

## EN BANC

[ G.R. No. 149800, November 21, 2002 ]

**RICARDO V. QUINTOS, PETITIONER, VS. COMMISSION ON ELECTIONS AND JOSE T. VILLAROSA, RESPONDENTS.**

### DECISION

**CARPIO, J.:**

Before us is a petition for *certiorari* with prayer for the issuance of a temporary restraining order and a writ of preliminary injunction under Rule 65 of the Rules of Court. Petitioner seeks to annul the Orders ("Assailed Orders" for brevity) dated August 27, 2001 and September 12, 2001 of the Commission on Elections' Second Division ("COMELEC" for brevity) in Election Protest Case No. 2001-34 entitled "Ricardo V. Quintos v. Jose T. Villarosa." The Assailed Orders deferred the delivery to the COMELEC of the protested and counter-protested ballot boxes ("Contested Ballot Boxes" for brevity) from the Municipality of Paluan, Occidental Mindoro. The same ballot boxes were also the subject of two pending municipal election protests<sup>[1]</sup> in the Regional Trial Court of Mamburao, Branch 44, Occidental Mindoro.

The COMELEC, under the Assailed Orders, gave the Regional Trial Court of Mamburao priority in the custody and revision of the ballots in the Contested Ballot Boxes. The Assailed Orders deviated from the order of preference prescribed in Section 2 of COMELEC Resolution No. 2812 promulgated on October 17, 1995. Under this COMELEC Resolution, when contested ballot boxes are the subject of simultaneous protests before the COMELEC and the Regional Trial Court, the COMELEC enjoys preference in the custody of the ballot boxes. Petitioner contends that in issuing the Assailed Orders, the COMELEC acted without or in excess of jurisdiction, or with grave abuse of discretion, and there is no appeal or any speedy remedy in the ordinary course of law.

Thus, this petition for *certiorari*.

#### The Antecedents

Petitioner Ricardo V. Quintos ("petitioner" for brevity) and private respondent Jose T. Villarosa ("private respondent" for brevity) were candidates for Governor of Occidental Mindoro in the May 14, 2001 elections. On May 26, 2001, the Provincial Board of Canvassers proclaimed private respondent winner with 57,136 votes. Petitioner received 56,043 votes and lost to private respondent by 1,093 votes.<sup>[2]</sup> Petitioner filed with the COMELEC an election protest, docketed as Election Protest Case No. 2001-34,<sup>[3]</sup> against private respondent claiming that massive fraud and illegal electoral practices were committed in the contested precincts (Precinct Nos. 13A and 14A, Barangay Lumangbayan, Municipality of Paluan) during the registration, the voting and the counting of the votes. Petitioner claimed that because of the fraud and illegal electoral practices, he was deprived of votes cast in his favor while private respondent was illegally benefited by votes which should not

be credited to him. After revision of the ballots in the protested precincts, petitioner prayed that he be declared the winner in the elections and thus be proclaimed as the duly elected Governor of the Province of Occidental Mindoro.

On June 15, 2001, private respondent filed his Answer with Counter-Protest and Counterclaim.<sup>[4]</sup> He counter-protested thirteen (13) ballot boxes from 13 precincts in the Municipality of Paluan, namely, Precinct Nos. 23A, 25A, 24A, 3A, 47A1/48A, 29A/30A, 35A, 27A/28A, 7A/8A, 26A1, 9A, 36A and 47A.

In a hearing on August 7, 2001, private respondent's counsel moved that the Regional Trial Court of Mamburao be allowed to take first custody of the Contested Ballot Boxes before their transmittal to the COMELEC. The Contested Ballot Boxes were also the subject of two election protests, pending before the Regional Trial Court of Mamburao, involving the positions of mayor and councilors in the Municipality of Mamburao.<sup>[5]</sup> The COMELEC issued an Order dated August 7, 2001 denying private respondent's motion because of COMELEC Resolution No. 2812 giving the COMELEC preference in the custody of the Contested Ballot Boxes over the Regional Trial Court.<sup>[6]</sup>

From the COMELEC's Order, private respondent filed a Manifestation and Motion for Partial Reconsideration.<sup>[7]</sup> Private respondent stated that petitioner identified only one (1) ballot box (Barangay Lumangbayan, Precinct No. 13A/14A [clustered]) in the Municipality of Paluan, Occidental Mindoro as subject of his protest. Private respondent, however, identified thirteen (13) ballot boxes from the same municipality in his counter-protest. Thus, the total number of Contested Ballot Boxes, both in the protest and counter-protest, is fourteen (14). Private respondent explained that the Contested Ballot Boxes were also the subject of two municipal election protests both filed with the Regional Trial Court of Mamburao, and both handled by counsel of private respondent. In an Order dated June 25, 2001,<sup>[8]</sup> the Regional Trial Court directed the Municipal Treasurer of Paluan to bring before the court the Contested Ballot Boxes.

