Republic of the Philippines
Supreme Court
Baguio City

EN BANC

G.R. No. 216572 (Feliciano P. Legaspi v. Commission on Elections, Alfredo D. Germar and Rogelio P. Santos, Jr.)

Promulgated:

April 19, 2016

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DISSENTING OPINION

PEREZ, J.:

The resolution penned by the learned Justice Presbitero J. Velasco, Jr. which was joined by seven (7) other colleagues, reversed the original decision[1] in this case and displaced the judicial doctrine meticolously laid out by the Court in *Mendoza v. COMELEC*.[2] I view the reversal and the displacement by the new majority as legally erroneous. Hence, I must dissent.

I stand by the reasonings of the original decision and the *Mendoza* case. In addition to them, however, I submit this opinion to fully articulate my position against the majority resolution.

I

At the heart of this case is Section 6, Rule 18 of the COMELEC Rules.[3] The provision reads:

> Sec. 6. *Procedure if Opinion is Equally Divided.* – When the Commission *en banc* is equally divided in opinion, or the necessary majority cannot be had, the case shall be reheard, and if on rehearing no decision is reached, the action or proceeding shall be dismissed if originally commenced in the Commission; in appealed cases, the judgment

1 G.R. No. 216572, 1 September 2015.
2 630 Phil. 432 (2010)
3 *COMELEC Rules Governing Pleadings, Practice and Procedure Before It or Any of Its Offices*, dated 15 February 1993.

> or order appealed from shall stand affirmed; and in all incidental matters, the petition or motion shall be denied.

The above provision was intended to fill the procedural void left when the COMELEC *en banc* is unable to reach the constitutionally-required majority vote[4] in deciding or resolving any case or matter before it. It does this in two ways: *one*, by providing a mechanism by which the COMELEC *en banc* can try and achieve a majority consensus; and *two*, when such mechanism fails, by providing for the effects of the COMELEC *en banc's* failure to decide.

Hence, under the subject provision, the COMELEC *en banc* is first required to rehear the case or matter that it cannot decide or resolve by the necessary majority. When a majority still cannot be had after the rehearing, however, there results a failure to decide on the part of the COMELEC *en banc*; the provision then steps in and specifies the **effects** of such failure to decide:

1. If the action or proceeding is *originally commenced* in the COMELEC, **such action or proceeding shall be dismissed**;

2. In *appealed* cases, **the judgment or order appealed from shall stand affirmed**; *or*

3. In *incidental matters*, **the petition or motion shall be denied.**

Verily, the effects of the COMELEC *en banc*'s failure to decide vary depending on the *type of case or matter* that is before the commission. Under the provision, the **first effect** (*i.e.*, the dismissal of the action or proceeding) only applies when the type of case before the COMELEC is an action or proceeding "*originally commenced in the commission*"; the **second effect** (*i.e.*, the affirmance of a judgment or order) only applies when the type of case before the COMELEC is an "*appealed case*"; and the **third effect** (*i.e.*, the denial of the petition or motion) only applies when the case or matter before the COMELEC is an "*incidental matter.*"

Mendoza was the leading pronouncement of the Court regarding the first effect under Section 6, Rule 18 of the COMELEC Rules. It defined the

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[4] *See* Section 7, Article IX-A of the CONSTITUTION.

bounds of the first effect *and* it gave us a clear illustration of the application of the first effect.

In *Mendoza,* we proclaimed that the first effect under Section 6, Rule 18 of the COMELEC Rules applies when the COMELEC *en banc* failed to reach a majority consensus on a motion for reconsideration from a decision of the division in an original election case (in *Mendoza*, the case was an electoral protest originally filed before the division). **This was so because, in such event, the case or matter before the COMELEC *en banc* is actually still the same election case that was decided by the division**. We explained that while the election case may have reached the COMELEC *en banc* through the motion for reconsideration of the decision of a division, the same did not change the *original* nature of the election case; such motion not being an appeal.[5] Thus, we held that the failure of the COMELEC *en banc* to decide the motion for reconsideration would result—not in the denial of the said motion or the affirmance of the division's decision—but in the dismissal of the election case itself, pursuant to the first effect under Section 6, Rule 18 of the COMELEC Rules.[6]

II

The present case would have served us with the perfect factual context to apply the first effect under Section 6, Rule 18 of the COMELEC Rules as interpreted by *Mendoza*. Its facts are essentially parallel with that of *Mendoza*.

