

TEODORO S. MAYUGA, PETITIONER, VS. FRANCISCO MAT. RIODIQUE, AS PRESIDING JUDGE OF THE CFI OF BATANGAS, LEMERY BRANCH, LEMERY, BATANGAS, AND GERMAN M. TENORIO, RESPONDENTS.

G.R. No. L-56174. May 15, 1981

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

Petitioner Teodoro S. Mayuga, KBL candidate, was proclaimed on January 31, 1980 as the duly elected mayor of San Nicolas, Batangas by the Board of Canvassers with a majority of 30 votes following the elections of January 30, 1980.

On February 8, 1980, private respondent German M. Tenorio, the Nacionalista Party candidate filed an election protest against petitioner, alleging that the ballots in voting centers Nos. 4-A, 6-A, 8, 9, 9-A, 9-B, 10, 10-A, 13 and 14 were not correctly appreciated.

On March 4, 1980, private respondent German M. Tenorio amended his petition by adding voting centers Nos. 2, 2-A and 4-B.

On March 10, 1980, petitioner Mayuga filed his answer with counter-protest and interposed as affirmative defense, among others, that the petition and amended petition were both filed out of time and hence respondent's cause of action has prescribed.

On April 29, 1980, petitioner objected to the revision of the ballots from voting centers Nos. 2, 2-A and 4-B on the ground that the amendment including ballots from the aforesaid three (3) voting centers, was filed out of time.

On June 19, 1980, respondent judge gave due course to the amended protest.

Petitioner then filed with the Commission on Elections a petition to declare null and void the respondent Judge's order dated June 19, 1980, insisting that the inclusion of the three (3) additional voting centers in the amended petition was filed beyond the period fixed by law. In an order dated January 23, 1981, the Commission on Elections dismissed the petition on the ground that it has no jurisdiction over petitions for certiorari, prohibition and mandamus involving election cases cognizable by the Courts of First Instance.

On February 6, 1981, upon motion of private respondent, the respondent Judge issued an order setting the revision of ballots from voting centers Nos. 2, 2-A and 4-B in San Nicolas, Batangas.

Hence, this petition.

Petitioner claims that substantial amendments to election protests must be filed within the period for the filing of the original protest itself. This position is correct under the cases decided prior to February 26, 1980.

However, by virtue of its rule-making authority, the Commission on Elections promulgated on February 26, 1980,

Resolution No. 1451, Section 5, Rule II of which provides:

"Substantial and Formal Amendments. - After the case is set for hearing, no amendment to the allegations affecting the merits of the controversy shall be allowed except by leave of Court and only upon such ground as will serve public interest. But such leave may be refused if it appears to the Court that the motion to amend was made with intent to delay the action. Any amendment in matters of form may be permitted at any stage of the proceedings" (see Section 185[b], PD No. 1296 or the Revised Election Code of 1978; Sections 2[2] and [8], Art. XII, 1973 Constitution).

Neither the validity of said Resolution No. 1451 nor the authority of the Commission on Elections to promulgate the same has been challenged.

Contrary to the pretension of petitioner, the original protest was filed within the period prescribed by law.

It should be stressed that the amended petition was filed on March 4, 1980 by virtue of the aforesaid COMELEC Resolution No. 1451 promulgated on February 26, 1980, long before petitioner, as protestee, filed on March 10, 1980 his answer to the protest. In his answer, petitioner specifically denied paragraph 5 of the amended petition referring to the questioned voting centers Nos. 2, 2-A and 4-B.

Thus, the relevant portion of the challenged order of the respondent Judge reads:

"x x x.

"As stated, the protestee filed his answer to the amended motion of protest on March 10, 1980, specifically denying paragraph 5 of the amended petition (referring to the allegation concerning Voting Centers 2 and 2-A of Barangay Calangay and Voting Center No. 4-B in Barangay Pansipit, San Nicolas, Batangas) which were not alleged in the original motion of protest. Protestee in his answer averred --

'3.1 In Barangay Calangay, Voting Centers 2 and 2-A and in Barangay Pansipit, Voting Center No. 4-B, there were no marked ballots appreciated by the election committee in favor of the respondent.

