

EN BANC

[G.R. No. 152163, November 18, 2002]

SABDULLAH T. MACABAGO, PETITIONER, VS. COMMISSION ON ELECTIONS AND JAMAE M. SALACOP, RESPONDENTS.

D E

C I S I O N

CALLEJO, SR., J.:

On May 22, 2001, petitioner Sabdullah T. Macabago was proclaimed by the Municipal Board of Canvassers as the winning candidate for the position of Municipal Mayor of Saguiran, Lanao del Sur. Petitioner had a lead of 198 votes over his adversary, private respondent Jamael M. Salacop.

On June 1, 2001, private respondent filed a petition with the Commission on Elections (COMELEC) against petitioner and the proclaimed Vice-Mayor and Municipal Councilors, as well as the members of the Municipal Board of Canvassers, docketed as SPC-01-234, to annul the elections and the proclamation of candidates in the Municipality of Saguiran, Lanao del Sur. Private respondent alleged that there was a massive substitution of voters, rampant and pervasive irregularities in voting procedures in Precincts Nos. 19, 20, 28 and 29, and a failure of the Board of Election Inspectors (BEI) to comply with Sections 28 and 29 of Comelec Resolution No. 3743 and Section 193 of the Omnibus Election Code, thus rendering the election process in those precincts a sham and a mockery and the proclamation of the winning candidates a nullity. Private respondent further averred that if his petition were to be given due course, he would win by a margin of one hundred ninety-four (194) votes over the votes of petitioner. He thus prayed:

“WHEREFORE, foregoing premises considered, it is most respectfully prayed of this Honorable Commission that the election results in Precincts 19, 20, 28 and 29 be ordered set aside and considered excluded and the proclamation of the winning candidates in the said municipality be ANNULLED to reflect the genuine desire of the majority of the people.

All other reliefs, deemed just and equitable under the circumstances are likewise prayed for.”^[1]

In support of his petition, private respondent appended thereto photocopies of random Voters Registration Records (VRRs) evidencing the fraud and deceit that allegedly permeated the electoral process, as well as affidavits tending to prove that serious irregularities were committed in the conduct of the elections in the subject precincts.^[2]

In his answer, petitioner denied the truth of the material allegations in the petition and averred that it raised a pre-proclamation controversy. He further alleged that

the grounds relied upon by private respondent would be proper in an election protest but not in a pre-proclamation controversy.^[3]

The COMELEC *En Banc* took cognizance of the petition and on February 11, 2002, issued an order directing the Election Officer of Saguiran, Lanao del Sur, to bring to and produce before the COMELEC Office in Manila the original VRRs of the questioned precincts for technical examination:

“WHEREFORE, premises considered, the Commission hereby RESOLVES to direct Mr. Ibrahim M. Macadato, the Election Officer of Saguiran, Lanao del Sur to produce the subject original VRR’s of the questioned precincts here in Manila for the appertaining technical examination.

SO ORDERED.”^[4]

In the same order, the COMELEC declared that contrary to petitioner’s claims, the petition did not allege a pre-proclamation controversy. The Commission characterized the petition as one for the annulment of the election or declaration of failure of election in the municipality, a special action covered by Rule 26 of the COMELEC Rules of Procedure. Accordingly, the COMELEC set aside the docketing of the petition as a Special Case (SPC) and ordered the redocketing thereof as a Special Action (SPA). After its examination of the evidence submitted by petitioner, the COMELEC concluded that there was convincing proof of massive fraud in the conduct of the elections in the four (4) precincts that necessitated a technical examination of the original copies of the VRRs and their comparison with the voters’ signatures and fingerprints. The COMELEC further noted that since the lead of Macabago was only 124 votes *vis-à-vis* the 474 voters of the contested precincts, the outcome of the petition would adversely affect the result of the elections in the Municipality. In issuing said Order, the COMELEC relied on its broad powers under the 1987 Constitution and the pronouncement of this Court in *Pantaleon Pacis vs. Commission on Elections*,^[5] and *Tupay Loong vs. Commission on Elections, et al.*^[6]

Forthwith, petitioner filed with this Court the instant special civil action for certiorari under Rule 65 of the 1997 Rules of Civil Procedure, as amended, praying for the reversal of the February 11, 2002 order of the COMELEC *En Banc*. Petitioner alleged that:

“6.1.

PUBLIC RESPONDENT COMELEC EN BANC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR IN EXCESS OF JURISDICTION WHEN IT TOOK COGNIZANCE OF AND PASSED UPON THE PETITION IN SPC NO. 01-234 IN VIOLATION OF SECTION 3, RULE 3 OF THE COMELEC RULES OF PROCEDURE.

6.2.

PUBLIC RESPONDENT COMELEC EN BANC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR IN EXCESS OF JURISDICTION WHEN IT ISSUED ITS ORDER ON FEBRUARY 11, 2002 FOR THE TECHNICAL EXAMINATION OF THE VOTERS REGISTRATION RECORDS OF THE REGISTERED VOTERS OF PRECINCT NOS. 19, 20, 28 & 29 OF THE MUNICIPALITY OF SAGUIARAN, LANA DEL SUR.”^[7]

The kernel issues posed in the case at bar are (a) whether petitioner's recourse to this Court under Rule 65 of the 1997 Rules of Civil Procedure, as amended, is in order; and (b) whether the COMELEC acted without jurisdiction or committed a grave abuse of its discretion amounting to excess or lack of jurisdiction in taking cognizance of the petition of private respondent and in issuing the assailed Order.

