

PEDRO E. GAHOL, PETITIONER, VS. HON. FRANCISCO MAT. RIODIQUE, IN HIS CAPACITY AS PRESIDING JUDGE OF BRANCH III, COURT OF FIRST INSTANCE OF BATANGAS, AND CORAZON A. CANIZA, RESPO...

G.R. No. L-40415. June 27, 1975

Ponente: BARREDO, J.

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BARREDO, J.:

Original petition filed on April 3, 1975 praying that "this Honorable Tribunal issue a Writ of Certiorari (either) disqualifying respondent Presiding Judge or directing him to desist from further acting in Election Case No. IX (of the Court of First Instance of Batangas, Branch III) and simply elevate the records thereof to the Court of Appeals" followed on April 14, 1975 by a supplemental petition praying "that this Honorable Court issue a Writ of Certiorari setting aside the order of respondent Presiding Judge dated April 10, 1975", which declared the decision in said Election Case No. IX in favor of herein private respondent final and executory and ordered the issuance of a writ of execution thereof unless restrained by this Court.

Petitioner Pedro E. Gahol, hereinafter to be referred to as Protestee, and private respondent Corazon A. Caniza, hereinafter to be referred to as Protestant, were rival candidates for the mayorship of the Municipality of Taal, Batangas in the general local elections held November 8, 1971. Protestee was declared elected by the municipal board of canvassers with a majority of 1110 votes over Protestant. Protestant went to respondent court questioning the legality of the result thus proclaimed, and after due trial, respondent court rendered a decision on February 25, 1975 upholding the protest and declaring Protestant as the one duly elected with a majority of 253 votes over Protestee.

Copy of this decision was served on Protestee on March 4, 1975. Two days later or on March 6, 1975, Protestee filed a notice of appeal together with a motion asking the court to fix the appeal bond. In the meanwhile, earlier on the same day, March 6, 1975, Protestant filed a motion for immediate execution of the judgment as follows:

"COMES NOW protestant, by her undersigned counsel, and to this Honorable Court respectfully states —

1. Under date of February 25, 1975, this Honorable Court rendered a Decision, the pertinent portion of the dispositive portion of which reads:

'WHEREFORE, the Court finds and so hold and declare that in the Mayoralty election of Taal, Batangas in 1971, Corazon A. Caniza won over Pedro E. Gahol with a majority of 253 votes. The proclamation by the Municipal Board of Canvassers that Pedro E. Gahol was the duly elected Mayor of Taal, Batangas is hereby annulled.

'xxx xxx xxx.'

2. A copy of the Decision was received by counsel for the protestee on March 4, 1975 and received by counsel for

protestant Corazon A. Caniza on March 5, 1975;

3. Under the provisions of Section 218 of the Election Code of 1971, in relation to Section 2, Rule 39 of the Revised Rules of Court, an order of execution of the Decision of February 25, 1975 in favor of the protestant may issue even before the expiration of the time to appeal or pending appeal, upon good reasons shown therefor;

4. It is respectfully submitted that the protestant is entitled to an immediate execution of the Decision of February 25, 1975 even pending appeal for the following reasons:

- The full term for municipal officials elected in the November, 1971 elections expires at the end of December, 1975, thereby leaving protestant no more than ten (10) months of the four-year-term to which she is rightfully entitled, within which she may be able to seat and represent her constituency;
- In view of the results of the referendum which was held on February 27, 1975, President Ferdinand E. Marcos was granted the right to appoint local officials in lieu of the elective ones and it is possible that protestant's opportunity to occupy the seat may even be effectively reduced;
- Considering the fully-substantiated finding of massive fraud in the preparation of ballots cast in favor of the protestee consisting, among others, of ballots written by one and the same hand, any appeal that the protestee may interpose would be frivolous and definitely dilatory in character; and
- Any further delay in protestant's assumption of office would prejudice the electorate.