Like *Mendoza*, the present case involved an election case that was originally filed in and decided by a COMELEC division (in here, the election case was a petition for disqualification). Like in *Mendoza*, the election case herein was afterwards elevated to the *en banc* on motion for reconsideration. Like in *Mendoza*, the COMELEC *en banc* in the present case likewise failed to come up with a majority vote, even after rehearing, on the motion for reconsideration. By all indications, and pursuant the principle of *stare decisis*, the present case should have been decided like *Mendoza*.

Faulty legal reasoning, however, led the new majority astray. As I will attempt to demonstrate, the arguments relied upon by the new majority rests on less than solid foundations.

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5 *Mendoza v. COMELEC*, supra note 2.

6 Id.

III

At this juncture, I will venture into the arguments relied upon by the new majority in support of their resolution. For purposes of this discussion, I have categorized such arguments into two:

1. The **incidental matter argument** *i.e.*, it is the third effect, not the first effect, under Section 6, Rule 18 of the COMELEC Rules that ought to apply in cases where the COMELEC *en banc* fails to reach majority consensus on a motion for reconsideration. This is because, in such event, the matter before the COMELEC *en banc* is only a motion for reconsideration which falls under the category of an "*incidental matter*" under Section 6, Rule 18 of the COMELEC Rules.

2. The **unconstitutionality arguments** *i.e.*, pursuing *Mendoza*'s interpretation of the first effect under Section 6, Rule 18 of the COMELEC Rules would diminish the constitutional power of COMELEC divisions to decide election cases as well as circumvent the minimum voting threshold for constitutional commissions.[7]

I shall address these arguments *in seriatim*.

RE: Incidental Matter Argument

The new majority advanced the argument that it is the third effect, not the first effect, under Section 6, Rule 18 of the COMELEC Rules that ought to apply in cases where the COMELEC *en banc* fails to reach majority consensus on a motion for reconsideration. They insist that, in such event, the matter before the COMELEC *en banc* is only a motion for reconsideration, which is a mere "*incidental matter*."

To bolster their position that a motion for reconsideration to the COMELEC *en banc* from a decision of the division is a mere incidental matter, the new majority cites the case of the *League of Cities v. COMELEC*.[8]

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7 Section 7, Article IX-A of the CONSTITUTION.

8 G.R. Nos. 176951, 177499 and 178056, 24 August 2010.

Like the argument advanced by the petitioner to counter the application of first effect to this case, the incidental matter argument proceeds from the assumption that the proceedings in election cases before the COMELEC division are separate from those before the *en banc*; that there is a difference between what the COMELEC *en banc* decides on motion for reconsideration with what the division initially decides. Such assumption is admittedly appealing at first blush; but, as all should have known by now, that assumption was already rejected and proven wrong in *Mendoza*.

In *Mendoza*, we held that the COMELEC acts on election cases under a single and integrated process, to wit:

> [H]owever the jurisdiction of the COMELEC is involved, x x x, the COMELEC will act on the case in **one whole and single process: to repeat, in division, and if impelled by a motion for reconsideration, *en banc*.**[9]

It is to be minded that the above pronouncement in *Mendoza* is not one that was merely grasped from thin air. The same, in fact, has firm roots in Section 3, Article IX-C of the Constitution, which provides for the interplay between COMELEC divisions and the *en banc* in deciding election cases:

> SECTION 3. The Commission on Elections may sit en banc or in two divisions, and shall promulgate its rules of procedure in order to expedite disposition of election cases, including pre-proclamation controversies. All such election cases shall be heard and decided in division, provided that motions for reconsideration of decisions shall be decided by the Commission en banc.