'3.2 Assuming arguendo that some ballots contained the word 'Meralya', the same cannot be considered as identifying marks, but votes intended for 'Marella', a candidate for the Provincial Board.'

"From the foregoing answer of the protestee, he was not caught by surprise and placed to a disadvantage as to justify a rejection of the amended motion of protest. On the contrary, the action of the protestee, by answering specifically the amendments in question paved the way for the admission of the amended motion of protest. As a matter of fact, the protestee has not yet made an answer to the original motion of protest. No delay was intended by the protestant when he filed his amended motion of protest. The truth is he is much more interested in terminating this protest than anybody else. This situation obtaining in this case is only one among the different situations confronting the courts today. This situation occurring in the past elections, not having been provided for solution by law except by jurisprudence, must have prompted the Commission on Elections to promulgate on February 26, 1980, Resolution No. 1451 governing Rules on Election Contest.

"The law providing for a period within which an election protest should be filed is Mandatory but the law providing for amendments to the election protest is permissive. Hence, because this case has not yet been set for hearing when the amendment was made, the law allows the protestant to amend his motion of protest even without leave of court. This, to the mind of the Court is the liberal interpretation of Section 5, Rule III of the Comelec Rules on Election Contest (Resolution No. 1451, promulgated on February 26, 1980). A contrary interpretation will be repugnant to the fundamental rule that election laws should be liberally construed.

"x x x" (pp. 19-20, rec.).

It is clear, therefore, that COMELEC Resolution No. 1451 of February 26, 1980 has modified the previous rulings

on the matter of substantial and formal amendments. Under the resolution, as long as the case has not been set for hearing, substantial amendments affecting the merits of the protest shall be allowed when public interest could be sub-served thereby and when such amendments are not intended to delay the action.

In the instant case, the substantial amendment, as heretofore stated, was effected before any responsive pleading was filed by herein petitioner, and consequently, the case had not yet been set for hearing on March 4, 1980, because petitioner filed his answer only on March 10, 1980.

WHEREFORE, FOR LACK OF MERIT, THE PETITION IS HEREBY DISMISSED. NO COSTS.

Fernando, C.J., Teehankee, Aquino, Fernandez, Guerrero, and Melencio-Herrera, JJ., concur.

Barredo, J., concurs and agrees with Justice de Castro in Pimentel, but the majority ruled otherwise and that decision is now the law.

Concepcion, Jr., J., on leave.

Abad Santos, J., no part.

De Castro, J., see separate opinion.

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SEPARATE OPINION

DE CASTRO, J.:

This is not a dissent from how the present petition is disposed of on the merits, for on the assumption that in making such disposition, this Court is properly exercising jurisdiction, I would fully concur therein. I only wish to reiterate my dissenting opinion in the case of MARIANO J. PIMENTEL, et al., versus COMMISSION ON ELECTIONS, et al., promulgated 19 December 1980, under which I would hold that COMELEC to which the present petition was originally filed has jurisdiction to entertain said petition, and should not have dismissed it as it did. My dissenting opinion is quoted hereunder in full as follows:

"While I am in agreement with the rejection of the argument of private respondents in support of their view that COMELEC has jurisdiction to entertain the petition filed by them because it would trace the said jurisdiction to the Rules of Court, not to a law or the Constitution which alone can confer jurisdiction, I believe that when the law conferred appellate jurisdiction on COMELEC (Section 196, Revised Election Code 1978) in election cases originally tried and decided by the Court of First Instance, which jurisdiction used to pertain to the Court of Appeals, the law, at least impliedly, transferred along with such appellate jurisdiction the competence to issue writs of certiorari, prohibition, mandamus, etc. For any appellate court, such as the COMELEC in election contests appealed to it from the Court of First Instance, in order to effectively exercise its appellate jurisdiction, must have at least the authority to issue such writs in the same manner that such is conferred upon the Court of Appeals in aid of its appellate jurisdiction. In transferring jurisdiction over appealed election contests to the COMELEC, it can reasonably be assumed that the law intended to transfer also such power as is deemed necessary, if not indispensable, "in aid of the appellate jurisdiction" conferred on the COMELEC. There is no reason perceivable why the transfer is only partial, not total, for as stated in 11 Corpus Juris, p. 139, the jurisdiction to issue the writs may be expressly or impliedly conferred by constitutional or statutory provision. From this legal approach, the source of the power or jurisdiction of

COMELEC over petitions such as the petition in question, is the law, the Revised Election Code of 1978, not the Rules of Court.

"To hold that COMELEC has no jurisdiction to entertain the petition for certiorari etc. would be to leave no other court to which recourse may be had than the Supreme Court. But from the provision of the Revised Election Code of 1978 giving the appellate jurisdiction over election cases decided originally by the Courts of First Instance to the COMELEC, and the provision of the Constitution limiting the power of the Supreme Court to exercising only certiorari jurisdiction over decisions, orders and resolutions of the COMELEC, I am unable to say that the intention of the 1978 Election Code is to disperse or divide the authority over an election case filed in the Court of First Instance by giving to the Supreme Court jurisdiction to issue writs of certiorari, prohibition and mandamus against orders of the Court of First Instance but giving to the COMELEC the jurisdiction over the ultimate appeal from the decision of said court in the very same election case. It is more easy to say, with full legal rationality, that the grant of appellate jurisdiction over election cases filed in and decided by the Court of First Instance, carries with it the power to issue writs of certiorari, prohibition and mandamus when necessary in aid of its appellate jurisdiction, as indeed, it cannot be denied that, if it was such aid with the Court of Appeals, it must be so in the same way with the COMELEC."

As additional support for the view that COMELEC has jurisdiction to take cognizance of petitions for certiorari, etc., in aid of its appellate jurisdiction, the following propositions are submitted:

(1) Section 196 of the 1978 Election Code having conferred on the COMELEC the jurisdiction to review by appeal "any decision rendered by the Court of First Instance" in specified election cases, I submit that the supervisory power or jurisdiction of the COMELEC to issue writs of certiorari, etc., in aid of its appellate jurisdiction, must co-exist with and be a complement to its appellate jurisdiction to review by appeal the final orders and decisions of the Court of First Instance, in order to have a complete supervision over the acts of the latter. For it would be highly preposterous to deprive the COMELEC the power or jurisdiction to review interlocutory orders of the Court of First Instance, which need immediate relief thru a petition for certiorari, etc., as the plain, speedy and adequate remedy in the ordinary course of law, but it has such power or jurisdiction when the question is brought to it by appeal, at a time when, more often than not, damage has already been done, just because the law failed to confer expressly said jurisdiction, although, as already adverted to, it can be fairly inferred from the transfer to it by the Election Code of the jurisdiction which used to pertain to the Court of Appeals.

(2) While it may be true that the provisions of the Rules of Court, specifically Section 4, Rule 65, under which petitions for certiorari, etc., "may also be filed with the Court of Appeals if it is in aid of its appellate jurisdiction", if standing alone, cannot confer jurisdiction, being neither a constitutional provision nor a legislative enactment, it should be noted that the aforesaid provision merely echoed by way of restatement of the provision of Section 30 of the Judiciary Act, which grants to the Court of Appeals jurisdiction to issue writs of certiorari, etc., "in aid of its appellate jurisdiction." Consequently, it may be permissible to say that the aforesaid provision of the Rules of Court, being backed up by a substantive law, is just as good as the law itself. For, indeed, the provision of the Rules of Court alone and by itself, cannot confer the jurisdiction referred to independently of the provisions of the Judiciary Act which gives substantive vitality to the provision of Section 4 of Rule 65, not similarly given to other provisions of the Rules of Court having no counterpart in law or the Constitution. Hence, reference to certain provisions of the Rules of Court which are mere reproductions of existing statutory or constitutional provisions (such as the rights of an accused granted by the constitution the pertinent provisions of which have been repeated in the Rules of Court) may well be considered as reference to the law or the constitution itself.

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