

EN BANC

[G.R. No. 191084, March 25, 2010]

JOSELITO R. MENDOZA, PETITIONER, VS. COMMISSION ON ELECTIONS AND ROBERTO M. PAGDANGANAN, RESPONDENTS.

D E C I S I O N

PEREZ, J.:

When the language of the law is clear and explicit, there is no room for interpretation, only application. And if statutory construction be necessary, the statute should be interpreted to assure its being in consonance with, rather than repugnant to, any constitutional command or prescription.^[1] It is upon these basic principles that the petition must be granted.

The factual and procedural antecedents are not in dispute.

Petitioner Joselito R. Mendoza was proclaimed the winner of the 2007 gubernatorial election for the province of Bulacan, besting respondent Roberto M. Pagdanganan by a margin of 15,732 votes. On 1 June 2007, respondent filed the **Election Protest** which, anchored on the massive electoral fraud allegedly perpetrated by petitioner, was raffled to the Second Division of the Commission on Elections (COMELEC) as EPC No. 2007-44. With petitioner's filing of his **Answer with Counter-Protest** on 18 June 2007, the COMELEC proceeded to conduct the preliminary conference and to order a revision of the ballots from the contested precincts indicated in said pleadings.

Upon the evidence adduced and the memoranda subsequently filed by the parties, the COMELEC Second Division went on to render the 1 December 2009 Resolution, which annulled and set aside petitioner's proclamation as governor of Bulacan and proclaimed respondent duly elected to said position by a winning margin of 4,321 votes. Coupled with a directive to the Department of Interior and Local Government to implement the same, the resolution ordered petitioner to immediately vacate said office, to cease and desist from discharging the functions pertaining thereto and to cause a peaceful turn-over thereof to respondent.

Dissatisfied, petitioner filed a **Motion for Reconsideration** of the foregoing resolution with the COMELEC *En Banc*. Against respondent's **Motion for Execution of Judgment Pending Motion for Reconsideration**, petitioner also filed an **Opposition to the Motion for Execution** before the COMELEC Second Division. On 8 February 2010, however, the COMELEC *En Banc* issued a Resolution, effectively disposing of the foregoing motions/incidents in this wise:

WHEREFORE, in view of the foregoing, the Commission *En Banc* **DENIES** the Motion for Reconsideration for lack of merit. The Resolution

of the Commission (Second Division) promulgated on December 1, 2009 **ANNULING** the proclamation of **JOSELITO R. MENDOZA** as the duly elected Governor of Bulacan and **DECLARING ROBERTO M. PAGDANGANAN** as duly elected to said Office is **AFFIRMED** with modification.

Considering the proximity of the end of the term of office involved, this Resolution is declared immediately executory.

ACCORDINGLY, the Commission *En Banc* hereby **ISSUES** a **WRIT OF EXECUTION** directing the Provincial Election Supervisor of Bulacan, in coordination with the DILG Provincial Operations Officer to implement the Resolution of the Commission (Second Division) dated December 1, 2009 and this Resolution of the Commission *En Banc* by ordering **JOSELITO R. MENDOZA** to **CEASE** and **DESIST** from performing the functions of Governor of the Province of Bulacan and to **VACATE** said office in favor of **ROBERTO M. PAGDANGANAN**.

Let a copy of this Resolution be furnished the Secretary of the Department of Interior and Local Government, the Provincial Election Supervisor of Bulacan, and the DILG Provincial Operations Officer of the Province of Bulacan. (Underscoring supplied)

On 11 February 2010, petitioner filed before the COMELEC an ***Urgent Motion to Recall the Resolution Promulgated on February 8, 2010*** on the following grounds: (a) lack of concurrence of the majority of the members of the Commission pursuant to Section 5, Rule 3 of the ***COMELEC Rules of Procedure***; (b) lack of re-hearing pursuant to Section 6, Rule 18 of the Rules; and (c) lack of notice for the promulgation of the resolution pursuant to Section 5, Rule 18 of said Rules. Invoking Section 13, Rule 18 of the same Rules, petitioner additionally argued that the resolution pertained to an ordinary action and, as such, can only become final and executory after 30 days from its promulgation.

On 12 February 2010, petitioner filed the instant ***Petition for Certiorari with an Urgent Prayer for the Issuance of a Temporary Restraining Order and/or a Status Quo Order and Writ of Preliminary Injunction***. Directed against the 8 February 2010 Resolution of the COMELEC *En Banc*, the petition is noticeably anchored on the same grounds raised in petitioner's urgent motion to recall the same resolution before the COMELEC. In addition, the petitioner disputes the appreciation and result of the revision of the contested ballots.