5. Protestant is willing to post such bond as may be deemed just, reasonable and necessary under the circumstances.

"PREMISES CONSIDERED, it is respectfully prayed that a writ be issued by this Honorable Court for the immediate execution of its Decision of February 25, 1975 pending any appeal therefrom, or motion for reconsideration thereof, that protestee may file.

Manila for Lemery, Batangas, March 5, 1975." (Pages 133-134, Record.)

Respondent court promptly denied this motion holding the same to be "premature, . . . a notice of appeal having been filed (already) by the protestee." (Order of March 6, 1975.) And on the same date, respondent court issued the following order:

"A notice of appeal having been filed and pursuant to Section 223 of the Election Code of 1971, the appeal bond is hereby fixed at THIRTY THOUSAND (P30,000.00) PESOS to answer for the payment of all expenses and costs, including moral and exemplary damages which is in consonance with Section 225 of the same Code embodied in the appealed decision of the Court.

The appellant may deposit with the Court a cash of FIFTEEN THOUSAND (P15,000.00) PESOS and the remainder in bond." (Page 142, Rec.)

Notified of this order, on March 8, 1975, Protestee filed a motion asking that he be allowed to file only a surety bond (instead of the P15,000-cash-P15,000-surety bond required) for the sum of P30,000. On even date again respondent court ruled "the order dated March 6, 1975 to be clear on its material point, (hence) the resolution on the motion to set aside the order of cash bond is not necessary." Whereupon, believing that this last order meant he could file a surety bond only, on March 10, 1975, Protestee filed a surety bond of Filriters Guaranty Assurance Corporation "in the sum of PESOS THIRTY THOUSAND (P30,000.00), Philippine Currency, to answer for whatever award the Court may render against the appellant/protestee under this appeal."

Claiming that the filing of this surety bond for the whole sum of P30,000 instead of the P15,000-cash-P15,000-surety bond specified in the court's order of March 6, 1975 is fatal to the perfection of

Protestee's appeal, Protestant filed on March 15, 1975 another motion for execution which was set by her for hearing on March 20, 1975, but subsequently reset also by her on March 24, 1975. The hearing proceeded as scheduled in the absence of Protestee's counsel who had, however, submitted a written opposition under date of March 15, 1975 to the effect that he was submitting Protestant's motion for resolution. In his opposition, counsel maintained that Protestee's notice of appeal was filed on March 6, 1975, two days after service of the decision on him and well within the five-day period for appeal fixed by Section 227 of the Election Code of 1971, and as to the appeal bond, he contended that the law does not state when it should be filed, even as it provides that the amount thereof is to be fixed by the court, hence, until the court has so acted, the reasonable period within which the bond should be filed does not start, and inasmuch as a surety bond has already been filed in the sum of P30,000, Protestee had duly complied with the requirements for his appeal. After the hearing, the court issued two orders thus:

"O R D E R

On verbal motion of the counsel for the protestant the motion of the protestant filed with this Court dated March 5, 1975 is hereby reinstated and the reason for the Court in having this motion reinstated are the following:

- (1) The Court resolved that a ruling on the said motion was then pre-mature because the Court was not informed when Atty. Cabrera, counsel for the protestee received the decision of the Court; and
- (2) The Court is not aware that counsel for the protestants was asking for the immediate execution of the decision of the Court dated February 25, 1975 in accordance with Section 2, Rule 39 of the Rules of Court.

SO ORDERED.

Given in open Court at Lemery, Batangas, this 24th day of March, 1975." (Page 140, Rec.)

"O R D E R

In view of the absence of Atty. Cabrera, counsel for the protestee-appellant, and in order to afford the appellant opportunities to reply or oppose to the motion for execution of judgment, parties are hereby given three (3) days from today which will expire on Wednesday, March 26, 1975 within which to submit authorities as basis for the denial or granting of said motion.

SO ORDERED.

Given in open Court at Lemery, Batangas, this 24th day of March, 1975." (Page 141, Rec.)

