

EN BANC

[G.R. No. 160465, May 27, 2004]

ROMEO M. ESTRELLA, PETITIONER, VS. COMMISSION ON ELECTIONS, HON. COMMISSIONER RALPH C. LANTION AND ROLANDO F. SALVADOR, RESPONDENTS.

R E S O L U T I O N

CARPIO MORALES, J.:

From this Court's Resolution of April 28, 2004, private respondent Rolando F. Salvador seeks a reconsideration.

In his petition for certiorari filed before this Court, petitioner Romeo M. Estrella sought the nullification of the November 5, 2003 *Status Quo Ante* Order^[1] issued by the Commission on Elections (COMELEC) **En Banc** in **EAC No. A-10-2002**, "*Romeo M. Estrella v. Rolando F. Salvador*," directing the "parties to maintain the *status quo ante* order, which is the condition prevailing before the issuance" by the Regional Trial Court of Malolos of a writ of execution for the enforcement of said court's decision declaring petitioner as the duly elected mayor of Baliwag, Bulacan.

In the issuance of the questioned COMELEC En Banc *Status Quo Ante* Order, five (5) of the then incumbent **seven** (7) members of the COMELEC participated: Commissioners Benjamin Abalos, Sr., Luzviminda Tangcangco, Rufino S.B. Javier, Ressureccion Z. Borra and **Ralph C. Lantion**.

Commissioners Abalos, Tangcangco, Javier and Lantion voted for the issuance of said order, while Commissioner Borra dissented.

Commissioner Lantion previously inhibited in **SPR No. 21-2002**, a case pending before the COMELEC Second Division involving the same parties, thus necessitating the issuance of an order designating Commissioner Borra as his substitute. The substitution order was subsequently adopted in **EAC No. A-10-2002**. Parenthetically, petitioner had previously filed a Motion for Inhibition of Commissioner Lantion before the Second Division in **SPR No. 21-2002** which was denied, albeit on Motion for Reconsideration the Second Division, in its Resolution of May 7, 2002, noted that "Com[missioner] Lantion indicated for the record that he is no longer taking part in the proceedings in this case."

In the COMELEC En Banc *Status Quo Ante* Order, Commissioner Lantion stated in his handwriting that "his previous voluntary inhibition is only in the SPR cases and not in the EAC" and that "as further agreed in the Second Division, [he] will not participate in the Division deliberations but will vote when the case is elevated [to the] *en banc*."

In this Court's Resolution^[2] of April 28, 2004 now the subject of private respondent's Motion for Reconsideration, it was held that:

Commissioner Lantion's voluntary piecemeal inhibition cannot be countenanced. Nowhere in the COMELEC Rules does it allow a Commissioner to voluntarily inhibit with reservation. To allow him to participate in the En Banc proceedings when he previously inhibited himself in the Division is, absent any satisfactory justification, not only judicially unethical but legally improper and absurd.

Since Commissioner Lantion could not participate and vote in the issuance of the questioned order, thus leaving three (3) members concurring therewith, the necessary votes of four (4) or majority of the members of the COMELEC was not attained. The order thus failed to comply with the number of votes necessary for the pronouncement of a decision or order, as required under Rule 3, Section 5(a) of the COMELEC Rules of Procedure which provides:

Section 5. Quorum; Votes Required. – (a) When sitting en banc, four (4) Members of the Commission shall constitute a quorum for the purpose of transacting business. **The concurrence of a majority of the Members of the Commission shall be necessary for the pronouncement of a decision, resolution, order or ruling.**

WHEREFORE, the instant petition is **GRANTED**. The *Status Quo Ante* Order dated November 5, 2003 issued by the COMELEC *En Banc* is hereby **NULLIFIED**. This Resolution is **IMMEDIATELY EXECUTORY**. (Emphasis and underscoring supplied)

In seeking a reconsideration of the above-quoted Resolution, private respondent cites *Cua v. Commission on Elections*^[3] wherein this Court ruled:

After considering the issues and the arguments raised by the parties, the Court holds that the 2-1 decision rendered by the First Division was a valid decision under Article IX-A, section 7 of the Constitution. **Furthermore, the three members who voted to affirm the First Division constituted a majority of the five members who deliberated and voted thereon en banc and their decision is also valid under the aforecited constitutional provision.** x x x (Italics in the original; emphasis supplied)

Private respondent argues that "[f]ollowing the doctrine laid out in *Cua*, three (3) votes would have been sufficient to constitute a majority to carry the decision of the COMELEC *En Banc* as provided by the Constitution and the appropriate rules."^[4]

Section 5(a) of the COMELEC Rules of Procedure was lifted from Section 7, Article IX-A of the Constitution which provides:

SECTION 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. x x x (Emphasis and underscoring supplied)