



Republic of the Philippines

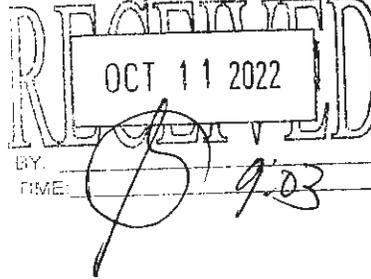
Supreme Court

Manila

EN BANC

NOTICE

SUPREME COURT OF THE PHILIPPINES
PUBLIC INFORMATION OFFICE



Sirs/Mesdames:

Please take notice that the Court en banc issued a Resolution dated **JULY 26, 2022**, which reads as follows:

“**G.R. No. 258307 (Marlon M. Coro vice Francisco M. Gonzales, Petitioner v. Commission on Elections, Hon. Cesar P. Bordalba, in His Capacity as Presiding Judge, Regional Trial Court, Branch 31, 10th Judicial Region, Dapa, Surigao Del Norte and Peter Jade Y. Ruaya, Respondents)**. – This Petition for *Certiorari*¹ under Rule 64 in relation to Rule 65 of the Revised Rules of Court seeks to reverse and set aside the Order dated 17 May 2021² of the Commission on Elections (COMELEC) First Division and the Order dated 01 October 2021³ of the COMELEC *En Banc* in SPR No. 013-2019.

Antecedents

The case originated in the election protest⁴ filed before the Regional Trial Court (RTC) by respondent Peter Jade Y. Ruaya (Ruaya) against Francisco M. Gonzales (Gonzales), assailing the proclamation and election of Gonzales as Vice Mayor of the Municipality of Dapa, Surigao Del Norte in the May 2019 Elections. Ruaya contested the results of the elections in all the 36 clustered precincts in Dapa, Surigao Del Norte. In his Answer with Special Affirmative Defenses,⁵ Gonzales prayed for the dismissal of the petition, claiming that Ruaya failed to pay the filing fees and the required cash deposit, and that the petition lacks the required verification and certification against forum shopping.

In a Joint Order dated 25 June 2019,⁶ the RTC denied Gonzales’ motion to dismiss, and required Ruaya to pay within 24 hours the insufficient cash deposit in the amount of ₱127,000.00 as additional cash

¹ *Rollo*, pp. 5-203.

² *Id.* at 49-52.

³ *Id.* at 53.

⁴ *Id.* at 62-75.

⁵ *Id.* at 76-90.

⁶ *Id.* at 91.

deposit. Gonzales moved for reconsideration, which the RTC denied in its Order dated 15 August 2019.⁷

On 27 September 2019, while the case was pending, Gonzales died and was succeeded by petitioner Marlon M. Coro (petitioner), who was the first municipal councilor-elect of the Municipality of Dapa, Surigao del Norte in the 2019 elections. Thus, petitioner substituted Gonzales as the protestee in the case.

Subsequently, on 16 October 2019, petitioner personally filed before the COMELEC a Petition for *Certiorari* and Prohibition,⁸ seeking to nullify the RTC Orders. Petitioner claimed that the RTC acted without or in excess of jurisdiction when it denied his special affirmative defenses.

Ruling of the COMELEC

The COMELEC First Division dismissed the petition for having been filed late and for non-compliance with the rule on certification against forum shopping. The COMELEC First Division explained:

Records show that the instant *Petition* was filed on October 16, 2019 or more that the sixty-day reglementary period to file certiorari in accordance with Section 4, Rule 65 of the Rules of Court in relation to Section 1, Rule 41 of the COMELEC Rules of Procedure, as amended. Taking into account that the Petitioner Francisco M. Gonzales received the copy of the *Order dated August 15, 2019* on the same date, the Petitioner has only until October 14, 2019 within which to file the same. For being filed two (2) days late, the instant *Petition* deserves to be dismissed.