Both parties submitted their respective memoranda of authorities on March 26, 1975, but a few hours before filing his memorandum, Protestee filed with this Supreme Court an administrative complaint against respondent judge charging him with alleged serious misconduct, inefficiency, gross and manifest partiality and knowingly rendering and issuing an unjust decision followed by a similarly unjust interlocutory order. Capsulized, the complaint (1) points out supposed erroneous findings of fact and of law in the decision, (2) claims that the reasons given by respondent judge in the first of the two last -above-quoted orders of March 24, 1975 are false, and (3) speculates, on the basis of alleged "nagging rumors in the municipality of Taal and neighboring towns which has gained notorious currency", that there is the "greatest probability" that respondent judge "was bought by Protestant", who "is a millionairess." And premised on the filing of such administrative complaint, a "Motion for Disqualification or Voluntary Inhibition" of respondent judge was filed with the trial court by Protestee on the same date March 26, 1975 even before he filed his memorandum of authorities. He set the motion for hearing on April 1, 1975, on which date, after the hearing, respondent judge denied it in an order the dispositive part of which

reads:

"WHEREFORE, the Court finds and so holds that there is no ground either moral or legal to disqualify the presiding Judge of this Court from acting in this case nor is there valid ground or reason to inhibit himself.

The Court, however, will not act on the pending motions before it and motions which may thereafter be filed within a period of 7 days from today. The protestee is given up to April 7, 1975 to secure a restraining order from the Honorable Supreme Court and to present the same not later than the close of office hours at the same day to the Court, otherwise the Presiding Judge shall continue to act in this case. MOTION DENIED." (Pp. 166-167, Record.)

It was this order that Protestee brought to this Court in his original petition on April 3, 1975, but as no restraining order was issued by Us when We resolved on April 4, 1975 to require respondents to answer and to set the case for hearing on April 14, 1975, on April 10, 1975, respondent judge deemed himself at liberty to further take action on the incidents then pending before him and issued the order contested in Protestee's Supplemental Petition of April 14, 1975. The dispositive portion of said second disputed order runs this wise:

"WHEREFORE, finding that the protestee has not perfected his appeal within the period fixed and allowed by law, the decision of the Court dated February 25, 1975 becomes final and executory.

If on April 14, 1975, on which date the petition for Certiorari with application for a restraining order (L-40415, Pedro E. Gahol vs. Hon. Francisco Mat. Riodique, et al.) shall be heard by the Honorable Supreme Court, or thereafter, the protestee cannot secure a restraining order, which restraining order, if any, shall be presented to this Court at the close of office hours on April 17, 1975, the Clerk of Court is hereby ordered to issue immediately the Writ of Execution." (Pages 213-214, Record.)

Meanwhile, respondents filed their answer to the original petition in this case on April 11, 1975, and because the Court *motu proprio* postponed the hearing to May 5, 1975, Protestee filed an urgent "motion for hearing and/or resolution of the application for restraining order." Accordingly, the Court set the petition for the issuance of a restraining order for hearing on April 18, 1975. On this date, both parties appeared and were allowed to argue not only on the question of the issuance of a restraining order but on the whole case on the merits, including the supplemental petition, respondents having already filed then their answer thereto on the morning of that day. After the hearing, the Court resolved to grant Protestee five (5) days to file a memorandum and Protestant two (2) days to reply thereto and to issue a restraining order to be immediately effective and to continue in effect until further orders. The hearing set for May 5, 1975 was cancelled.