Drawing from the discussion in *Mendoza* and the underlying edict of the Constitution, we are then able to reach the inescapable conclusion—a basic principle—that a **motion for reconsideration from the decision of a COMELEC division in an election case is only a *means* of elevating such case to the *en banc***. This the original decision stated:

> x x x when an election case originally filed with the COMELEC is first decided by a division, the subsequent filing of a motion for reconsideration from that decision before the *en banc* does not signify the initiation of a new action or case, but rather a mere continuation of an existing process. **The motion for reconsideration—not being an appeal**

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9 *Mendoza v. COMELEC*, supra note 2, at 460. (Emphasis ours.)

> **from the decision of the division to the *en banc*—only thus serves as a means of elevating an election case to the COMELEC *en banc*.** Under this view, therefore, the nature of the election case as it was before the division remains the same even after it is forwarded to the *en banc* through a motion for reconsideration. x x x[10]

Recognition of this basic principle readily discredits the incidental matter argument of the new majority. It was erroneous for the new majority to consider the motion for reconsideration from the decision of a COMELEC division as the very matter that is brought before the *en banc*. A motion for reconsideration from the decision of a COMELEC division in an election case is only a *means* of elevating such case to the *en banc*. **Thus, when a motion for reconsideration in an election case is filed, the case or matter that is actually brought before the COMELEC is the very election case that was decided initially by the division**. Hence, in such event, the failure of the COMELEC *en banc* to muster a majority consensus would only and rightly bring to the fore the application of the first effect under Section 6, Rule 18 of the COMELEC Rules.

RE: Unconstitutionality Arguments

To justify their avoidance of *Mendoza*'s interpretation of the first effect under Section 6, Rule 18 of the COMELEC Rules, the new majority played the unconstitutional card. According to the new majority, *Mendoza*'s interpretation of the first effect is unconstitutional for it diminishes the constitutional power of COMELEC divisions to decide election cases[11] and circumvents the minimum voting threshold for constitutional commissions.[12] This was apparently so because the interpretation would allow the "*paradoxical*" scenario wherein a valid decision of a COMELEC division in an election case can be simply overturned by the COMELEC *en banc* even though the latter is not able to reach a majority vote on the motion for reconsideration.

The "*paradoxical*" scenario complained of by the new majority is more apparent than real. No constitutional provision is actually violated by the application of the first effect in situations where the COMELEC *en banc* fails to reach a majority vote on a motion for reconsideration:

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10 Supra note 1.
11 See Section 3, Article IX-C of the CONSTITUTION.
12 See Section 7, Article IX-A of the CONSTITUTION.

First. The constitutional power of the COMELEC division to decide election cases is not diminished by the mere possibility that it may be overturned as a consequence of the failure of the *en banc* to reach a majority consensus on a motion for reconsideration. Under the Constitution, in its proper understanding, the power of a COMELEC division to decide election cases is subject to the concomitant power of the *en banc* to decide the same cases *as may be elevated to it on motion for reconsideration*.

The failure of the COMELEC *en banc* to reach a majority vote on a motion for reconsideration, therefore, only means that it is not able to come up with a valid decision in an election case. The only acceptable legal consequence of this is what the first effect precisely prescribes.

Second. On the same note, the minimum voting threshold for constitutional commissions is not circumvented when the failure of the COMELEC *en banc* to reach a majority vote on a motion for reconsideration results in the dismissal of the very election case. As earlier intimated, the case or matter that is actually brought before the COMELEC on motion for reconsideration is the very election case that was decided initially by the division.

Hence, we come back to the same conclusion: that the failure of the COMELEC *en banc* to reach a majority vote on a motion for reconsideration only means that it is not able to come up with a valid decision in an election case; and that the only acceptable legal consequence of this is what the first effect prescribes.

IV

All told, I absolutely find no valid reason why the Court should depart from the original decision and the legal teachings of *Mendoza*. I beg the indulgence of the majority if I cannot join them in their resolution.

IN VIEW WHEREOF, I vote to **DENY** the motion for reconsideration of petitioners.

JOSE PORTUGAL PEREZ
Associate Justice

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