



Republic of the Philippines
Supreme Court
Manila

EN BANC

ISABELITA P. GRAVIDES,
Petitioner,

G.R. No. 199433

Present:

- versus -

SERENO, C.J.,
CARPIO,
VELASCO, JR.,
LEONARDO-DE CASTRO,
BRION,
PERALTA,
BERSAMIN,
DEL CASTILLO,
ABAD,
VILLARAMA, JR.,
PEREZ,
MENDOZA,
REYES, and
PERLAS-BERNABE, JJ.

COMMISSION ON ELECTIONS
and PEDRO C. BORJAL,
Respondents.

Promulgated:

NOVEMBER 13, 2012

X-----X

DECISION

VILLARAMA, JR., J.:

This Rule 65 petition for certiorari seeks to annul and set aside the following issuances by public respondent Commission on Elections (COMELEC): (1) Resolution¹ dated August 25, 2011 of the First Division granting the appeal of private respondent Pedro C. Borjal (Borjal) from the December 7, 2010 Order² of the Metropolitan Trial Court (MeTC)

¹ Rollo, pp. 38-45. Penned by Commissioner Armando C. Velasco and concurred in by Presiding Commissioner Rene V. Sarmiento and Commissioner Christian Robert S. Lim.

² Id. at 251-254. Penned by Judge Alfredo D. Ampuan.

Quezon City, Branch 33 in EPC No. 10-1313; (2) Order³ dated November 23, 2011 of the Commission *En Banc* denying the motion for reconsideration filed by petitioner Isabelita P. Gravides (Gravides); and (3) Entry of Judgment⁴ dated November 24, 2011 declaring that the Resolution dated August 25, 2011 had become final and executory as of September 17, 2011.

Borjal and Gravides both ran for the position of *Punong Barangay* of Barangay U.P. Campus in Diliman, Quezon City during the October 25, 2010 Barangay and *Sangguniang Kabataan* (SK) Elections. Results of the elections showed that Gravides garnered a total of 2,322 votes as against Borjal's 2,320 votes. On October 26, 2010, the Barangay Board of Canvassers (BBOC) officially proclaimed Gravides as the winning candidate for the said post.

On November 5, 2010, Borjal filed an Election Protest⁵ alleging the following irregularities and violation of election laws:

7.1 Harassment, corruption, and anomalous activities committed by the BET and the Barangay Board of Canvassers.

7.2 Valid votes cast in favor of protestant were misread and misappreciated by the Board of Election Tellers (BET). For instance, several ballots containing wrong spelling (but with the same sound when read) of protestant's surname were not counted, there being no candidate with the surname when read.

7.3 Valid votes for protestant were erroneously counted/tallied in the election returns and/or erroneously tallied as votes of protestee and other candidates. Such that protestee and other candidates seemed to have received more votes than those actually cast in their favor.

7.4 Falsification, alteration, and manipulation of the votes and related data in the election returns.

7.5 Valid votes in favor of protestant were not counted or were considered stray and rejected. For instance, several ballots containing protestant's registered nickname "Doc" were not counted for protestant, there being no candidate with the same nickname. On the other hand, invalid ballots such as spurious and those containing markings to identify the ballots/voters, or with irrelevant, derogatory writings or drawings were counted in favor of protestee and other winning candidates.

³ Id. at 46-48.

⁴ Id. at 49.

⁵ Id. at 52-57.

7.6 The use of either fake, spurious ballots or genuine but manufactured ballots to increase protestee's votes.

7.7 Invalid ballots (prepared by persons other than the voters themselves) such as written-by-one person (WBO) and/or individual ballots written-by-two persons (WBT) containing protestee's name were counted as valid votes for protestee and other winning candidates.⁶

Borjal thus asserted that there is a need for revision, re-appreciation of ballots, judicial recount and thorough scrutiny of the election returns and minutes of voting in the protested precincts, the results of which will change the election sufficient to overcome the presumptive lead of the declared winner.

