

## EN BANC

[ G.R. No. 193846, April 12, 2011 ]

**MARIA LAARNI L. CAYETANO, PETITIONER, VS. THE  
COMMISSION ON ELECTIONS AND DANTE O. TINGA,  
RESPONDENTS.**

### RESOLUTION

**NACHURA, J.:**

Before us is a petition for *certiorari* under Rule 64, in relation to Rule 65 of the Rules of Court, assailing the Orders issued by public respondent Commission on Elections (COMELEC), through its Second Division, dated August 23, 2010<sup>[1]</sup> and September 7, 2010,<sup>[2]</sup> respectively. The two Orders were issued in relation to the election protest, docketed as EPC No. 2010-44, filed by private respondent Dante O. Tinga against petitioner Maria Laarni Cayetano.

In the automated national and local elections held on May 10, 2010, petitioner and private respondent were candidates for the position of Mayor of Taguig City. Petitioner was proclaimed the winner thereof on May 12, 2010, receiving a total of Ninety-Five Thousand Eight Hundred Sixty-Five (95,865) votes as against the Ninety-Three Thousand Four Hundred Forty-Five (93,445) votes received by private respondent.

On May 24, 2010, private respondent filed an Election Protest against petitioner before the COMELEC. Private respondent's protest listed election frauds and irregularities allegedly committed by petitioner, which translated to the latter's ostensible win as Mayor of Taguig City. On the whole, private respondent claims that he is the actual winner of the mayoralty elections in Taguig City.

Posthaste, petitioner filed her Answer with Counter-Protest and Counterclaim on June 7, 2010. Petitioner raised, among others, the affirmative defense of insufficiency in form and content of the Election Protest and prayed for the immediate dismissal thereof.

On July 1, 2010, the COMELEC held a preliminary conference and issued an Order granting private respondent a period within which to file the appropriate responsive pleading to the Answer of petitioner. The COMELEC likewise stated that it will rule on the affirmative defenses raised by petitioner.

As previously adverted to, the COMELEC issued the assailed Preliminary Conference Order dated August 23, 2010, finding the protest filed by private respondent and counter-protest filed by petitioner to be sufficient in form and substance. Effectively, the COMELEC denied petitioner's affirmative defense of insufficiency in form and substance of the protest filed by private respondent. The Order reads:

**WHEREFORE**, finding the instant protest and the counter-protest to be sufficient in form and substance, the Commission (Second Division) hereby:

1. **DIRECTS** [private respondent] to make a cash deposit [of] **ONE MILLION SIX HUNDRED NINE THOUSAND FIVE HUNDRED PESOS (P1,609,500.00)** to defray the expenses for the recount of the ballots as well as for other incidental expenses relative thereto pertaining to the **217 clustered protested precincts** composed of **1,073 established precinct[s]** at the rate of P1,500.00 for each precinct as required in Section 2 Rule II of COMELEC Resolution No. 8804 payable in three (3) equal installments every twenty (20) days starting within five (5) days from receipt hereof.

2. **DIRECTS** [petitioner] to make a cash deposit of **TWO MILLION EIGHT HUNDRED ELEVEN THOUSAND PESOS (P2,811,000.00)** to defray the expenses for the recount of the ballots as well as for other incidental expenses relative thereto pertaining to the **380 protested clustered precinct[s]** composed of **1,874 established precincts** at the rate of P1,500.00 for each precinct as required in Section 2[,] Rule II of COMELEC Resolution No. 8804 payable in three (3) equal installments every twenty (20) days starting within five (5) days from receipt hereof.

3. **DIRECTS** the City Election Officer (EO) of Taguig City, to gather and collect the subject contested ballot boxes containing the ballots, and their keys from the City Treasurer of Taguig City and to deliver the same to ECAD, COMELEC, Intramuros, Manila, within fifteen (15) days from receipt of the ballot boxes from said Treasurer with prior notice to herein parties who may wish to send their respective duly authorized representatives to accompany the same, observing strict measures to protect the safety and integrity of the ballot boxes;

4. **DIRECTS** [private respondent] and [petitioner] to provide for the needed vehicle/s to the EO for the gathering and transportation of the subject contested ballot boxes. All expenses for the retrieval and transportation of the said ballot boxes shall be borne by both [private respondent] and [petitioner];

5. **AUTHORIZES** the City Election Officer to secure a sufficient number of security personnel either from the PNP or the AFP in connection with the afore-directed gathering and transportation of the subject ballot boxes;

6. **DIRECTS** [private respondent] to shoulder the travel expenses, per diems and necessary allowance of the COMELEC personnel, which include the PES and at most two (2) support staff, and the PNP/AFP personnel acting as security; and

7. **DIRECTS** the herein parties to shoulder the travelling expenses of their respective counsels and watchers.