In the meantime, it appears that the COMELEC *En Banc* issued a 10 February 2010 Order, scheduling the case for re-hearing on 15 February 2010, on the ground that ***"there was no majority vote of the members obtained in the Resolution of the Commission En Banc promulgated on February 8, 2010."*** At said scheduled re-hearing, it further appears that the parties agreed to submit the matter for resolution by the COMELEC *En Banc* upon submission of their respective memoranda, without further argument. As it turned out, the deliberations which ensued again failed to muster the required majority vote since, with three (3) Commissioners not taking part in the voting, and only one dissent therefrom, the assailed 1 December 2009 Resolution of the COMELEC Second Division only

garnered three concurrences.

In their respective **Comments** thereto, both respondent and the Office of the Solicitor General argue that, in addition to its premature filing, the petition at bench violated the rule against forum shopping. Claiming that he received the 10 February 2010 Order of the COMELEC *En Banc* late in the morning of 12 February 2010 or when the filing of the petition was already underway, petitioner argued that: (a) he apprised the Court of the pendency of his ***Urgent Motion to Recall the Resolution Promulgated on 8 February 2010***; and, (b) that the writ of execution ensconced in said resolution compelled him to resort to the petition for *certiorari* before us.

On 4 March 2010, the COMELEC *En Banc* issued an Order for the issuance of a Writ of Execution directing the implementation of the 1 December 2009 Resolution of the COMELEC Second Division. While the COMELEC Electoral Contests Adjudication Department (ECAD) issued the corresponding Writ of Execution on 5 March 2010, the record shows that COMELEC *En Banc* issued an Order on the same date, directing the ECAD to deliver said 4 March 2010 Order and 5 March 2010 Writ of Execution by personal service to the parties. Aggrieved, petitioner filed the following motions with the COMELEC *En Banc* on 5 March 2010, viz.: (a) ***Urgent Motion to Declare Null and Void and Recall Latest En Banc Resolution Dated March 4, 2010***; and, (b) ***Urgent Motion to Set Aside 4 March 2010 En Banc Resolution Granting Protestant's Motion for Execution Pending Motion for Reconsideration***.

On 8 March 2010, petitioner filed before us a ***Supplement to the Petition with a Most Urgent Reiterating Motion for the Issuance of a Temporary Restraining Order or a Status Quo Order***. Contending that respondent's protest should have been dismissed when no majority vote was obtained after the re-hearing in the case, petitioner argues that: (a) the 4 March 2010 Order and 5 March 2010 Writ of Execution are null and void; (b) no valid decision can be rendered by the COMELEC *En Banc* without the appreciation of the original ballots; (c) the COMELEC ignored the Court's ruling in the recent case of *Corral v. Commission on Elections*;^[2] and (d) the foregoing circumstances are indicative of the irregularities which attended the adjudication of the case before the Division and *En Banc* levels of the COMELEC.

Despite receipt of respondent's ***Most Respectful Urgent Manifestation*** which once again called attention to petitioner's supposed forum shopping, the Court issued a Resolution dated 9 March 2010 granting the ***Status Quo Ante Order*** sought in the petition. With respondent's filing of a ***Manifestation and Comment*** to said supplemental pleading on 10 March 2010, petitioner filed a ***Manifestation with Motion to Appreciate Ballots Invalidated as Written by One Person and Marked Ballot*** on 12 March 2010.

The submissions, as measured by the election rules, dictate that we grant the petition, set aside and nullify the assailed resolutions and orders, and order the dismissal of respondent's election protest.

The Preliminaries

More than the justifications petitioner proffers for the filing of the petition at bench,

the public interest involved in the case militates against the dismissal of the pleading on technical grounds like forum shopping. On the other hand, to rule that petitioner should have filed a new petition to challenge the 4 March 2010 Order of the COMELEC *En Banc* is to disregard the liberality traditionally accorded amended and supplemental pleadings and the very purpose for which supplemental pleadings are allowed under Section 6, Rule 10 of the 1997 Rules of Civil Procedure.^[3] More importantly, such a course of action would clearly be violative of the injunction against multiplicity of suits enunciated in a long *catena* of decisions handed down by this Court.