Moreover, under Section 1, Rule 65 of the Rules of Court in relation to Section 1, Rule 41 of the COMELEC Rules of Procedure, as amended, it is mandated that a petition for certiorari must be accompanied by a certification against non-forum shopping. Nonetheless, records are bereft of any document that would show that the subject *Petition* has complied with this well-enshrined rule. Time again, the Supreme Court has explained that: *As to certification against forum shopping, non-compliance therewith or a defect therein, unlike in verification, is generally not curable by its subsequent submission or correction thereof, unless there is a need to relax the Rule on the ground of 'substantial compliance' or presence of 'special circumstances or compelling reasons.'*

Justification as to the 'presence of special circumstances or special reasons' or 'substantial compliance', as the case may be, is likewise clearly absent in the *Petition*. Regrettably, the subject *Petition* is bound to suffer due to this infirmity particularly when according to Section 5, Rule 7 of the Rules of Court, non-compliance therewith shall be cause for the dismissal of the case.⁹

⁷ Id. at 92-93.

⁸ Id. at 95-115.

⁹ Id. at 50-51.

Petitioner moved for reconsideration. In its Order dated 01 October 2021, the COMELEC *En Banc* did not act on petitioner's Motion for Reconsideration for failure of petitioner to comply with Section 4 of COMELEC Resolution No. 9576 (*In the Matter of Adopting the Efficient Use of Paper Rule*) promulgated on 12 December 2012.

Hence, this petition.

Issues

Petitioner raises the following grounds in his petition:

- A. RESPONDENT HONORABLE COMELEC ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ISSUING THE 17 MAY 2021 COMELEC FIRST DIVISION'S ORDER, AS WELL AS THE 01 OCTOBER 2021 COMELEC *EN BANC*'S ORDER DENYING THE PETITIONER'S MOTION FOR RECONSIDERATION DESPITE THE PATENT LACK OF JURISDICTION OF RESPONDENT REGIONAL TRIAL COURT TO TAKE CONGNIZANCE OF THE SUBJECT ELECTION PROTEST FOR FAILURE OF PROTESTANT-RESPONDENT RUAYA TO PAY FILING FEES AND REQUIRED CASH DEPOSIT WITHIN THE PRESCRIBED TIME AS MANDATED BY RULE 7 OF A.M. NO. 10-4-1-SC (THE 2010 RULES OF PROCEDURE IN ELECTION CONTESTS BEFORE THE COURTS INVOLVING MUNICIPAL OFFICIALS)
- B. RESPONDENT HONORABLE COMELEC ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ISSUING THE 17 MAY 2021 COMELEC FIRST DIVISION'S ORDER, AS WELL AS THE 01 OCTOBER 2021 COMELEC *EN BANC*'S ORDER DENYING THE PETITIONER'S MOTION FOR RECONSIDERATION ON THE GROUND OF MERE TECHNICALITIES, WHICH ARE THE SAME TECHNICALITIES THAT WERE JUST DISREGARDED BY THE PUBLIC RESPONDENT REGIONAL TRIAL COURT WHEN IT TOOK COGNIZANCE OF THE INSTANT ELECTION PROTEST.¹⁰

Petitioner admits that the petition was personally filed at the COMELEC office on 16 October 2019. However, he claims that as stated in his motion for reconsideration before the COMELEC, the petition was already filed earlier on 14 October 2019 through registered mail. Petitioner insists that the date of mailing the petition by registered mail is considered the date of filing with the COMELEC, such that the petition was actually

¹⁰ Id. at 14-15.

filed within the reglementary period. Moreover, petitioner insists that his late submission of the certification against forum shopping and his non-compliance with the Efficient Use of Paper Rule should not be taken against him considering that Ruaya also committed the same procedural lapses in his election protest before the RTC.

In its Comment dated 21 February 2022,¹¹ the COMELEC maintains that it did not commit grave abuse of discretion, and that the petition was in fact belatedly filed on 16 October 2019 through personal filing. According to the COMELEC, it was also on 16 October 2019 that petitioner paid the filing fees assessed by the COMELEC as evidenced by Official Receipt No. 7832259 C dated 16 October 2019. Thus, even if it were true that petitioner also filed the petition via registered mail on 14 October 2019, such date cannot be considered the date of filing since the fees were not yet paid then. Consequently, the COMELEC asserts that petitioner's belated payment of the fees could not have cured the defect as it was already done beyond the sixty-day reglementary period within which to file a petition for *certiorari* before the COMELEC. Moreover, petitioner's oversight in not filing the mandatory certification of non-forum shopping cannot be considered as special circumstance or compelling reason to excuse his non-compliance. Lastly, petitioner's failure to follow the Efficient Use of Paper Rule resulted in the denial of his motion for reconsideration.