Gravides filed her Answer with Compulsory Counterclaim⁷ denying the allegations of fraud, vote manipulation, misreading/misappreciation of ballots and other irregularities in the counting and tallying of votes, committed either by her or by the Board of Election Tellers (BET)/BBOC. She pointed out that the protest failed to provide a detailed specification of the acts or omissions complained of, which would show the alleged fraud or irregularities in the protested precincts. Such general and sweeping allegations violate the provisions of A.M. No. 07-4-15-SC⁸ or the Rules of Procedure in Election Contests Before the Courts Involving Elective Municipal and Barangay Officials, including non-compliance with the requirement of cash deposit. Neither Borjal nor his watchers filed a challenge or raised any issue with the BET or BBOC on the integrity of the ballots during the voting and counting of votes in accordance with Sections 202 and 203 of Batas Pambansa Blg. 881, as evidenced by the Minutes of Voting and Counting of Votes.

On November 15, 2010, the MeTC issued a Notice of Pre-Trial Conference stating:

This Court sets the case for preliminary conference on the 18th day of November 2010 at 2:00 o'clock in the morning in the Session Hall of this Branch, Room 312, Third Floor, Hall of Justice, Quezon City.

⁶ Id. at 54-55.

⁷ Id. at 64-78.

⁸ Promulgated on April 24, 2007 and became effective on May 15, 2007.

In order to assist the Court in conducting the Preliminary Conference, parties are enjoined to be ready on that date regarding the following:

1. A statement whether the parties have arrived at an amicable settlement, and if so, the terms thereof;
2. Intention to refer the case for mediation;
3. A Summary of admitted facts and proposed stipulation of facts;
4. The issues to be resolved or a clear specification of material facts which remain controverted;
5. Such other matter intended to expedite the disposition of the case.

The counsel served with this Notice is duty bound to notify the party represented by him of the schedule of Preliminary Conference. Failure of the plaintiff or the defendant to appear in the preliminary conference shall respectively be cause for dismissal of his/her case or a summary judgment based solely on the complaint in accordance with Rule 70, Sec. 8, par[.] 2 & 3 of the Rules of Civil Procedure.⁹

During the preliminary conference, Gravides moved for the dismissal of the election protest for non-compliance with Section 4, Rule 9 of A.M. No. 07-4-15-SC as to the contents of the preliminary conference brief. After considering the movant's arguments and the counter-arguments of the opposing counsel, the MeTC resolved to grant the motion. The Order¹⁰ dated December 7, 2010 thus ordered the dismissal of the election protest in accordance with the aforesaid provisions in relation to Sections 5 and 6 of the same Rule.

Borjal appealed the order of dismissal to the COMELEC arguing that the MeTC erred (1) in applying the Rules of Civil Procedure on the preliminary conference in the election protest and in misinforming him of the contents of a preliminary conference brief in its Notice of Pre-Trial Conference; (2) assuming said notice is not defective, it was issued prematurely, contrary to the mandate of Section 1, Rule 9 of A.M. No. 07-4-15-SC; (3) in applying the ruling in *Cabrera v. COMELEC*¹¹ considering that the factual circumstances are not foursquare with the present case; and

⁹ *Rollo*, p. 79.

¹⁰ *Supra* note 2.

¹¹ G.R. No. 182084, October 6, 2008, 567 SCRA 686.

(4) in dismissing the election protest by holding that his Preliminary Conference Brief failed to comply with the required contents under Section 4, Rule 9 of A.M. No. 07-4-15-SC.¹²

In its Resolution dated August 25, 2011, the COMELEC's First Division granted the appeal, annulled the December 7, 2010 Order of the MeTC and remanded the case for further proceedings. In finding for Borjal, the First Division held:

First, the assailed Order of the court a quo declared the Preliminary Conference Brief of Borjal non-compliant with Section 4, Rule 9 of A.M. 07-4-15-SC in the following manner:

x x x x

The court a quo, after stating the antecedent facts of the case, the contentions of each party, and the pertinent provisions of the rules, simply dismissed the election protest without specifying which of the required contents were lacking in Borjal's Preliminary Conference Brief. It would appear, based on the court's Order, that the said brief did not at all contain the contents required in Section 4 of Rule 9.

