

EN BANC

[G.R. No. 178259, March 13, 2009]

**ARTURO F. PACIFICADOR AND JOVITO C. PLAMERAS, JR.,
PETITIONERS VS. COMMISSION ON ELECTIONS (FIRST
DIVISION) COMPRISED OF HON. COMMISSIONERS
RESURRECION BORRA AND ROMEO A. BRAWNER, THE NEW
SPECIAL PROVINCIAL BOARD OF CANVASSERS OF THE
PROVINCE OF ANTIQUE COMPRISED OF ATTY. DAISY DACUDAO-
REAL, ATTY. JESSIE SUAREZ AND ATTY. MAVIL V. MAJARUCON,
AND SALVACION Z. PEREZ, RESPONDENTS.**

D E C I S I O N

CARPIO MORALES, J.:

The present petition, the Court gathers from its allegations, is one for Certiorari, ^[1] Prohibition and Injunction.

During the May 14, 2007 elections, Arturo F. Pacificador and Jovito C. Plameras, Jr. (petitioners), and Salvacion Z. Perez (private respondent), then the incumbent Governor of Antique, ran as candidates for the position of Governor.

Alleging violation of Section 261, ^[2] paragraphs O, V and W of the Omnibus Election Code, petitioners filed on April 23, 2007 with the Office of the Provincial Election Supervisor a case ^[3] for disqualification (disqualification case) against respondent and other members of the Nationalist People's Coalition-Antique ticket.

Petitioners claimed that on April 4, 2007, under private respondent's order, Provincial Engineer Vicente Dalumpines sent a letter to the chairmen of the different *barangays* of Sibalom, Antique inviting them to attend a program for the resumption of the construction of the *Solong* Bridge on April 10, 2007 at 10 o'clock in the morning at the project site; and that, accordingly, the chairmen of sixteen (16) *barangays* went to the project site on April 10, 2007 to attend the program which turned out to also serve as a proclamation program for private respondent's party, the Nationalist People's Coalition, as the program of activities given out to the attendees showed.

Petitioners thus concluded that what was supposed to be a simple program heralding the resumption of the *Solong* Bridge project turned out to be a political rally where private respondent's party-mates took turns in speaking and soliciting the attendees' support for their respective candidacies, and culminated in private respondent's distribution of checks to the chairmen of six (6) *barangays* of Sibalom town, drawn from the account of the Provincial Government.

Petitioners went on to allege that upon distributing the checks, private respondent instructed the recipients to direct their respective *barangay* treasurers to issue

Official Receipts in favor of the Provincial Government, to be antedated to March 29, 2007 in order to circumvent COMELEC Resolution No. 7707 prohibiting disbursements or expenditures for public works, social services and development from March 30, 2007 to May 14, 2007.

Finally, petitioners alleged that after private respondent delivered her keynote speech, she, as the Nationalist People's Coalition candidate for governor, and the rest of the party's candidates for the position of Vice Governor down to the Sangguniang Bayan of Sibalom were presented and proclaimed.

The disqualification case remained unresolved even after the election.

After the elections or on May 18, 2007, petitioners filed a petition for suspension of the canvassing of votes for the position of Governor and/or suspension of the proclamation of private respondent before the COMELEC which docketed it as EM07-041 (suspension case). They alleged that the canvassing of votes on May 15, 2007 by the Provincial Board of Canvassers (PBOC) composed of Atty. Gil Barcenal as Chairman, Prosecutor Napoleon Abiera as Vice-Chairman, and Corazon Brown as Member-Secretary (Barcenal PBOC) was attended by fraud because the election returns were prepared under duress and bore fraudulent entries.

By Resolution of May 21, 2007, the Barcenal PBOC ruled against petitioner Pacificador due to insufficiency of evidence, hence, he appealed to the COMELEC, which appeal was denominated as REF No. 07-066 (PBOC appeal).

Meanwhile, the COMELEC's Second Division, by Resolution of May 28, 2007,^[4] ruled against petitioners on the suspension case, finding "no overwhelming need to suspend the canvassing of votes as well as the proclamation of the candidate who garners the most number of votes for the election for Governor of the province of Antique."

