

RUDY J. DE LEON, DANILO MAGNO, JUAN TINIO, AL-FREDO LAMSON, JUAN OSTA-RES, CRISOLITO SABINO, ROSITA DE PAZ, FRANCISCO ALVAREZ, ET AL., PETITIONERS, VS. HON. JUDGE TEOFILO GUADIZ...

G.R. Nos. L-55922-23. May 26, 1981

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

In this Petition for Review on Certiorari, petitioners, who were the defeated candidates for Vice-Mayor and Members of the Sangguniang Bayan of San Antonio, Nueva Ecija, respectively, seek a reversal of respondent Court's Order, dated March 27, 1980, which dismissed their Election Protest for alleged failure, within the period given by the Court, to file their separate amended protests and to pay the filing fees and cash deposits as required by Comelec Resolution No. 1451, as well as of the Orders of May 16 and October 3, 1980 denying reconsideration.

On February 12, 1980, petitioners filed a joint election protest contesting the positions of Vice-Mayor and Members of the Sangguniang Bayan of San Antonio, Nueva Ecija, with the Court of First Instance of Nueva Ecija, Branch V, entitled "Rudy de Leon, et als. vs. Jovenal Aldaba, et als.," docketed as Election Case No. 3. They anchored their contest on alleged failure of election, commission of election day frauds, and turncoatism. Upon filing of the protest, they paid the corresponding docket fee and legal research fund fee.

On February 26, 1980, the Commission on Elections (Comelec) promulgated Resolution No. 1451 known as the "Procedural Rules for Election Contests in the Courts of First Instance" involving elective municipal and municipal district offices.

The provisions thereof pertinent to this case read:

"Sec. 2. Filing of election contests. - x x x Each contest shall refer exclusively to one office, but contests for offices of the sangguniang bayan may be consolidated in one case.

x x x

"Sec. 6. Filing fee. - No contest shall be given due course without the payment of a filing fee in the amount of one hundred pesos (100.00) for each interest.

"Sec. 7. Cash deposit. - In a protest or a counter-protest not requiring ballot revision, the protestant or the counter-protestant, as the case may be, shall make a cash deposit in the amount of two hundred pesos (P200.00); if a revision must be made, the cash deposit shall be in the sum of one thousand pesos (P1,000.00). The amount shall be deposited with the Clerk of Court within ten (10) days after being required by the Court to do so, and shall be applied to the payment of all expenses incidental to such protest or counter-protest. When the circumstances so demand, additional cash deposits may be required. Failure to make the cash deposits herein provided within the prescribed time limit shall result in the automatic dismissal of the protest or

counter-protest, as the case may be." (Emphasis supplied)

Pursuant thereto, on February 28, 1980, respondent Court ordered the petitioners-protestants, within ten days from receipt, to file amended protests separating the contest for Vice-Mayor from that of the members of the Sangguniang Bayan; to pay P100.00 each as filing fee; and it appearing that a ballot revision was necessary, the protestant for the position of Vice-Mayor was required to make a cash deposit of P1,000.00, and the protestants for the positions of members of the Sangguniang Bayan, who could remain consolidated in one position, also to make a cash deposit of P1,000.00. This Order was received by petitioners on March 4, 1980. They had, therefore, up to March 14, 1980 within which to file amended protests, pay the filing fees, and make the cash deposits.

On March 12, 1980, petitioners-protestants moved for five days extension from March 14, 1980 within which to comply. Encountering difficulty in raising the necessary amounts, petitioners, on March 19, 1980, mailed their Motion for another extension of seven days. (There is a dispute as to whether this was, in fact, filed on March 19, or on March 21, 1980). On March 26, 1980, petitioners again filed an Urgent Motion for an additional seven days extension on the ground that their counsel was bed-ridden, which period would have extended up to April 2, 1980. This last Motion was unacted upon by respondent Court.

On April 1, 1980, petitioners filed an Amended Protest covering the position of Vice-Mayor (Election Case 3), and another Amended Protest (Election Case 3-A) in respect of the members of the Sangguniang Bayan. The corresponding cash deposits in the total amount of P2,000.00^[1] and filing fees of P100.00 each^[2] were likewise satisfied, except for two protestants for the position of members of the Sangguniang Bayan, who failed to pay the filing fees.

In the meantime, apparently unaware of petitioners' Motion for extension dated March 26, 1980, respondent Court dismissed the Election Protest in its Order of March 27, 1980, herein assailed, reasoning as follows:

"The Court believes that the period within which the protestants may submit amended petitions in order to separate the protest for vice-mayor from that of the protest involving the membership in the Sangguniang Bayan may be extended in the exercise of sound discretion by the Court. However, with respect to the period within which the filing fee of P100.00 may be paid and the period within which the cash deposit of P1,000.00 may be made may not be extended. This is so because the time to file a protest which carries with it the corresponding payment of the filing fee, may not be extended. With respect to the cash deposits which may be required pursuant to Section 7 of the Procedural Rules involving election contests for elective offices in the municipalities and municipal districts, it is because it is provided in section 7 that:

" x x x. Failure to make the cash deposits herein provided within the prescribed time limit shall result in the automatic dismissal of the protest or counter-protest, as the case may be."

"The Court notes that, even if all the petitions for extensions were legally permissible, the protestants had failed to comply with the Order dated February 28, 1980 within the extensions sought by them. Considering the fact that the protestants, thru counsel, received a copy of the said Order on March 4, 1980, the last day of the 10-day-period within which to comply was March 14, 1980. The first motion for extension was for 5 days and the last day thereof was on March 19, 1980. The second motion for extension of time was filed on March 21, 1980 when the first sought extension of 5 days had already expired. But even assuming arguendo that the same were extended, still the second extension of 7 days sought by the protestants had already expired because counting 7 days from March 20, 1980 the last day within which the protestants could have complied with the Order dated February 28, 1980 should have been on March 26, 1980.