8. **DIRECTS** [private respondent] in the protest proper and [petitioner]

in the counter protest to bear the expenses for the rental of the Precinct Count Optical System (PCOS) machine that will be used for the authentication of the ballots as well as the payment for the information Technology Expert (IT Expert) who will assist in the authentication of the ballots, unless they are both willing to stipulate on the authenticity of the said ballots cast in connection with the May 10, 2010 National and Local Elections. **DIRECTS** further that in case [private respondent] agree[s] to stipulate on the authenticity of the ballots and [petitioner] raises the issue of authenticity, [petitioner] shall be the one to bear the fee for the rent of the PCOS machine as well as the service of the IT Expert.

9. **DIRECTS** the parties to file a manifestation whether they intend to secure photocopies of the contested ballots within a non-extendible period of five (5) days from receipt of this Order. No belated request for the photocopying of ballots shall be entertained by this Commission (Second Division). The photocopying shall be done simultaneous with the recount of the ballots considering that the ballot box storage area is no longer near the recount room.

The pertinent Order for the constitution of Recount Committees and the schedule of recount shall be issued after the arrival of the subject ballot boxes and after the required cash deposits shall have been paid by [private respondent].

The Preliminary Conference is hereby ordered terminated. The parties are given three (3) days from receipt hereof to file their comment, suggestions or corrections, if any, to this Preliminary Conference Order. After the lapse of said period, no more comment, suggestion or correction shall be entertained, and this Preliminary Conference Order shall thereafter be valid and binding upon the parties.<sup>[3]</sup>

Thereafter, on August 31, 2010, petitioner filed a Motion for Reconsideration of the Preliminary Conference Order relative to the denial of her affirmative defenses. Private respondent filed a Comment and Opposition thereto. Consequently, the COMELEC issued the second assailed Order dated September 7, 2010, denying petitioner's Motion for Reconsideration.

Hence, this petition for *certiorari* positing the singular issue of whether the COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction in refusing to dismiss the protest of private respondent for insufficiency in form and content.

Not unexpectedly, private respondent refutes the allegations of petitioner and raises the procedural infirmity in the instant petition, *i.e.*, the power of this Court to review decisions of the COMELEC under Section 3,<sup>[4]</sup> Article IX-C of the Constitution, pursuant to the leading case of *Repol v. COMELEC*.<sup>[5]</sup> Private respondent likewise counters that the petition fails to demonstrate grave abuse of discretion.

Adamantly, petitioner insists that the case at bar differs from *Repol* since the herein assailed Orders constituted a final order of the COMELEC (Second Division) on that

particular issue. Moreover, petitioner maintains that the COMELEC *patently* committed grave abuse of discretion.

We cannot subscribe to petitioner's proposition. The landmark case of *Repol*, as affirmed in the subsequent cases of *Soriano, Jr. v. COMELEC*<sup>[6]</sup> and *Blanco v. COMELEC*,<sup>[7]</sup> leaves no room for equivocation.

Reviewing well-settled jurisprudence on the power of this Court to review an order, whether final or interlocutory, or final resolution of a division of the COMELEC, *Soriano* definitively ruled, thus:

In the 2004 case of *Repol v. Commission on Elections*, the Court cited *Ambil* and held that this Court has no power to review *via* certiorari an interlocutory order or even a final resolution of a division of the COMELEC. However, the Court held that an exception to this rule applies where the commission of grave abuse of discretion is apparent on its face. In *Repol*, what was assailed was a *status quo ante* Order without any time limit, and more than 20 days had lapsed since its issuance without the COMELEC First Division issuing a writ of preliminary injunction. The Court held that the *status quo ante* Order of the COMELEC First Division was actually a temporary restraining order because it ordered Repol to cease and desist from assuming the position of municipal mayor of Pagsanghan, Samar and directed Ceracas to assume the post in the meantime. Since the *status quo ante* Order, which was qualified by the phrase "until further orders from this Commission," had a lifespan of more than 20 days, this Order clearly violates the rule that a temporary restraining order has an effective period of only 20 days and automatically expires upon the COMELEC's denial of preliminary injunction. The Court held:

"Only final orders of the COMELEC in Division may be raised before the COMELEC *en banc*. Section 3, Article IX-C of the 1987 Constitution mandates that only motions for reconsideration of *final decisions* shall be decided by the COMELEC *en banc*, thus:

SEC. 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.* (Emphasis supplied.)

Under this constitutional provision, the COMELEC *en banc* shall decide motions for reconsideration only of "*decisions*" of a Division, meaning those acts having a *final* character. Clearly, the assailed *status quo ante* Order, being interlocutory, should first be resolved by the COMELEC First Division *via* a motion for reconsideration.

Furthermore, the present controversy does not fall under any of the instances over which the COMELEC *en banc* can take cognizance of the case. Section 2, Rule 3 of the 1993 COMELEC Rules of Procedure