Ruling of the Court

The primordial issue to be resolved is whether the COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction: (1) in dismissing the petition for having been filed beyond the reglementary period, and for non-compliance with the rule on certification against forum shopping; and (2) in denying petitioner's motion for reconsideration for failure to follow the Efficient Use of Paper Rule.

The petition is without merit.

In *Halili v. Commission on Elections*,¹² the Court defined what constitutes as 'grave abuse of discretion,' thus:

In a special civil action for certiorari, the burden rests on the petitioner to prove grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public respondent in issuing the impugned order, decision or resolution. Grave abuse of discretion is such 'capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, or [an] exercise of power in an arbitrary and despotic manner by reason of passion or personal hostility, or an exercise of judgment so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined, or to act in a manner not at all in contemplation of law.' In short, grave abuse

¹¹ Id. at 209-235.

¹² G.R. Nos. 231643 and 231657, 15 January 2019.

of discretion arises when a court or tribunal violates the Constitution, the law, or existing jurisprudence.

Absent any grave abuse of discretion, the Court will not interfere with the resolutions of the COMELEC, which is vested by the Constitution with the enforcement and administration of all laws and regulations in the conduct of elections, and the resolution and determination of election controversies.¹³

In this case, the COMELEC'S dismissal of the petition for belated filing, that is, beyond the sixty-day reglementary period to file the petition on *certiorari*, was pursuant to Section 4, Rule 65¹⁴ of the Revised Rules of Court, in relation to Section 1, Rule 41¹⁵ of the COMELEC Rules of Procedure. Even if petitioner also filed a petition via registered mail on 14 October 2019, he was only able to pay the filing fee on 16 October 2019 when the petition was personally filed at the COMELEC office. The date of payment of the filing fee on 16 October 2019 is deemed the actual date of filing the petition for *certiorari*,¹⁶ which in this case was already beyond the sixty-day reglementary period to file the petition on *certiorari*. Moreover, the requirement of a certification of non-forum shopping is explicitly provided in Section 1 of Rule 65.¹⁷ Clearly, no abuse of discretion can be

¹³ *Albania v. Commission on Elections*, 810 Phil. 470, 480 (2017).

¹⁴ REVISED RULES OF COURT, Rule 65, Sec. 4 reads:

SECTION 4. *When and Where to File the Petition.* — The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the petition shall be filed not later than sixty (60) days counted from the notice of the denial of the motion.

If the petition relates to an act or an omission of a municipal trial court or of a corporation, a board, an officer or a person, it shall be filed with the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed with the Court of Appeals or with the Sandiganbayan, whether or not the same is in aid of the court's appellate jurisdiction. If the petition involves an act or an omission of a quasi-judicial agency, unless otherwise provided by law or these rules, the petition shall be filed with and be cognizable only by the Court of Appeals.

In election cases involving an act or an omission of a municipal or a regional trial court, the petition shall be filed exclusively with the Commission on Elections, in aid of its appellate jurisdiction. (Emphasis supplied)

¹⁵ COMELEC Rules of Procedure, Rule 41, Sec. 1, as amended, states that '[i]n the absence of any applicable provisions in these Rules, the pertinent provisions of the Rules of Court in the Philippines shall be applicable by analogy or in suppletory character and effect.'

¹⁶ *See Duco v. Commission on Elections*, 613 Phil. 186 (2009).

¹⁷ THE REVISED RULES OF COURT, Rule 65, Sec. 1 provides:

SECTION 1. *Petition for Certiorari.* — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification

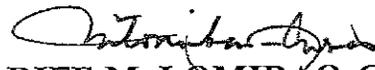
attributed to the COMELEC for dismissing the petition for having been filed beyond the reglementary period, and for non-compliance with the rule on certification against forum shopping.

Further, the denial of the motion for reconsideration was likewise proper considering that petitioner failed to comply with A.M. No. 11-9-4-SC or the Efficient Use of Paper Rule, as adopted by the COMELEC Resolution No. 9576.

Finally, the Court notes that the election protest, from which this case originated, has already been rendered moot and academic by the recently concluded 2022 elections, and the subsequent assumption to office of the newly elected public officials.

WHEREFORE, the petition is **DISMISSED** for lack of merit.”
Inting and Kho, Jr., JJ., no part. (42)

By authority of the Court:



MARIFE M. LOMIBAO-CUEVAS

Clerk of Court *han*

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