

## EN BANC

[ G.R. NO. 169885, July 25, 2006 ]

### ARTEMIO PEDRAGOZA, PETITIONER, VS. COMMISSION ON ELECTIONS AND FRANCISCO SUMULONG, JR., RESPONDENTS.

#### DECISION

**CARPIO, J.:**

##### The Case

This is a petition for certiorari<sup>[1]</sup> of the Resolution dated 30 September 2005 of the Commission on Elections ("COMELEC") *En Banc* affirming the ruling of the COMELEC First Division ("First Division") in an election protest case involving the office of Punong Barangay of De La Paz, Antipolo City.

##### The Facts

Petitioner Artemio Pedragoza ("petitioner") and respondent Francisco Sumulong, Jr. ("respondent") were among the candidates for Punong Barangay of De La Paz, Antipolo City in the 15 July 2002 Sangguniang Kabataan and Barangay elections. Petitioner was proclaimed winner by a margin of 39 votes.<sup>[2]</sup> Claiming that irregularities marred the elections, respondent filed an election protest in the Municipal Trial Court in Cities, Antipolo City ("trial court"). Respondent sought a recount of ballots from 25 out of De La Paz's 103 precincts.

In his Answer, petitioner denied respondent's claim and filed a counter-protest, contending that he was the one prejudiced by election irregularities.

The trial court revised the contested ballots.

##### The Ruling of the Trial Court

On 20 January 2003, the trial court rendered judgment dismissing the election protest and counter-protest. The trial court noted that petitioner and respondent raised substantially identical objections<sup>[3]</sup> to the contested ballots and other election paraphernalia. After going over these grounds, the trial court ruled that the objections did not suffice to change the election results.

Respondent appealed to the COMELEC. The appeal, docketed as EAC No. 42-2003, was raffled to the First Division.

##### The Ruling of the COMELEC

In its Resolution of 18 May 2005, the First Division granted respondent's appeal, reversed the trial court's Decision, annulled petitioner's proclamation, declared

respondent as the duly elected Punong Barangay, and ordered petitioner to vacate the contested office and to desist from performing the functions of that office. The First Division found respondent to have won the election by 19 votes.

The First Division noted that the parties invoked the following grounds for the revision of ballots: (1) the assailed ballots are marked because unnecessary words or figures, identifying markings, erasures, and retracing of letters were manifest on the ballots or that distinctive circles, lines, or crosses were written on the ballots; (2) pairs or sets of ballots were written by one person or that two or more persons participated in filling-up one ballot; and (3) certain ballots are invalid because they were not signed at the back by the Chairman of the Board of Election Tellers. Applying pertinent rules of ballot appreciation, the First Division deducted 75 invalid votes from, and added five valid votes to, petitioner's tally, leaving a total of 2,189 votes. On the other hand, the First Division deducted 12 invalid votes from respondent's tally, leaving a total of 2,208 votes. Thus the 19-vote margin in respondent's favor.

Petitioner sought reconsideration with the COMELEC *En Banc*, listing the ballots he wanted re-examined. However, in the per curiam Resolution of 30 September 2005, the COMELEC *En Banc* denied petitioner's motion and affirmed the First Division's findings. All the five incumbent COMELEC Commissioners, namely, Benjamin S. Abalos, Rufino S.B. Javier, Resurreccion Z. Borra, Mehol K. Sadain, and Florentino A. Tuason, Jr. signed the Resolution. Commissioners Sadain and Tuason took no part, without, however, indicating the reasons for their inhibition.

Petitioner raises two contentions in this petition: (1) that the Court should invalidate the Resolution of 30 September 2005 for having been promulgated without a quorum because of the failure of Commissioners Sadain and Tuason to indicate the reasons for their taking no part in the case and, alternatively, (2) that the COMELEC *En Banc* committed grave abuse of discretion in affirming the findings of the First Division.

### **The Issues**

The petition raises the following issues:

- 1) Whether the failure of Commissioners Sadain and Tuason to indicate their reasons for taking no part in the case annuls the Resolution of 30 September 2005 and, if in the negative,
- 2) Whether the COMELEC *En Banc* committed grave abuse of discretion in affirming the First Division's findings.

### **The Ruling of the Court**

The petition has no merit. We hold that the Resolution of 30 September 2005 is valid and that the COMELEC *En Banc* did not commit grave abuse of discretion in issuing that ruling.

### ***The Failure of Commissioners Sadain and Tuason to State their Reasons for Taking No Part in***

***the Resolution of 30 September 2005  
does not Annul that Ruling***

Under Section 1, Rule 18 of the COMELEC Rules of Procedure<sup>[4]</sup> ("COMELEC Rules"), a COMELEC member who takes no part in a decision or resolution must state the reason for his inhibition. The provision states:

*Procedure in Making Decisions.* -<sup>1</sup> The conclusions of the Commission in any case submitted to it for decision *en banc* or in Division shall be reached in consultation before the case is assigned by raffle to a Member for the writing of the opinion of the Commission or the Division and a certification to this effect signed by the Chairman or the Presiding Commissioner, as the case may be, shall be incorporated in the decision.

**Any Member who took no part, or dissented, or abstained from a decision or resolution must state the reason therefor.** (Emphasis supplied)

Section 13, Article VIII of the 1987 Constitution imposes an identical requirement on the members of this Court and all lower collegiate courts.<sup>[5]</sup> By intent of the Constitution's framers, as reflected in the language of the text, this requirement is mandatory.<sup>[6]</sup> Owing to the exact identity of the two provisions' phrasing of the requirement in question, Section 1, Rule 18 (which, in all probability, was lifted from Section 13, Article VIII), must be of mandatory nature itself.

There is no dispute here that two COMELEC Commissioners took no part in the 30 September 2005 Resolution without stating the reasons for their inhibition. Petitioner is of the view that this omission annuls the 30 September 2005 Resolution for lack of quorum, with the two non-participating Commissioners' votes becoming "inexistent."<sup>[7]</sup>

We cannot sustain this view.

To begin with, even if the votes of Commissioners Sadain and Tuason are disregarded (for whatever reason), a quorum still remains, with three of the then five<sup>[8]</sup> COMELEC Commissioners voting to deny petitioner's motion for reconsideration. The more important question is whether, despite such quorum, the 30 September 2005 Resolution should be invalidated for failure of the two Commissioners to state the reasons for their inhibition.

While there is no extant record of the COMELEC's proceedings in adopting Section 1, Rule 18 of the COMELEC Rules, the parallel deliberations of the framers of the 1987 Constitution on Section 13, Article VIII shed light on the purpose of the rule requiring a member of this Court and all lower collegiate courts to state his reason for taking no part in a case. Because of the exact identity of the rule in question as stated in Section 1, Rule 18 and Section 13, Article VIII, these deliberations apply here by analogy.

In discussing the purpose of the rule in question, which was absent in the 1935 and 1973 Constitutions,<sup>[9]</sup> Constitutional Commissioner and former Chief Justice Roberto Concepcion explained that it was meant to "[see] to it that all justices participate [in the promulgation of decisions] x x x," thus: