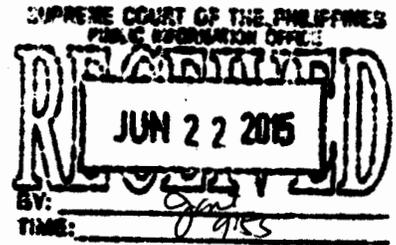




Republic of the Philippines
Supreme Court
Manila

EN BANC

NOTICE



Sirs/Mesdames:

Please take notice that the Court en banc issued a Resolution dated JUNE 16, 2015, which reads as follows:

“G.R. No. 215411 (Reynaldo M. Ordanes v. Commission on Elections and Elizabeth R. Vargas). – This is a petition for *certiorari* and prohibition under Rule 64 in relation to Rule 65 of the Rules of Court assailing the November 21, 2014 Resolution¹ of the Commission on Elections (COMELEC) *En Banc*, in SPR (AEL) Case No. 10-2014, which *reversed* the September 15, 2014 Resolution² of the COMELEC Second Division. The September 15, 2014 Resolution of the COMELEC Second Division (COMSD) dismissed the petition for *certiorari* filed by private respondent Elizabeth R. Vargas (*Vargas*), in effect, upholding the June 19, 2014 Order³ of the Regional Trial Court, Branch 30, Cabanatuan City (*RTC*) granting the motion for execution pending appeal filed by petitioner Reynaldo M. Ordanes (*Ordanes*).

In the same November 21, 2014 Resolution, the COMELEC *En Banc* also *annulled* and *set aside* the June 19, 2014 Order of the RTC. The *fallo* of the November 21, 2014 Resolution of the COMELEC *En Banc* reads:

WHEREFORE, premises considered, the Commission *En Banc* RESOLVED, as it hereby RESOLVES, to GRANT the *Motion for Reconsideration dated 18 September 2014*. ACCORDINGLY, Commission (Second Division) Resolution dated 15 September 2014 is hereby REVERSED and the *Order dated 19 June 2014* by public respondent Honorable Virgilio G. Caballero, in his capacity as Presiding Judge, Regional Trial Court, 3rd Judicial Region, Branch 30, Cabanatuan City is SET ASIDE and ANNULLED.

SO ORDERED.⁴

¹ *Rollo*, pp. 37-48.

² *Id.* at 56-64.

³ *Id.* at 56-65.

⁴ *Id.* at 47-48.

June 16, 2015

The Antecedents:

Private respondent Vargas and petitioner Ordanes were candidates for the position of Municipal Mayor of Aliaga, Nueva Ecija, in the May 13, 2013 Synchronized Automated National and Local Elections. Vargas was proclaimed winner with 11,477 votes against the 11,413 of Ordanes with a lead of 64 votes.⁵

Ordanes then filed an election protest before the RTC. On May 28, 2014, after the revision proceedings, the RTC declared him as the winner by a margin of 11 votes over Vargas. The latter filed a notice of appeal which was given due course and was eventually docketed as EAC (AEL) No. 20-2014, raffled to the COMSD.⁶

Meanwhile, Ordanes filed his Motion for Execution Pending Appeal. On June 19, 2014, the RTC granted it.⁷

Vargas then filed before the COMELEC a petition for *certiorari* seeking to annul the June 19, 2014 RTC order of execution pending appeal.

On September 15, 2014, the COMSD dismissed the said petition for lack of merit.⁸ It was of the view that the RTC did not commit any grave abuse of discretion in issuing the subject order which would warrant its annulment. It stated that all the requirements for the grant of execution pending appeal in election protest cases under Section 11, Rule 14 of A.M. No. 10-4-1-SC⁹ were satisfied in this case, namely: Ordanes filed a motion and a supplemental motion for execution of order/decision pending appeal with notice to Vargas; the motions were supported by good reasons; and the good reasons were stated in the order granting execution. Moreover, the COMSD agreed with the RTC when it cited two good reasons for allowing execution pending appeal in accordance with the ruling in *Ramas v. COMELEC*¹⁰ and *Fermo v. COMELEC*.¹¹ *first*, the will of the electorate and the sovereign will of the people should be given the utmost respect and *second*, the time element.