On the first issue, petitioner avers that he was impelled to file the instant petition without first filing with the COMELEC a motion for a reconsideration of its order because under the COMELEC Rules of Procedure, a motion for a reconsideration of an interlocutory order of the COMELEC *En Banc* is a prohibited pleading, and that the COMELEC acted with grave abuse of discretion amounting to excess or lack of jurisdiction in issuing the assailed order. Private respondent on the other hand insists that under Rule 64 of the 1997 Rules of Civil Procedure, a special civil action for certiorari filed with this Court is proper only for the nullification of a final order or resolution of the COMELEC and not of its interlocutory order or resolution such as the assailed order in this case.

Section 1, Rule 64, as amended, reads:

"SECTION 1. *Scope.* – This Rule shall govern the review of judgments and final orders or resolutions of the Commission on Elections and the Commission on Audit."^[8]

Under Section 2 of the same Rule, a judgment or final order or resolution of the COMELEC may be brought by the aggrieved party to this Court on certiorari under Rule 65, as amended, except as therein provided. We ruled in [Elpidio M. Salva, et al. vs. Hon. Roberto L. Makalintal, et al.](#)^[9] that Rule 64 of the Rules applies only to judgments or final orders of the COMELEC in the exercise of its quasi-judicial functions. The rule does not apply to interlocutory orders of the COMELEC in the exercise of its quasi-judicial functions or to its administrative orders. In this case, the assailed order of the COMELEC declaring private respondent's petition to be one for annulment of the elections or for a declaration of a failure of elections in the municipality and ordering the production of the original copies of the VRRs for the technical examination is administrative in nature.^[10] Rule 64, a procedural device for the review of final orders, resolutions or decision of the COMELEC, does not foreclose recourse to this Court under Rule 65 from administrative orders of said Commission issued in the exercise of its administrative function.^[11]

It bears stressing that under Article VIII, Section 1 of the Constitution, judicial power is vested in the courts. Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. Judicial power is an antidote to and a safety net against whimsical, despotic and oppressive exercise of governmental power. The aggrieved party may seek redress therefrom through the appropriate special civil action provided by the Rules of Court. As to acts of the COMELEC, the special civil action may be one for certiorari pursuant to Article IX(A), Section 7 of the Constitution.

As a general rule, an administrative order of the COMELEC is not a proper subject of a special civil action for certiorari.^[12] But when the COMELEC acts capriciously or

whimsically, with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing such an order, the aggrieved party may seek redress from this Court *via* a special civil action for certiorari under Rule 65 of the Rules.^[13]

Private respondent cannot find solace in the pronouncement in *Ruperto Ambil, Jr. vs. Commission on Elections, et al.*^[14] because the subject matter of the petition therein was an interlocutory order of a Division of the COMELEC. This Court held that the remedy of the aggrieved party was first to file a motion for a reconsideration of the order with the COMELEC *En Banc*. The *raison d'être* therefor is that under Rule 3, Section 6(c) of the COMELEC Rules of Procedure, any motion for a reconsideration of a decision, resolution, order or ruling of a Division of the COMELEC has to be referred to and resolved by the Commission sitting *En Banc*. A motion for reconsideration filed with the COMELEC *En Banc* of an order, ruling or resolution of a Division thereof is a plain, speedy and adequate remedy therefrom.

We now resolve the second issue. Irrefragably, the petition before the COMELEC does not pose a pre-proclamation controversy as defined in Article XX, Section 241 of Republic Act No. 7166, thus:

“SEC. 241. *Definition.* – A pre-proclamation controversy refers to any question pertaining to or affecting the proceedings of the board of canvassers which may be raised by any candidate or by any registered political party or coalition of political parties before the board or directly with the Commission.”^[15]

Pre-proclamation controversies are properly limited to challenges directed against the Board of Canvassers and proceedings before said Board relating to particular election returns to which private respondent should have made specific verbal objections subsequently reduced to writing. The proceedings are summary in nature; thus, the reception of evidence *aliunde*, e.g. the original copies of the VRRs, is proscribed. In fine, in pre-proclamation proceedings, the COMELEC is not to look beyond or behind election returns which are on their face regular and authentic returns.^[16] Issues such as fraud or terrorism attendant to the election process, the resolution of which would compel or necessitate the COMELEC to pierce the veil of election returns which appear to be *prima facie* regular, on their face, are anathema to a pre-proclamation controversy. Such issues should be posed and resolved in a regular election protest.^[17]

In his petition with the COMELEC, private respondent alleged that fraud and irregularities allegedly perpetrated by unscrupulous individuals who substituted for the registered voters and voted for the latter in the subject precincts, in conspiracy with the Board of Election Inspectors, or abetted by the members thereof, attended the electoral process in the subject precincts. The fraud and the irregularities catalogued by private respondent required the reception of evidence *aliunde*. As stated earlier, such grounds are not proper bases for a pre-proclamation controversy but are appropriate for a regular election contest within the original jurisdiction of the Regional Trial Court. Indeed, the Court held in *Dimangadap Dipatuan vs. Commission on Elections, et al.*:^[18]

“That the padding of the List of Voters may constitute fraud, or that the Board of Election Inspectors may have fraudulently conspired in its preparation, would not be a valid basis for a pre-proclamation