of Civil Procedure, as amended.

Rule 65, Section 1, 1997 Rules of Civil Procedure, as amended, requires that there be no **appeal, or any plain, speedy and adequate remedy** in the ordinary course of law. A motion for reconsideration **is a plain and adequate remedy provided by law. Failure to abide by this procedural requirement constitutes a ground for dismissal of the petition.**

In like manner, a decision, order or resolution of a division of the

Comelec must be reviewed by the Comelec *en banc* via a motion for reconsideration before the final *en banc* decision may be brought to the Supreme Court on *certiorari*. The pre-requisite filing of a motion for reconsideration is mandatory. x x x^[23] (Citations omitted and emphasis supplied)

Here, the Orders dated March 5, 2012 and May 3, 2012 issued by the First Division of the COMELEC were merely interlocutory orders since they only disposed of an incident in the main case *i.e.* the propriety of the technical examination of the said election paraphernalia. Thus, the proper recourse for the petitioners is to await the decision of the COMELEC First Division in the election protests filed by Matba and Usman, and should they be aggrieved thereby, to appeal the same to the COMELEC *en banc* by filing a motion for reconsideration.^[24]

The petitioners, citing the case of *Kho v. COMELEC*,^[25] nevertheless insist that this Court may take cognizance of the instant Petition for *Certiorari* since the COMELEC *en banc* is not the proper forum in which the said interlocutory orders issued by the COMELEC First Division can be reviewed.

The petitioners' reliance on *Kho* is misplaced. In *Kho*, the issue was whether a Division of the COMELEC may admit an answer with counter-protest which was filed beyond the reglementary period. This Court held that the COMELEC First Division gravely abused its discretion when it admitted the answer with counter-protest that was belatedly filed.

On the propriety of a filing a Petition for *Certiorari* with this Court *sans* any motion for reconsideration having been filed with the COMELEC *en banc*, it was held therein that, as an exception, direct resort to this Court *via certiorari* assailing an interlocutory order may be allowed when a Division of the COMELEC commits grave abuse of discretion tantamount to lack of jurisdiction. Thus:

As to the issue of whether or not the case should be referred to the COMELEC *en banc*, this Court finds the respondent COMELEC First Division correct when it held in its order dated February 28, 1996 that no final decision, resolution or order has yet been made which will necessitate the elevation of the case and its records to the Commission *en banc*. No less than the Constitution requires that the election cases must be heard and decided first in division and any motion for reconsideration of decisions shall be decided by the commission *en banc*. Apparently, the orders dated July 26, 1995, November 15 1995 and February 28, 1996 and the other orders relating to the admission of the answer with counter- protest are issuances of a Commission in division and are all interlocutory orders because they merely rule upon an incidental issue regarding the admission of Espinosa's answer with counter-protest and do not terminate or finally dispose of the case as they leave something to be done before it is finally decided on the merits. **In such a situation, the rule is clear that the authority to resolve incidental matters of a case pending in a division, like the questioned interlocutory orders, falls on the division itself, and not on the Commission en banc.** x x x