In the meantime, the COMELEC First Division, by Resolution^[5] dated June 7, 2007, dismissed petitioners' PBOC appeal and created a new PBOC to be composed of Atty. Renato A. Mabutay as Chairman, Atty. Tomas Valera as Vice-Chairman, and Atty. Elizabeth Doronila as Member-Secretary (Mabutay PBOC). It noted that petitioners filed their Notice of Appeal on May 21, 2007, but that no appeal was filed within five days as required under Sec. 20 (f) of Republic Act No. 7166^[6] and Sec. 9 of the COMELEC Rules of Procedure.^[7]

In the *interregnum*, private respondent filed before the COMELEC an "Urgent Motion to Reconvene the New PBOC of Antique and Proclaim the Winning Candidate for the Position of Governor Down to the Position of Sangguniang Panlalawigan."^[8] Acting on said Motion, the COMELEC First Division issued on June 22, 2007 a Resolution relieving the Mabutay PBOC and creating, in its stead, a still another PBOC composed of respondents Atty. Daisy Real, Atty. Jessie Suarez and Atty. Mavil Majarucon (Majarucon PBOC) as Chairman, Vice-Chairman and Member-Secretary, respectively, and ordering it to convene and proclaim the winning candidates. On even date, the Marajucon PBOC issued a Notice^[9] to the parties announcing that it would convene on June 29, 2007 at 10:00 in the morning, at the Capitol Building in San Jose, Antique, to proclaim the winning candidates, prompting petitioners to file the present petition against the COMELEC and the Marajucon PBOC to enjoin the

proclamation of private respondent and the enforcement of the June 22, 2007 Resolution.

Petitioners contend that the Majarucon PBOC is illegal, being violative of Sec. 2 of COMELEC Resolution No. 7859 promulgated on April 17, 2007 which provides that the relief of the Board of Canvassers (BOC) must be for cause, and Sec. 21 of Republic Act. No. 6646 (An Act Introducing Additional Reforms in the Electoral System and for other Purposes) which states that the substitute BOC must be composed of the therein named officials in their order of appearance, viz, the Provincial Auditor, the Register of Deeds, the Clerk of Court nominated by the Executive Judge of the Regional Trial Court, and any other available appointive provincial official.

Petitioners maintain that the COMELEC First Division, in creating the Majarucon PBOC solely for the purpose of proclaiming the winning candidates, had the intention of "railroading" the proceedings, despite the fact that the votes garnered by the candidates for the position of Governor were, at the time of the filing of the petition, not yet recorded in the official Certificates of Canvass; that several actions were still pending before the COMELEC in Manila; and that they had not even received a copy of the June 22, 2007 Resolution.

Finally, petitioners claim that the June 22, 2007 Resolution is void *ab initio* as it was issued only by a Division, in contravention of Secs. 5 and 6, Rule 19 of the COMELEC Rules of Procedure^[10] which provide that any Motion for Reconsideration filed before the COMELEC pertaining to any resolution, order or ruling of a Division shall be heard by the COMELEC *en banc*.

In its Comment^[11] which was adopted by private respondent, the COMELEC First Division, through the Office of the Solicitor General, seeks the dismissal of the petition on the ground that the certified true copy of the assailed June 22, 2007 Resolution was not attached thereto, as required under Sec. 5, Rule 64 of the 1997 Rules of Procedure. And it posits that a petition for prohibition, such as the one at bar, will not lie to challenge a final and executory resolution of the COMELEC, following Sec. 3, Art. IX-C of the Constitution^[12] *vis a vis* Sec. 13, Rule 18 of the COMELEC Rules of Procedure;^[13] and that since petitioners did not move for the reconsideration of the June 22, 2007 Resolution before the COMELEC *en banc* prior to their direct resort to this Court, then the questioned resolution is deemed to have attained finality.

The COMELEC further posits that petitioners' prayer for a writ of preliminary injunction has become moot. It points out that what petitioners are questioning is the legality of the composition of the Majarucon PBOC which, under Sec. 241 of the Omnibus Election Code, is a pre-proclamation controversy. Hence, so it argues, private respondent's proclamation on June 29, 2007 as the winner of the gubernatorial elections has rendered the petition moot and academic. It adds that the proper remedy of petitioners should have been to institute an electoral protest.

Finally, the COMELEC emphasizes that under Sec. 277 of the Omnibus Election Code,^[14] it has the power of direct control and supervision over BOCs, hence, its act of relieving the Mabutay PBOC, through its June 22, 2007 Resolution, due to the filing of indirect contempt and insubordination cases against its members, was valid.