Examination thereof reveals, however that the same has substantially complied with Section 4, Rule 9 of A.M. No. 07-4-15-SC.

In his Preliminary Conference Brief, Borjal stated a summary of admitted facts and proposed stipulation of facts; the issues to be tried or resolved; documents to be presented; witnesses to be presented; proposed number of revision committees; and a statement of his conformity to discovery procedures or referral to the commissioners to facilitate the speedy disposition of the case.

Apparently, what Borjal failed to include are statements of (1) a manifestation of withdrawal of certain protested precincts, if such is the case; and (2) in case the election protest or counter-protest seeks the examination, verification, or re-tabulation of election returns, the procedure to be followed.

Nonetheless, **these omissions do not warrant the outright dismissal of the election protest.** As explained by Borjal's counsel during the preliminary conference, withdrawal of certain protested precincts will be made either after or during the revision.

Moreover, **Borjal's failure to provide for the procedure to be followed in case the election protest seeks the examination, verification or re-tabulation of election returns is not fatal.** A reading of the election protest shows that Borjal's allegations consist mainly of election irregularities and frauds that resulted to an incorrect number of votes pertaining to each candidate. Hence, Borjal's prayer is for the recount/revision of the ballots to determine the correct number of votes cast in his favor.

¹² *Rollo*, pp. 257-284.

Undoubtedly, **Borjal does not seek the examination, verification or re-tabulation of the election returns; therefore, a statement for its procedure is not necessary in the instant case.**

Second, it must be emphasized that Gravidez won by a **lead of merely two (2) votes**. Thus, **should the allegation of Borjal that some votes cast in his favor were misread and misappreciated during the counting of votes appears to be true in at least two (2) ballots, the election result will be different, as the same will result in a tie.** This fact should have been taken into consideration by the court a quo.

It bears stressing that blind adherence to a technicality, with the inevitable result of frustrating and nullifying the constitutionally guaranteed right of suffrage, cannot be countenanced. Likewise, it has been held that “on more than one occasion, this Court has recognized the emerging trend towards a liberal construction of procedural rules to serve substantial justice. Courts have the prerogative to relax rules of even the most mandatory character, mindful of the duty to reconcile both the need to speedily end litigation and the parties’ right to due process.” While procedural rules are intended for the expeditious disposition of election cases, this should not impede this Commission from compliance with the established principles of fairness and justice and adjudication of cases not on technicality but on their substantive merits.

Finally, it is worth mentioning that the court a quo, in its “Notice of Pre-Trial Conference,” required the parties to state in their respective preliminary conference briefs the following:

x x x x

Noticeably, **the court a quo overlooked the rule applicable in the instant case, i.e., Section 4, Rule 9 of A.M. No. 07-4-15-SC, as it failed to include all the matters required under the said rule.** On the contrary the foregoing notice is more akin to the provision on pre-trial brief under the Rules on Civil Procedure. Notwithstanding this, the court a quo hastily dismissed the election protest for non-compliance with Section 4, Rule 9 of A.M. 07-4-15-SC.¹³ (Underscoring in the original; additional emphasis supplied)

Gravides filed a motion for reconsideration which was denied by the Commission En Banc in its Order dated November 23, 2011. The denial of the motion was based on the failure to pay the required motion fees prescribed under Section 7(f), Rule 40, COMELEC Rules of Procedure, as amended by COMELEC Minute Resolution No. 02-130 dated September 18, 2002, in relation to Section 18 of the same Rule, to wit:

It [Motion for Reconsideration] should be accompanied by the payment of the correct amount of motion fee and should be paid within the five (5)-day period for the filing of said motion.

¹³ Id. at 42-44.

There being no valid motion for reconsideration to speak of, the provision of Section 13, paragraph (c) Rule 18, Comelec Rules of Procedure applies, to wit:

Rule 18 – Decisions

xxx xxx xxx

“Sec. 13. *Finality of Decisions or Resolutions.* –

xxx xxx xxx

(c) Unless a motion for reconsideration is seasonably filed, a decision or resolution of a Division shall become final and executory after the lapse of five (5) days in Special actions and Special cases and after fifteen (15) days in all other actions or proceedings, following its promulgation.”