In his Dissenting Opinion,¹² Commissioner Luie Tito F. Guia remarked that there was no sufficient statement of good reasons in the RTC order that could justify the execution of the decision pending appeal. He added that the victory or defeat of either party was not clearly established in

⁵ Id. at 57.

⁶ Id. at 57.

⁷ Id. at 38.

⁸ Id. at 56-64.

⁹ 2010 Rules of Procedure in Election Contests before the Courts Involving Elective Municipal Officials.

¹⁰ 349 Phil. 857 (1998).

¹¹ 384 Phil. 584 (2000).

¹² *Rollo*, pp. 66-72.

the decision. He concluded that the RTC committed grave abuse of discretion in issuing the said order.

Vargas filed a motion for reconsideration praying, among others, for the issuance of a Temporary Restraining Order (*TRO*) and/or Status *Quo Ante* Order (*SQAO*) which the COMSD elevated to the COMELEC *En Banc*.

In the Order, dated September 23, 2014, the COMELEC *En Banc* granted the interim relief.¹³

On November 21, 2014, the COMELEC *En Banc* granted Vargas' motion for reconsideration.¹⁴ It stressed that, pursuant to Section 11, Rule 14 of A.M. No. 07-4-15-SC, the reasons which justified execution pending appeal demanded urgency outweighing any possible injury should the losing party secure a reversal of the judgment on appeal; and that the victory of the protestant must be clearly established. It stated that the victory of Ordanes was not clearly established in the RTC decision because its appreciation of the questioned ballots was obviously flawed; and it did not explain the tallies and figures pertaining to the parties' respective votes.

The COMELEC *En Banc* further noted that there was no shortness of the remaining term of the contested office because at the time the RTC issued the subject order, the protest case was pending for barely a year or, conversely, two-thirds of the term had not yet transpired. Finding that there was no urgency to speak of, it stated that there was no combination of good reasons to allow the execution pending appeal.

Hence, this petition with prayer for the issuance of a TRO, SQAO or a Writ of Preliminary Injunction (*WPI*) anchored on the following

GROUND

A. PUBLIC RESPONDENT COMMISSION ON ELECTIONS *EN BANC* GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT GRANTED THE MOTION FOR RECONSIDERATION OF PRIVATE RESPONDENT IN SPR (AEL) NO. 10-2014 ON THE BASIS THAT THE LOWER COURT ERRED IN THE APPRECIATION OF BALLOTS EVEN WHEN THIS IS BEYOND THE PROVINCE OF A SPECIAL CIVIL ACTION FOR *CERTIORARI*.

¹³ Id. at 38.

¹⁴ Id. at 37-48.

B. PUBLIC RESPONDENT COMMISSION ON ELECTIONS *EN BANC* GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT OVERSTEPPED ITS POWERS AND PRE-EMPTED THE DETERMINATION OF THE MERITS OF THE CASE SUBJECT OF A SEPARATE AND PENDING APPEAL BEFORE THE COMELEC SECOND DIVISION.

C. PUBLIC RESPONDENT COMMISSION ON ELECTIONS *EN BANC* GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT TOOK COGNIZANCE OF THE *CERTIORARI* PETITION FILED BY PRIVATE RESPONDENT DESPITE HER FAILURE TO FILE A MOTION FOR RECONSIDERATION BEFORE THE TRIAL COURT.¹⁵

In advocacy of his position, Ordanes argues that the COMELEC *En Banc* acted with grave abuse of discretion when it nullified and set aside the special order issued by the RTC mainly on its findings that the latter's appreciation of the questioned ballots was obviously flawed as this was beyond the province of a special civil action for *certiorari* and notwithstanding the pendency of an appeal before the COMELEC. Moreover, such action, in effect, pre-empted or prejudged the merits of the pending appeal proceedings before the COMSD and rendered the same moot, in gross violation of his right to due process. He further argues that Vargas did not comply with the condition *sine qua non* of filing a motion for reconsideration of the RTC order granting execution pending appeal, hence, her *certiorari* petition before the COMELEC was fatally defective for having been prematurely filed.

In their respective comments,¹⁶ the respondents counter that the COMELEC *En Banc*: 1] did not commit grave abuse of discretion in promulgating the assailed November 21, 2014 Resolution as it was issued after properly considering the requirements of the law, rules and jurisprudence; 2] correctly found that the RTC committed grave abuse of discretion in granting the motion for execution pending appeal as Ordanes miserably failed to satisfy the strict and exclusive requirement mandated by Section 11, Rule 14 of A.M. No. 10-4-1-SC; and 3] failed to find good and valid reasons that would justify an execution pending appeal. They also argue that a motion for reconsideration was not necessary, the COMELEC having the authority to issue the extraordinary writs of *certiorari*, prohibition

¹⁵ Id. at 19-20.

¹⁶ By respondent Vargas, dated March 2, 2015 (*rollo*, pp. 203-219) and by COMELEC, dated March 30, 2015.

and *mandamus* in aid of its appellate jurisdiction. In addition, the public respondent contends that the COMELEC *En Banc* did not prejudice the pending appeal before the COMSD because it did not rule on the merits of the appeal.

Further, the respondents aver that Ordanes was not entitled to the issuance of a TRO and/or WPI for his failure to show clear and unmistakable right, a material and substantial invasion of such right, and an urgent necessity for the writ to prevent serious damage.

The Court's Ruling:

The issue for the Court's resolution is whether the COMELEC gravely abused its discretion amounting to lack or excess of jurisdiction in issuing the November 21, 2014 Resolution which granted the motion for reconsideration filed by Vargas and annulled the RTC order granting Ordanes' motion for execution pending appeal.

Section 11, Rule 14 of A.M. No. 10-4-1-SC, with regard to the issuance of a valid writ of execution pending appeal, reads:

Section 11. Execution pending appeal. – On motion of the prevailing party with notice to the adverse party, the court, at its discretion and while still in possession of the original records, may order the execution of its decision before the expiration of the period to appeal, subject to the following rules:

(a) Execution pending appeal shall not issue except upon motion and hearing with prior notice of the motion of at least three (3) days to the adverse party. The motion for execution pending appeal must be **supported by good reasons cited and stated by the court in a special order.** **These reasons must:**

(i) **constitute superior circumstances demanding urgency** that would outweigh the injury or damage, should the losing party secure a reversal of the judgment on appeal; and

(ii) manifest, in the decision sought to be executed, that **the defeat of the protestee or the victory of the protestant has been clearly established.**

(b) xxx

[Emphases Supplied]

In other words, before allowing an execution pending appeal in election cases, the following requisites must concur: (1) there must be a

motion by the prevailing party with notice to the adverse party; (2) there must be good reasons for the execution pending appeal; and (3) the order granting execution pending appeal must state the good reasons.¹⁷ The good reasons must be stated in a special order. The following constitute good reasons and a combination of two or more of these will suffice to grant a motion for execution pending appeal: (1) public interest involved or will of the electorate; (2) the shortness of the remaining term of the contested office; and (3) the length of time that the election contest has been pending.¹⁸

In this case, no time element was involved because, as correctly pointed out by the COMELEC *En Banc*, the RTC issued the subject order on June 19, 2014, when the protest case had been pending for barely a year only or, more or less, with two (2) years of the term still remaining. Thus, the COMELEC *En Banc* had a valid basis in concluding that there was no shortness of the remaining term. In the case of *Istarul v. Comelec*,¹⁹ there were still 21 months remaining which the Court did not consider as a good reason. Thus:

Moreover, the length of time that the election protest has been pending, thus, leaving petitioner only 21 months as the remaining portion of the term to serve as mayor, does not constitute "good reason" to justify execution pending appeal. The case of *Fermo v. Comelec*, which is closely analogous to the present case, is instructive. Therein, the Court stated thus:

"Shortness of term," alone and by itself cannot justify premature execution. It must be manifest in the decision sought to be executed that the defeat of the protestee and the victory of the protestant has been clearly established.

The COMELEC *En Banc* also correctly found that the victory of Ordanes was not clearly established in the RTC decision because its appreciation of the questioned ballots was obviously flawed and it did not explain the tallies and figures pertaining to the parties' respective votes. Thus:

For perspective, public respondent considered seventy-two (72) votes for petitioner [Vargas] for private respondent [Ordanes] finding that the markings or shadings thereon comprising less than half of the oval are stray votes pursuant to Section 6 (h), Rule 10 of A.M. No. 10-4-1-SC, viz:

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Public respondent's reasoning is understandably outdated; the fifty percent (50%) threshold public respondent speaks of is immaterial in relation to 13 May 2013 National and Local Elections. The threshold limit pertains to the minimum amount of marking or shading required in order

¹⁷ *Lim v. Comelec*, 546 Phil. 642, 645 (2007), citing *Alvarez v. Comelec*, 405 Phil. 950, 958 (2001).

¹⁸ *Id.* at 645-646, citing *Fermo v. Comelec*, 384 Phil. 584, 592 (2000).

¹⁹ 524 Phil. 609 (2006).

to register a valid vote during the 10 May 2010 National and Local Elections; a vote that did not meet the required limit was considered ambiguous and the voting machine would return the ballot with such marking for the voter to re-shade. For the 2013 Elections, this feature of the voting machine was disabled to “prevent the disenfranchisement of the voter caused by the PCOS of the entire ballot due to ambiguous mark;” consequently, the voting machine may consider even a minute dot as a valid vote. Since the voting machine “only distinguishes a valid or no mark at all, the intent of the voter, and whether or not such intent was reflected in the election returns, may be determined... by printing the ballot digital images, and comparing said images with the election returns and the contested ballots.” Simply stated, the only manner to positively identify a stray vote is to compare the ballot digital image (particularly the vote summary), the pertinent Election Return and the contested ballot. Thus, it is unfathomable how public respondent could immediately conclude that the seventy-two (72) votes for petitioner were stray considering that no such comparison was made. Even if the comparison was done and a vote is shown to be stray, there is still the persuasive argument that the marking nevertheless proves the voter’s intent and thus should be counted as such pursuant to Section 211 of the Omnibus Election Code. In fine, public respondent mis-appreciated the seventy-two (72) votes for petitioner and gravely placed into question the defeat of petitioner and, conversely, the victory of private respondent.²⁰

[Underscoring Supplied]

The COMELEC *En Banc* further noted in the assailed November 21, 2014 Resolution that:

Compounding the foregoing is the glaring absence of any “tabulation and summary of the total number of votes and those which were validated, nullified, and voided...” Worse, public respondent confused the parties in the process of totalling their votes:

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What is truly painstaking is the attempt to understand how public respondent could have arrived at the parties’ respective votes; neither did public respondent mention the results of the ballot revision proceedings nor did he explain how he derived the above-mentioned figures.

The Decision dated 28 May 2014 may have declared private respondent to have received a plurality of eleven (11) votes but the defeat of petitioner and victory of private respondent were never clearly established. This is possibly the reason why the Order dated 19 June 2014 did not even mention, much less discuss, this.²¹

[Underscoring Supplied]

²⁰ *Rollo*, pp. 43-45.

²¹ *Id.* at 45-46.

Considering the afore-quoted circumstances, the Court sees no error committed by the COMELEC *En Banc* in ascribing grave abuse of discretion on the part of the RTC when it granted the motion for the execution of the decision on appeal.