Accordingly, the failure of the protestants to file the amended petitions referred to in the Order dated February 28, 1980, to pay the filing fees and the cash deposits mentioned in the said Order 'results in the automatic dismissal of the protest' as provided under Section 7 of the Procedural Rules."^[3]

Petitioners received this Order on April 1, 1980. They moved for reconsideration twice but were unsuccessful in both attempts, as embodied in respondent Court's challenged Orders of May 16 and October 3, 1980. This last Order was received by petitioners on January 5, 1981.[4]

The instant Petition was filed on February 27, 1981 within the extended period granted by this Court. On May 20, 1981, we resolved to give due course thereto and considered the case submitted for decision without need for submittal of memoranda.

We hold that respondent Court committed grave abuse of discretion tantamount to lack of jurisdiction when it dismissed the protest. It is significant to note that petitioners had promptly filed their original joint pro-test on February 12, 1980, or, within the period of ten days after the proclamation of respondents on February 2, 1980, pursuant to section 190 of the 1978 Election Code, then the governing proviso. Petitioners had also duly paid the necessary filing fee of P32.00 and legal re-search fund fee of P2.00 as shown by receipts issued by the Clerk of Court of the Court of First Instance of Nueva Ecija, Branch V, Gapan, also pursuant to the requirements then in force.[5] Thus, in the filing of their original protest, there was full compliance by petitioners with then prevailing requisites. That protest contained all the jurisdictional facts and statements of a cause of action to warrant a hearing of the case on the merits.

Upon the filing of the original Protest, therefore, respondent Court had already acquired jurisdiction over petitioners' protest, and petitioners-protestants should not be deprived of their right to be heard on the merits of their case.

"After the court has acquired jurisdiction of an election protest by the presentation of the motion of protest within time and proper notice is given and the bond has been filed, it deprives the protestant of his right to be heard upon the merits of his cause by dismissing the protest and mandamus will issue to compel a re-statement of the same and a hearing upon the merits."[6]

It is true that under Section 7 of Resolution No. 1451, failure to make the cash deposits within the prescribed time limit shall result in the automatic dismissal of the protest. That provision, however, finds no application herein. Petitioners were not remiss in complying with the rules nor with the Order of respondent Court dated February 28, 1980. This is so because they had seasonably filed their motions for extension of time within which to comply, based on meritorious grounds, the last of which was unacted upon by the Court. There is a dispute as to whether the petition for extension of March 19, 1980 was, in fact, filed on said date or on March 21, 1980. If the latter date, the extended period would have already expired. But, as petitioners claim, they had sent by registered mail the second prayer for extension on March 19, 1980, which would have been the last day and would still have been complying, the date of mailing being considered as the date of filing (Section 1, Rule 13, Rules of Court). Petitioners' third and last Motion for extension dated March 26, 1980 was not resolved by respondent Court. It was even unaware of said Motion at the time it dismissed the Protest on March 27, 1980. Petitioners filed their compliance on April 1, 1980, which was within the last extended period of time requested, or up to April 2, 1980, unaware of any denial of the extensions asked, nor of the Order of dismissal, which they received only on the same date, or, April 1, 1980. Petitioners promptly sought reconsideration thereafter.

There should be no question but that the filing of an election protest and with it the payment of docket fees should be done within the statutory period[7], and that no extensions of said period are legally permissible. The factual environment in the instant case, as above explained, however, removes this case from the rigid application of that mandatory rule. Had the protest herein been filed after February 26, 1980, the date of the promulgation of Comelec Resolution No. 1451, that general rule would have been perfectly applicable. As matters stand, however, Resolution No. 1451 was promulgated only subsequent to the filing of the original protest. This was presented well within the reglementary period and the requisite filing fees likewise paid. Petitioners were then unaware of

the increase in filing fees nor of the requirement regarding cash deposits as embodied in the Comelec Resolution. Giving them time to comply with the new rules was but fair and equitable.

Above all, there is a cardinal principle to consider. An election contest does not merely concern the personal interests of rival candidates for an office. Over and above their claims is the deep public interest involved, the need to imperatively determine the correct expression of the will of the electorate. More, "it is a recognized principle that laws governing election protests must be liberally interpreted to the end that the popular will expressed in the election of public officers will not, by reason of purely technical objections, be defeated."^[8]

WHEREFORE, the questioned Orders of March 27, May 16, and October 3, 1980, are hereby set aside, and respondent Court hereby ordered to give due course to the separate Amended Protests for the position of Vice-Mayor and members of the Sangguniang Bayan of San Antonio, Nueva Ecija, respectively.

No costs.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Guerrero, and De Castro*, JJ., concur.

[1] page 49, Rollo.

[2] pages 47-50, *ibid*.

[3] pages 29-30, *ibid*.

[4] page 17, *ibid*.

[5] pages 45, 46 & 50, *ibid*.

[6] *Ancheta and Aguilar vs. Judge of 1st Instance of La Union*, 40 Phil. 73, 74 (1919).

[7] *see Malimit vs. Degamo*, 12 SCRA 450 (1964).

[8] *Macasundig vs. Macalangan*, 13 SCRA 577 (1965).

* Justice Pacifico P. de Castro was designated to sit with the First Division vice Justice Ramon C. Fernandez, who is on official leave.

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