Hence, the Resolution of the Commission (*First Division*) promulgated on August 25, 2011, copy of which was received by protestee-appellee’s counsel on September 1, 2011, per admission in her Motion for Reconsideration filed on September 6, 2011, had become final and executory as of September 17, 2011.¹⁴

Hence, this petition raising the following issues:

- I. WHETHER PUBLIC RESPONDENT COMMITTED A GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT ISSUED ITS RESOLUTION DATED AUGUST 25, 2011 IN CLEAR CONTRAVENTION OF SECTION 4 IN RELATION TO SECTIONS 5 AND 6, RULE 9 OF A.M. NO. 07-4-15-SC OR THE RULES OF PROCEDURE IN ELECTION CONTESTS BEFORE THE COURTS INVOLVING ELECTIVE MUNICIPAL AND BARANGAY OFFICIALS AND THE SUPREME COURT EN BANC RULING IN CABRERA VS. COMELEC (G.R. NO. 182084, OCTOBER 6, 2008).
- II. WHETHER PUBLIC RESPONDENT COMMITTED A GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT ISSUED ITS RESOLUTION DATED AUGUST 25, 2011 REVERSING THE DECISION OF BRANCH 33, METC QUEZON CITY JUDGE ALFREDO AMPUAN, WHICH WAS ISSUED IN ACCORDANCE WITH LAW.
- III. WHETHER PUBLIC RESPONDENT COMMITTED A GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN CONSIDERING THE NARROW LEAD OF PETITIONER OVER PRIVATE RESPONDENT IN REVERSING THE ORDER OF JUDGE AMPUAN DATED DECEMBER 7, 2010, DISMISSING THE ELECTION PROTEST OF PRIVATE RESPONDENT IN ACCORDANCE WITH LAW.

¹⁴ Id. at 46-48.

- IV. WHETHER PUBLIC RESPONDENT COMMITTED A GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN GIVING THE MANDATORY RULES GOVERNING THE FILING OF PRELIMINARY CONFERENCE BRIEFS AND ITS REQUIRED CONTENTS UNDER SECTION 4, RULE 9 OF A.M. NO.07-4-15-SC A LIBERAL CONSTRUCTION.
- V. WHETHER PUBLIC RESPONDENT COMMITTED A GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT BLAMED THE COURT A QUO FOR THE ABJECT FAILURE OF COUNSEL FOR PRIVATE RESPONDENT TO BE [COGNIZANT] OF THE MANDATORY REQUISITES UNDER SECTION 4, RULE 9 OF A.M. NO. 07-4-15-SC ON THE REQUIRED CONTENTS OF HIS PRELIMINARY CONFERENCE BRIEF[.]
- VI. WHETHER PUBLIC RESPONDENT COMMITTED A GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT ISSUED ITS ORDER DATED NOVEMBER 23, 2011 DENYING THE MOTION FOR RECONSIDERATION OF PETITIONER DESPITE THE PLEA OF THE LATTER FOR A REVERSAL OF ITS RESOLUTION BECAUSE OF THE OPPORTUNITY OF COUNSEL FOR PRIVATE RESPONDENT, ATTY. MICHAEL D. VILLARET, WHO IS CURRENTLY EMPLOYED AS A MEMBER OF THE STAFF OF THE HON. COMELEC COMMISSIONER AUGUSTO LAGMAN, TO EXERCISE UNDUE INFLUENCE IN THE PREPARATION OF THE ASSAILED RESOLUTION, WHICH RENDERS ITS INTEGRITY, VALIDITY AND PROPRIETY DUBIOUS, SUSPECT AND QUESTIONABLE.¹⁵

The petition has no merit.