Private respondent averred that if COMELEC Resolution No. 2812 were strictly implemented, the resolution of the election protests in the Municipality of Paluan would suffer undue delay. The COMELEC would take first custody of the 14 Contested Ballot Boxes. The resolution of the election protests in the Municipality of Paluan would have to wait for the COMELEC to complete its revision of the ballots in the Contested Ballot Boxes. Private respondent argued that if the COMELEC reconsidered its Order dated August 7, 2001, the local election protests would be resolved expeditiously without causing any undue delay in the resolution of petitioner's election protest and private respondent's counter-protest.

Private respondent prayed that the COMELEC allow the one ballot box (Precinct Nos. 13A/14A, Barangay Lumangbayan) from the Municipality of Paluan, subject of petitioner's protest, to be delivered first to the Regional Trial Court of Mamburao. The Regional Trial Court could transmit this one ballot box to the COMELEC after the revision of the ballots in the election protests pending with the trial court. Alternatively, private respondent prayed that the COMELEC first allow the delivery of the 13 ballot boxes subject of the counter-protest to the Regional Trial Court of Mamburao.

On August 27, 2001, the COMELEC rendered the Assailed Order granting private respondent's Manifestation and Motion for Partial Reconsideration subject to the following guidelines:

**"Accordingly**, the retrieval of the ballot box from Precinct No. 13A/14A of Barangay Lumangbayan, and those from the precincts mentioned in the aforementioned manifestation, all from the Municipality of Paluan, Occidental Mindoro, is hereby ordered deferred subject to the following guidelines:

1. That the said ballot boxes should be delivered to the Commission (Second Division) one (1) week prior to the termination of the revision of the other protested ballot boxes, the schedule of which shall be set after the delivery of the said ballot boxes; and
2. The Regional Trial Court of Mamburao, Occidental Mindoro, Branch 44, is requested to conduct the revision and appreciation proceedings in Election Cases Nos. 19 and 20 (Ocampo vs. Pangilinan and Terana vs. Velandria, respectively) in the most expeditious manner possible in order that the subject ballot boxes and other election documents can be turned over to the Commission in due time. No revision of ballots shall be conducted without prior notice being given to both parties in the above-entitled case.

SO ORDERED."<sup>[9]</sup>

On September 4, 2001, petitioner filed a Motion for Reconsideration<sup>[10]</sup> of the Order of the COMELEC dated August 27, 2001.

On September 12, 2001, the COMELEC issued the second Assailed Order,<sup>[11]</sup> the dispositive portion of which reads:

**"Wherefore**, in view of the foregoing, the Commission (Second Division) hereby **DENIES** the instant *Motion for Reconsideration*. It is however, emphasized that one (1) week prior to the completion of the revision of the protested ballots, the Regional Trial Court, Branch 44, of Mamburao, Occidental Mindoro shall be notified to transmit the ballot box of Precinct 13A/14A to this Commission whether or not the said court has completed its revision of the ballots therein.

SO ORDERED."

Hence, petitioner filed this petition for *certiorari* seeking the annulment of the Assailed Orders dated August 27, 2001 and September 12, 2001 based on the following grounds:

"1. The Manifestation and Motion for Partial Reconsideration is not verified pursuant to Sec. 3, Rule 19, Comelec Rules of Procedure and is considered an unsigned pleading which should be denied (Soller vs. Comelec, et al., G.R. No. 139853, September 5, 2000; Lalic vs. Casupanan, EAC No. 73-98, January 12, 2001, G.R. No. 146868, February 27, 2001).

2. The Order of August 27, 2001 was issued without giving the petitioner and other parties concerned the opportunity to comment/oppose the motion for partial

reconsideration filed by the respondent in violation of due process.

3. The Order of August 27, 2001 is impractical and would clog one ballot with 26 different exhibit marks as there are four (4) parties in Election Protest Case No. 19, RTC, Branch 44, Mamburao, Occidental Mindoro involving the Office of Mayor of Paluan, Occidental Mindoro as well as twenty-two (22) parties in Election Protest Case No. 20, RTC, Branch 44, Mamburao, Occidental Mindoro, involving the Office of Municipal Councilors of Paluan, Occidental Mindoro.

