

EN BANC

[G.R. No. 133927, November 29, 1999]

MA. AMELITA C. VILLAROSA, PETITIONER, VS. COMMISSION ON ELECTIONS, AND ATTY. DAN RESTOR, RESPONDENTS.

RICARDO QUINTOS, NECESSARY RESPONDENT.

D E C I S I O N

GONZAGA-REYES, J.:

For the Court's resolution is the instant petition for certiorari and prohibition assailing Resolution dated May 11, 1998 of the Commission on Elections (hereafter, "COMELEC" or "the Commission")^[1] on Election Matter No. 98-044, disallowing the use by petitioner of the nickname "JTV" for the purpose of her candidacy in the May 11, 1998 elections, and the COMELEC Resolution, dated May 13, 1998,^[2] denying reconsideration of the earlier Resolution.

Petitioner was a candidate for Representative of the lone district of Occidental Mindoro in the May 11, 1998 elections and was proclaimed duly elected thereto on May 27, 1998. On March 27, 1998, she filed her certificate of candidacy in which she stated, among others, that her nickname is "JTV". On April 20, 1998, private respondent Restor filed a letter-petition^[3] addressed to COMELEC Chairman Bernardo Pardo through Atty. Jose Balbuena, Director of the COMELEC Law Department, asking for the invalidation or cancellation of "JTV" as the official nickname of petitioner as declared in her certificate of candidacy, and the nullification of all votes cast in the said nickname, on the ground that petitioner is not publicly known by that name. The letter-petition further averred that petitioner is publicly known in Occidental Mindoro as "Girlie" and that the appellation "JTV" actually pertains to the initials of her husband and former Congressman of Occidental Mindoro, Jose Tapales Villarosa.

On election day, May 11, 1998, the Commission, sitting *en banc*, issued a Resolution granting private respondent Restor's letter-petition on the ground that the nickname "JTV" is not one by which petitioner is popularly known.^[4] Petitioner received a fax copy of this Resolution at 5:32 in the afternoon of May 11, 1998, at which time voting has ceased and canvassing of votes in some precincts has already gone underway.

On May 12, 1998, petitioner filed with the Commission an Urgent Manifestation and Motion to reconsider the aforesaid Resolution. Finding that no new matter has been raised therein, the Commission *en banc* issued another Resolution the next day, May 13, 1998, denying the above motion.

Thus, this petition raises the question of whether the Commission gravely abused its discretion in: (1) ruling on private respondent Restor's letter-petition without

according notice and hearing to petitioner; (2) taking cognizance of the letter-petition which was not filed by a real party in interest; (3) resolving the letter-petition *en banc*, instead of first referring it to one of its Divisions; and finally, (4) disallowing petitioner's use of the nickname "JTV" and ordering the election officers of Occidental Mindoro to consider invalid all votes cast in that appellation.

The petition also impleads as a necessary respondent Ricardo Quintos, who ran opposite petitioner for the lone congressional post of Occidental Mindoro in the May 11, 1998 elections, in view of "confirmed reports" that he will file an election protest before the House of Representatives Electoral Tribunal ("HRET") invoking the questioned resolutions. Private respondents validated this allegation when they declared that private respondent Quintos has in fact filed such an election protest case, docketed as HRET Case No. 98-030.^[5]

In its Manifestation In Lieu of Comment, the Office of the Solicitor General observed that even if the letter-petition was treated as an "election matter" which may be properly heard firsthand by the Commission *en banc*, the Commission should have given notice to petitioner before resolving the issue therein, especially since the petitioner stands to be adversely affected should the petition be granted. On the issue of the validity of the use of "JTV" as petitioner's nickname, it opined that petitioner may validly use the same as she is in fact Mrs. Jose Tapales Villarosa, and hence, there is no misrepresentation. Moreover, no one among the other candidates had the same initials as to be prejudiced by her use of the same.

The petition is impressed with merit.