The pertinent provisions of Rule 9 of A.M. No. 07-4-15-SC state:

SEC. 4. *Preliminary conference brief.*—The parties shall file with the court and serve on the adverse party, in such manner as shall ensure their receipt at least one day before the date of the preliminary conference, their respective briefs which shall contain the following:

- (1) A summary of admitted facts and proposed stipulation of facts;
- (2) The issues to be tried or resolved;
- (3) The pre-marked documents or exhibits to be presented, stating their purpose;
- (4) A manifestation of their having availed or their intention to avail themselves of discovery procedures or referral to commissioners;
- (5) The number and names of the witnesses, their addresses, and the substance of their respective testimonies. The testimonies of

¹⁵ Id. at 178.

the witnesses shall beby affidavits in question and answer form as theirdirect testimonies, subject to oral cross examination;

(6) **A manifestation of withdrawal of certain protested or counter-protested precincts, if such is the case;**

(7) The proposed number of revision committees andnames of their revisors and alternate revisors; and

(8) **In case the election protest or counter-protest seeks the examination, verification or re-tabulation of election returns, the procedure to be followed.**

SEC. 5. *Failure to file brief.*—**Failure** to file the brief or **to comply with its required contents** shall have the same effect as failure to appear atthe preliminary conference.

SEC. 6. *Effect of failure to appear.*—The failure of the protestantor counsel to appear at the preliminary conference **shall be cause for dismissal, *motu proprio*, of the protest or counter-protest.** The failure ofthe protestee or counsel to appear at the preliminary conference shallhave the same effect as provided in Section 4(c), Rule 4 of these Rules,that is, the court may allow the protestant to present evidence *ex parte*and render judgment based on the evidence presented. (Emphasis supplied)

In *Cabrera v. COMELEC*,¹⁶ this Court upheld the nullification by COMELEC of the RTC orders denying the motion to dismiss election protest on the ground that protestant’s preliminary conference brief did not contain the following: (1) a manifestation of his having availed or intention to avail of discovery procedures or referral to commissioners; (2) a manifestation of withdrawal of certain protested or counter-protested precincts, if such is the case; and, (3) in the event the protest or counter-protest seeks the examination, verification or re-tabulation of election returns, the procedure to be followed.

Rejecting petitioner’s proffered excuse for the foregoing omissions, we held that –

The petitioner’s commitment that he does not seek the examination, verification or re-tabulation of election returns is belied by the preliminary conference brief’s statement that the protestant shall present the election returns as documentary evidence, and that he will present witnesses who will testify that the entries thereon are erroneous. Clearly, the testimonies of these witnesses will entail the examination or verification of the election returns. Likewise, the petitioner’s undertaking that he does not intend to withdraw any of the protested precincts appears

¹⁶ Supra note 11 at 693.

inconsistent with the allegation in the preliminary conference brief that protestant will present 22 witnesses (who served as watchers) to give evidence on alleged irregularities in the voting and counting in 22 precincts. Considering that there is a total of 142 precincts in the locality, and in fact, the ballots in 88 precincts had already been revised by the trial court, the probability is great that petitioner may have to withdraw some precincts from his protest.

The Rules should not be taken lightly. The Court has painstakingly crafted A.M. No. 07-4-15-SC precisely to curb the pernicious practice of prolonging election protests, a sizable number of which, in the past, were finally resolved only when the term of office was about to expire, or worse, had already expired. These Rules were purposely adopted to provide an expeditious and inexpensive procedure for the just determination of election cases before the courts. Thus, we emphasize that **the preliminary conference and its governing rules are not mere technicalities which the parties may blithely ignore or trifle with. They are tools meant to expedite the disposition of election cases and must, perforce, be obeyed.**¹⁷ (Emphasis supplied)

Contrary to petitioner's submissions, we find no grave abuse of discretion in the proper consideration by COMELEC of the attendant circumstances warranting a more reasonable and liberal application of the rules. Foremost of these is the fact that Borjal was misled by the Notice of Preliminary Conference issued by the MeTC which erroneously applied the provision on pre-trial brief under the Rules of Civil Procedure. The mistake committed by Borjal's counsel in complying with the court's directive should not prejudice his cause, as no intent to unduly prolong the resolution of the election protest can be gleaned from his failure to include such manifestation of withdrawal of certain protested precincts and of the procedure to be followed in case the election protest seeks the examination, verification, or re-tabulation of election returns.