In their Reply,^[15] petitioners argue that they are not disputing the COMELEC's authority to change the PBOC's composition, but that the COMELEC's choice of substituting officials is restricted by Sec. 21 of Republic Act. No. 6646, hence, its choice of COMELEC officials Attys. Real, Suarez and Majarucon was tainted with grave abuse of discretion. The June 22, 2007 Resolution being null and void, petitioners concluded that all acts of the Marajucon PBOC, including private respondent's proclamation, is also null and void.

The petition is bereft of merit.

At the outset, the Court notes that petitioners failed to attach a copy of the assailed June 22, 2007 Resolution of the COMELEC, in violation of Sec. 5, Rule 64 of the Rules of Civil Procedure which provides:

Sec. 5. Form and contents of petition. -

x x x x

The petition shall be accompanied by a clearly legible duplicate original or certified true copy of the judgment, final order or resolution subject thereof, together with certified true copies of such material portions of the record as referred to therein and other documents relevant and pertinent thereto. The requisite number of copies of the petition shall contain plain copies of all documents attached to the original copy of said petition.

x x x x

The failure of petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition. (Emphasis supplied)

The Court has repeatedly held that the right to appeal is merely a statutory privilege that can be exercised only in the manner and in accordance with the provisions of law. Thus, save for the most persuasive of reasons, strict compliance with procedural rules is enjoined to facilitate the orderly administration of justice, and one who seeks to avail oneself of the right to appeal must comply with the requirements of the Rules. Failure to do so often leads to the loss of the right to appeal.^[16]

Even if the Court relaxes the Rules to allow the present petition, however, just the same it fails, there being no grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the COMELEC when it rendered the assailed June 22, 2007 Resolution.

x x x The office of prohibition is to prevent the unlawful and oppressive exercise of authority and is directed against proceedings that are done without or in excess of jurisdiction, or with grave abuse of discretion, there being no appeal or other plain, speedy, and adequate remedy in the ordinary course of law. Stated differently, **prohibition is the remedy to prevent inferior courts, corporations, boards, or persons from usurping or exercising a jurisdiction or power with which**

they have not been vested by law.^[17] (Emphasis supplied)

Under Sec. 2, Article IV-C of the 1987 Constitution, the COMELEC exercises original jurisdiction over all contests, relating to the election, returns, and qualifications of all elective regional, provincial, and city officials, and appellate jurisdiction over election contests involving elective municipal and barangay officials, and has supervision and control over the board of canvassers. The COMELEC sitting *en banc*, however, does not have the authority to hear and decide election cases, including pre-proclamation controversies in the first instance, as the COMELEC in division has such authority. The COMELEC *en banc* can exercise jurisdiction only on motions for reconsideration of the resolution or decision of the COMELEC in division.

^[18]

In issuing the June 22, 2007 Resolution relieving the Mabutay PBOC and creating the Marajucon PBOC, the COMELEC First Division was merely exercising its mandate under Sec. 227 of the Omnibus Election Code which reads:

Sec. 227. Supervision and control over board of canvassers. - **The Commission shall have direct control and supervision over the board of canvassers.**

Any member of the board of canvassers may, at any time, be relieved for cause and substituted motu proprio by the Commission. (Emphasis supplied)

Petitioners' contention that the COMELEC's choice of officials to substitute the members of the BOC is limited only to those enumerated under Sec. 21 of Republic Act. No. 6646 is untenable. The said provision provides:

Sec. 21. *Substitution of Chairman and Members of the Board of Canvassers.* - In case of non-availability, absence, disqualification due to relationship, or incapacity for any cause of the chairman, the Commission shall appoint as substitute, a ranking lawyer of the Commission. **With respect to the other members of the board, the Commission shall appoint as substitute the following in the order named: the Provincial Auditor, the Registrar of Deeds, the Clerk of Court nominated by the Executive Judge of the Regional Trial Court, and any other available appointive provincial official in the case of the provincial board of canvassers;** the officials in the city corresponding to those enumerated, in the case of the city board of canvassers; and the Municipal Administrator, the Municipal Assessor, the Clerk of Court nominated by the Executive Judge of the Municipal Trial Court, or any other available appointive municipal officials, in the case of the municipal board of canvassers. (Emphasis supplied)

Contrary to petitioners' assertion, the enumeration above is not exclusive. Members of BOCs can be filled up by the COMELEC not only from those expressly mentioned in the above-quoted provision, but **from others outside if the former are not available.**^[19]

It bears noting that pursuant to Rule 18 of the Omnibus Election Code, decisions and resolutions of any division of the COMELEC in special cases become final and