Ordanes' contention that the assailed resolution of the COMELEC *En Banc* effectively rendered nugatory the pending appeal proceedings before the COMSD has no merit. Section 12,²² Rule 14 of the Rules of Procedure on Election Contests provides the COMELEC the authority to issue the extraordinary writs of certiorari, prohibition and mandamus in aid of its appellate jurisdiction over decisions of the courts in election cases involving elective municipal officials. This authority, however, is not so restricted. Thus, in the case of *Nazareno v. Comelec*,²³ it was written:

In resolving a special civil action for *certiorari* assailing an order granting execution pending appeal for having been issued with grave abuse of discretion, an appellate tribunal — or **the COMELEC in appropriate election cases — is not limited in its inquiry to the challenged order alone, but must likewise take into account the decision itself.** This is obvious from the fact that execution pending appeal allowed by Section 2 of Rule 39 of the Rules of Court is an exception to the general rule that only *final* judgments may be executed; accordingly, the provision must be strictly construed. It can only be allowed on the basis of "good reasons" to be stated in a special order; the reasons must be of such urgency as to outweigh the injury or damage of the losing party should the latter secure a reversal of the judgment on appeal.

[Emphasis Supplied]

And there was nothing in the COMELEC *En Banc* Resolution which would render nugatory the pending appeal proceedings. There was no conclusionary finding which would, in effect, prejudge the pending case. It merely stated that the decision was "obviously flawed," which cannot in any way be read as pre-empting the resolution of the issue on who has the right to occupy the contested seat — a question that will still be properly resolved in the pending appeal in the COMSD.

With respect to the argument of Ordanes that Vargas failed to file a motion for reconsideration with the RTC, suffice it to state that the present case is one of those falling within the exceptions to the general rule. Some of the exceptions to this general rule are: (1) when public interest is involved, (2) the matter is one of urgency, or (3) the order is a patent

²² **Section 12. Jurisdiction of the Commission on Elections in Certiorari Cases.** — The COMELEC has the authority to issue the extraordinary writs of certiorari, prohibition and mandamus only in aid of its appellate jurisdiction over decisions of the courts in election cases involving elective municipal officials.

²³ 344 Phil. 505 (1997).



nullity.²⁴ As can be gleaned from the foregoing, the first and second reasons are extant in the case.

In fine, Ordanes failed to sufficiently prove that the COMELEC acted with caprice or whimsical arbitrariness to warrant the issuance of the writ of *certiorari*.

WHEREFORE, the petition is **DENIED.**” Peralta and Leonen, JJ., on official leave. (adv80)

Very truly yours,


ENRIQUETA E. VIDAL
Clerk of Court 

ATTYS. MARILYN V. GALLANOSA & SUZETTE A. NER (reg)
Gallanosa Ner & Associates
Counsel for Petitioner
Unit 515, Pacific century Tower
1472-76 Quezon Avenue
South Triangle, Quezon City

COMMISSION ON ELECTIONS (x)
Intramuros, Manila

THE SOLICITOR GENERAL (reg)
Office of the Solicitor General
134 Amorsolo St., Legaspi Village
Makati City

JUDICIAL RECORDS OFFICE (x)
JUDGMENT DIVISION (x)
Supreme Court

ATTYS. STANLEY L. GOTOHIO & LUZVIE T. GONZAGA (reg)
Counsel for Private Respondent
Unit 9, Kaminari Bldg.,
247 Banawe, Quezon City

 PUBLIC INFORMATION OFFICE (x)
LIBRARY SERVICES (x)
Supreme Court
[FOR UPLOADING PURSUANT TO A.M. No. 12-7-1-SC]

ATTYS. FLORENCIO M. MARTINEZ, TEODORO M. JUMAMIL & ROBESPIERRE S. CU (reg)
Navarro Jumamil Escolin & Martinez
Law Offices
Counsel for private respondent E.R. Vargas
20-C Burgundy Corporate Tower
252 Sen. Gil Puyat Avenue
1200 Makati City

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²⁴ *Istarul v. COMELEC*, supra note 19, at 618-619 (2006), citing *Far East Bank and Trust Co. v. Toh, Sr.*, 452 Phil. 734 (2003).