Another important consideration for the COMELEC was that, unlike in *Cabrera* where petitioner lost by 420 votes to the winning candidate, only **two (2) votes** separated the winning candidate Gravides from Borjal who placed second in the 2010 elections for *Punong Barangay* in Barangay U.P. Campus. There were also only 25 precincts subject of the protest out of the total 36 precincts, in the barangay, as against the 142 precincts protested in *Cabrera*. As COMELEC duly noted, the finding of just more than 2

¹⁷ Id. at 694-695.

misread or miscounted ballots during the revision or recount would be sufficient to overcome the lead of Gravidès. The paramount interest of determining the true will of the electorate thus justified a relaxation of procedural rules. Indeed, an election protest is imbued with public interest so much so that the need to dispel uncertainties which becloud the real choice of the people is imperative.¹⁸

We likewise fail to discern whimsicality or arbitrariness in the denial of petitioner's motion for reconsideration. Rule 40, Section 18¹⁹ of the COMELEC Rules of Procedure gives discretion to the COMELEC *En Banc* either to refuse or to take action until the motion fee is paid, or to dismiss the action or proceeding.²⁰

We stress that in a special civil action for certiorari, the petitioner carries the burden of proving not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction, on the part of the public respondent for his issuance of the impugned order.²¹ Grave abuse of discretion is present "when there is a capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, such as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law."²² In other words, the tribunal or administrative body must have issued the assailed decision, order or resolution in a capricious or despotic manner.²³ Petitioner failed to discharge that burden and perforce the petition must fail.

¹⁸ *Punzalan v. COMELEC*, 352 Phil. 538, 556 (1998).

¹⁹ Sec. 18, Rule 40 of the COMELEC Rules of Procedure provides:

Sec. 18. ***Non-payment of Prescribed Fees.***—If the fees above prescribed are not paid, the Commission may refuse to take action thereon until they are paid and may dismiss the action or the proceeding.

²⁰ See *Aguilar v. Commission on Elections*, G.R. No. 185140, June 30, 2009, 591 SCRA 491, 508.

²¹ *Duco v. Commission on Elections, First Division*, G.R. No. 183366, August 19, 2009, 596 SCRA 573, 583-584, citing *Suliguin v. Commission on Elections*, G.R. No. 166046, March 23, 2006, 485 SCRA 219, 233.

²² *Id.* at 584, citing *Reyes-Tabujara v. Court of Appeals*, G.R. No. 172813, July 20, 2006, 495 SCRA 844, 857-858.

²³ *Malinias v. COMELEC*, 439 Phil. 319, 330 (2002).


WHEREFORE, premises considered, the petition for certiorari is **DISMISSED**. The Resolution dated August 25, 2011 of the COMELEC's First Division and Order dated November 23, 2011 of the COMELEC *En Banc* (EAC [BRGY-SK] NO. 32-2010), as well as the Entry of Judgment dated November 24, 2011 declaring that the Resolution dated August 25, 2011 had become final and executory as of September 17, 2011, are all **AFFIRMED**.

With costs against the petitioner.


SO ORDERED.



MARTIN S. VILLARAMA, JR.
Associate Justice

WE CONCUR:



MARIA LOURDES P. A. SERENO
Chief Justice


ANTONIO T. CARPIO
Associate Justice


PRESBITERO J. VELASCO, JR.
Associate Justice



TERESITA J. LEONARDO-DE CASTRO
Associate Justice


ARTURO D. BRION
Associate Justice


DIOSDADO M. PERALTA
Associate Justice


LUCAS P. BERSAMIN
Associate Justice


MARIANO C. DEL CASTILLO
Associate Justice


ROBERTO A. ABAD
Associate Justice


JOSE PORTUGAL PEREZ
Associate Justice

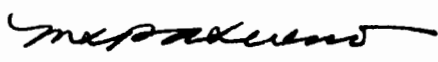

JOSE CATRAL MENDOZA
Associate Justice


BIENVENIDO L. REYES
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice

CERTIFICATION

I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.


MARIA LOURDES P. A. SERENO
Chief Justice