4. There is no compelling and urgent reason to disturb the order of preferences in the custody and revision of ballots and other election documents contained in the ballot boxes sequentially enumerated in Section 2 of Comelec Resolution No. 2812 promulgated October 17, 1995 and still enforced up to the present time.”<sup>[12]</sup>

In his Comment and Manifestation,<sup>[13]</sup> private respondent manifested that the Regional Trial Court of Mamburao had completed the revision of the ballots in the ballot box of Precincts 13A and 14A of Barangay Lumangbayan, Paluan. Private respondent submitted the supporting Certification<sup>[14]</sup> dated November 19, 2001 issued by the Clerk of Court of the trial court. Private respondent stated that the Assailed Orders of the COMELEC, which petitioner sought to restrain, were already implemented. The COMELEC could direct at any time the Regional Trial Court to transmit to the COMELEC in Manila the ballot box of Precincts 13A and 14A of Barangay Lumangbayan. Private respondent thus asserted that this development rendered the instant petition for *certiorari*, with prayer for a temporary restraining order and preliminary injunction, moot and academic.

In its Comment,<sup>[15]</sup> the Office of the Solicitor General, as counsel for the COMELEC, stated that the issue is already moot and academic because the trial court had completed its review of the ballot boxes included in petitioner’s protest. These ballot boxes are ready for transmittal to the COMELEC.

In his Reply, petitioner stated that while he concedes that indeed the Regional Trial Court had completed its review of the ballots subject of his protest, still the issue should not be considered moot and academic. Petitioner asserts that it is of paramount interest that the COMELEC strictly observe the order of preference in the custody and revision of ballots as prescribed by Section 2 of COMELEC Resolution No. 2812.

### The Issues

This petition raises the following issues:

1. Whether the COMELEC, in issuing the Assailed Orders giving the Regional Trial Court of Mamburao priority in the custody and revision of the ballots in the Contested Ballot Boxes, acted without or in excess of jurisdiction or with grave abuse of discretion because (a) there was no compelling reason to disturb the order of preference prescribed in Section 2 of COMELEC Resolution No. 2812; and (b) the Order dated August 27, 2001 is impractical.
2. Whether the Unverified Manifestation and Motion for Partial Reconsideration should have been denied.
3. Whether the failure to give petitioner the opportunity to comment or oppose private respondent’s Manifestation and Motion for Partial Reconsideration is a denial

of due process.

Since the Clerk of Court of the Regional Trial Court of Mamburao certified on November 19, 2001 that "the revision/counting of ballot boxes of Precincts 13A and 14A of Barangay Lumangbayan, Paluan, Occidental Mindoro has already been completed,"<sup>[16]</sup> the issue is moot and academic with respect to the ballot box subject of petitioner's protest. There is no showing, however, that the revision of ballots in the 13 ballot boxes of the 13 precincts in the Municipality of Paluan, which are the subject of the counter-protest, was also completed. Hence, the issue is not moot and academic with regard to the 13 counter-protested ballot boxes, the initial custody of which was also given to the Regional Trial Court of Mamburao in the Assailed Orders of the COMELEC.

### The Court's Ruling

We rule that the COMELEC did not act without or in excess of jurisdiction, or commit grave abuse of discretion, in issuing the Assailed Orders giving the Regional Trial Court of Mamburao first access to the Contested Ballot Boxes.

First Issue: (a) whether there is no compelling reason to disturb the order of preference in COMELEC Resolution No. 2812.

Petitioner contends that there is no compelling and urgent reason to disturb the order of preference in the custody of the Contested Ballot Boxes, which order is prescribed sequentially in Section 2 of COMELEC Resolution No. 2812. Petitioner alleges that private respondent's only reason in asking for observance of the order of preference is to delay the election protest. Petitioner points out that when the COMELEC promulgated Resolution No. 2812, the Electoral Tribunals and the COMELEC knew that delays would happen as a matter of course in the observance of the order of preference. Petitioner asserts that the rationale in the order of preference prescribed in COMELEC Resolution No. 2812 is the importance of the office involved insofar as the revision of the ballots is concerned. Petitioner maintains that if the ballots and other election documents in the Contested Ballot Boxes are initially placed in the custody of the COMELEC, the possibility of tampering of these ballots and documents is very remote, if not impossible.

COMELEC Resolution No. 2812 addresses "the matter of impounding, transfer and control of ballot boxes, election documents and paraphernalia which are subject of simultaneous protests before the Electoral Tribunals, the Commission and Regional Trial Courts." Section 2 of the Resolution provides as follows:

"Sec. 2. The following order of preference in the custody and revision of ballots and other documents contained in the ballot boxes shall be:

- 2.1 Presidential Electoral Tribunal (PET);
- 2.2 Senate Electoral Tribunal (SET);
- 2.3 House of Representatives Electoral Tribunal (HRET);
- 2.4 Commission on Elections (Commission);
- 2.5 Regional Trial Court (RTC)."