The Main Matter

Acting on petitioner's motion for reconsideration of the 1 December 2009 Resolution issued by the COMELEC Second Division, the COMELEC *En Banc*, as stated, initially issued the Resolution dated 8 February 2010, denying the motion for lack of merit and declaring the same resolution immediately executory. However, even before petitioner's filing of his ***Urgent Motion to Recall the Resolution Promulgated on 8 February 2010*** and the instant ***Petition for Certiorari with an Urgent Prayer for the Issuance of a Temporary Restraining Order and/or a Status Quo Order and Writ of Preliminary Injunction***, the record shows that the COMELEC *En Banc* issued the 10 February 2010 Resolution, ordering the re-hearing of the case on the ground that "***there was no majority vote of the members obtained in the Resolution of the Commission En Banc promulgated on February 8, 2010.***" Having conceded one of the grounds subsequently raised in petitioner's ***Urgent Motion to Recall the Resolution Promulgated on February 8, 2010***, the COMELEC *En Banc* significantly failed to obtain the votes required under Section 5(a), Rule 3 of its own **Rules of Procedure**^[4] for a second time.

The failure of the COMELEC *En Banc* to muster the required majority vote even after the 15 February 2010 re-hearing should have caused the dismissal of respondent's ***Election Protest***. Promulgated on 15 February 1993 pursuant to Section 6, Article IX-A and Section 3, Article IX-C of the Constitution, the **COMELEC Rules of Procedure** is clear on this matter. Without any trace of ambiguity, Section 6, Rule 18 of said Rule categorically provides as follows:

Sec. 6. *Procedure if Opinion is Equally Divided.* - When the Commission *en banc* is equally divided in opinion, or the necessary majority cannot be had, the case shall be reheard, and if on rehearing no decision is reached, the action or proceeding shall be dismissed if originally commenced in the Commission; in appealed cases, the judgment or order appealed from shall stand affirmed; and in all incidental matters, the petition or motion shall be denied.

The propriety of applying the foregoing provision according to its literal tenor cannot be gainsaid. As one pertaining to the election of the provincial governor of Bulacan, respondent's ***Election Protest*** was originally commenced in the COMELEC, pursuant to its exclusive original jurisdiction over the case. Although initially raffled to the COMELEC Second Division, the elevation of said election protest on motion for reconsideration before the Commission *En Banc* cannot, by any stretch of the imagination, be considered an appeal. Tersely put, there is no appeal within the

COMELEC itself. As aptly observed in the lone dissent penned by COMELEC Commissioner Rene V. Sarmiento, respondent's ***Election Protest*** was filed with the Commission "at the first instance" and should be, accordingly, considered an action or proceeding "originally commenced in the Commission."

The dissent reads Section 6 of COMELEC Rule 18 to mean exactly the opposite of what it expressly states. Thus was made the conclusion to the effect that since no decision was reached by the COMELEC *En Banc*, then the decision of the Second Division should stand, which is squarely in the face of the Rule that when the Commission *En Banc* is equally divided in opinion, or the necessary majority cannot be had, the case shall be re-heard, and if on re-hearing, no decision is reached, the action or proceeding shall be dismissed if originally commenced in the Commission. The reliance is on Section 3, Article IX(C) of the Constitution which provides:

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*.

The dissent reasons that it would be absurd that for a lack of the necessary majority in the motion for reconsideration before the COMELEC *En Banc*, the original protest action should be dismissed as this would render nugatory the constitutional mandate to authorize and empower a division of the COMELEC to decide election cases.

We cannot, in this case, get out of the square cover of Section 6, Rule 18 of the COMELEC Rules. The provision is not violative of the Constitution.

The Rule, in fact, was promulgated obviously pursuant to the Constitutional mandate in the first sentence of Section 3 of Article IX(C). Clearly too, the Rule was issued "in order to expedite disposition of election cases" such that even the absence of a majority in a Commission *En Banc* opinion on a case under reconsideration does not result in a non-decision. Either the judgment or order appealed from "shall stand affirmed" or the action originally commenced in the Commission "shall be dismissed."

It is easily evident in the second sentence of Section 3 of Article IX(C) that all election cases before the COMELEC are passed upon in one integrated procedure that consists of a hearing and a decision "in division" and when necessitated by a motion for reconsideration, a decision "by the Commission *En Banc*."

What is included in the phrase "all such election cases" may be seen in Section 2(2) of Article IX(C) of the Constitution which states:

Section 2. The Commission on Elections shall exercise the following powers and functions:

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