It stands uncontested that petitioner came to know of the letter-petition lodged against her by private respondent Restor only upon receipt of a copy of the COMELEC Resolution issued on May 11, 1998, which she received by fax at 5:32 in the afternoon of the same day. Under these circumstances, it is clear that the Commission passed upon the letter-petition without affording petitioner the opportunity to explain her side and to counter the allegations of private respondent Restor's letter-petition. Due process dictates that before any decision can be validly rendered in a case, the twin requirements of notice and hearing must be observed.

^[6] Evidently, the conclusion of the Commission in the assailed Resolution dated May 11, 1998, that "JTV" is not a nickname by which petitioner is generally or popularly known, was drawn purely from the allegations of the letter-petition and for this reason, the Commission acted in excess of its jurisdiction.

Interminably, we have declared that deprivation of due process cannot be successfully invoked where a party was given the chance to be heard on his motion for reconsideration.^[7] However, we find the foregoing rule inapplicable to the circumstances of the case at bench.

As earlier narrated, petitioner filed an "Urgent Manifestation and Motion" with the Commission on May 12, 1998, which the Commission promptly denied the following day. By its own designation, the two-page pleading filed by petitioner is one part manifestation and one part motion. On the main, it enters appearance of petitioner, who was not impleaded in private respondent Restor's letter-petition, and communicates receipt of the May 11, 1998 Resolution. Even as it seeks reconsideration of the said resolution by invoking due process, it does not purport to

embody petitioner's grounds and arguments for reconsideration. Rather, it states that "(petitioner) reserve(s) all rights and waive(s) none, including filing a supplemental motion for reconsideration, pending retaining additional counsel" as the lawyer representing petitioner at the time was saddled with other commitments.

[8] In filing this "Urgent Manifestation and Motion" on the second day of canvassing of votes, and immediately after receipt of the contested resolution, it is obvious that petitioner's immediate concern for doing so was not mainly to exercise her right to be heard, but to have the Commission seasonably reconsider the May 11, 1998 Resolution while canvassing was still at the precinct or municipal level.

While the filing of a supplemental motion for reconsideration is not a matter of right, it is believed that the judicious thing for the Commission to have done, considering the obvious due process issues brought about by the May 11, 1998 Resolution, was to afford petitioner a chance to explain why she should be allowed to use the nickname "JTV", such as by requiring her to submit a supplemental motion for reconsideration. We consider this more in consonance with our rulings in *Salonga* and *Rodriguez* on opportunity to be heard on reconsideration. Thus, we find that respondent COMELEC acted imprudently and in excess of its jurisdiction in treating the "Urgent Manifestation and Motion" as petitioner's motion for reconsideration of the May 11, 1998 Resolution, and in summarily dismissing the same.

Anent the second issue, petitioner contends that the Commission gravely abused its discretion when it took cognizance of the petition below, there being no showing that it was filed in the name of a real party in interest.

The argument is tenable. The COMELEC Rules of Procedure require that all actions filed with the Commission be prosecuted and defended in the name of the real party in interest.[9] The letter-petition does not allege that the protestant, herein private respondent Restor, is a candidate for any position in the May 11, 1998 elections, or a representative of a registered political party or coalition, or at the very least, a registered voter in the lone district of Occidental Mindoro --- as to stand to sustain any form of injury by petitioner's use of the nickname "JTV". Absent such essential allegation, the letter-petition stood defective and should have been dismissed outright for failure to state a cause of action.

The question of whether the Commission may decide cases *en banc* without first referring them to any of its divisions has been consistently answered in the negative since *Sarmiento vs. COMELEC*[10], which interpreted Section 3, Article IX(C) of the Constitution[11] as requiring all election cases to be first heard and decided by a division of the Commission, before being brought to the Commission *en banc* on reconsideration. Conformably, we hold that the Commission exceeded the bounds of its jurisdiction when it took cognizance of private respondent Restor's letter-petition at the first instance, thus rendering its May 11, 1998 Resolution void.

To the above rule, private respondents take exception by stating that the subject letter-petition posed issues which were administrative in character, and, thus, not subject to the requirement of referral to division which applies only in the Commission's exercise of its adjudicatory or quasi-judicial functions.

In the concurring opinion of Justice Antonio in *University of Nueva Caceres vs. Martinez*, 56 SCRA 148, he noted that