After the parties had submitted their memoranda, including a reply memorandum of Protestee dated April 30, 1975 the Court issued the following resolution on May 5, 1975:

"G.R. No. L-40415 (Pedro E. Gahol vs. Hon. Francisco Mat. Riodique, et al.) — Upon due consideration of the pleadings and memoranda submitted by the parties, the Court resolved to (1) RESET; (2) REQUIRE RESPONDENT JUDGE TO APPEAR THEREAT; (3) REQUIRE the Clerk of Court of respondent court to submit to this Court not later than May 9, 1975 the original records of subject Election Case No. IX; (4) REQUIRE BOTH PARTIES TO BE READY TO EXPLAIN AT THE HEARING CLEARLY AND INTELLIGIBLY (a) the results in each contested NINETEEN precincts after correspondingly taking into account the alleged errors in the canvass by the respective precinct boards of inspectors; (b) why the results in precincts which do not appear to be subject of the protest, there being no counter-protest, were examined and reevaluated by respondent court, and (c) why the results in eight precinct Nos. 30, 34, 31, 32-A, 31-A, 28-A and 50 should be annulled completely instead of merely deducting from the proclaimed respective results thereat the supposed illegal votes which are seemingly identifiable and separable from the legal votes of each of the two contending candidates; and (5) REQUIRE the parties to state why the supposed defective appeal bond filed by petitioner may not be cured in order to comply strictly with requirements of the law and the

pertinent orders of respondent court, instead of the said court outrightly disapproving the same, thereby making it possible for petitioner to perfect and prosecute his appeal, regardless of whether or not the immediate execution of the impugned decision is allowed." (Page 628, Record.)

On the day of the hearing, Protestant submitted a rejoinder to Protestee's reply memorandum. After the hearing, the case was deemed submitted for decision.

Two main issues are thus submitted for resolution of this Court. First, under the law, should respondent judge have granted Protestee's motion for his disqualification or that he voluntarily inhibit himself, such that in denying said motion and more importantly, in issuing his impugned order of April 10, 1975 declaring his decision in question final and executory and forthwith ordering the issuance of the writ of execution, he acted without legal authority and in consequence, his said orders are without force and effect? Second, in the negative, does the said order of April 10, 1975 suffer from any other fatal legal flaw in the light of the facts and circumstances extant in the record as related above?

I

ON THE ISSUE OF DISQUALIFICATION

Anent this question, it may be stated that at the hearing on April 18, 1975, it was quite apparent from the answers given by counsel for Protestee to the interrogations of the Court that Protestee would consider more important and decisive the issues regarding the intrinsic legal merits of the order of April 10, 1975, and so, We were under the impression that We could forego discussion of the disqualification prayed for. In his memorandum, however, counsel seemingly takes a different pose and insists that the acts of respondent judge subsequent to the decision, such as, the order of immediate execution and disapproval of Protestee's appeal bond, are determinative of his partiality and bias. Such being the case, We have no alternative but to consider the matter. Accordingly, We have painstakingly reviewed the record and We have arrived at the conclusion that Protestee's plea for the disqualification of respondent judge has no merit.

As already noted earlier, most of the charges refer to errors supposedly committed by respondent judge in making findings of fact and of law in his decision. The proper remedy in this respect is appeal, for only after the appellate court holds in a final judgment that a trial judge's alleged errors were committed deliberately and in bad faith may a charge of knowingly rendering an unjust decision be levelled against a trial judge and thus warrant his being made to desist from further acting in the case. And it is only when there are extrinsic circumstances or facts indicative of serious malfeasance or misfeasance in the rendering of a questioned order or decision, may such disqualification be perhaps justified. Any other rule would obviously lay the normal course of judicial proceedings in the trial courts open to continuous and repeated derailments in order to give way to the investigation of even the most groundless charge, which after all can be adequately taken up on appeal. Indeed, it is not very difficult for a party feeling desperate about the progress and merits of his case to concoct or fabricate or just imagine supposed unjust or unfair actuations of a judge in the resolution of the issues before him in the course of the trial, and if on every such occasion, the party apparently aggrieved would be allowed to either stop the proceedings in order to await the final decision on the desired disqualification, or, demand the immediate inhibition of the judge on the basis alone of his being so charged, many cases would have to keep pending or perhaps there would not be enough judges to handle the cases pending in all the courts and almost invariably the administration of justice as to the merits of the cases would have to be at a standstill.

In this connection, We hasten to add that We are not overlooking the guidelines for the voluntary inhibition of judges laid down in *Pimentel vs. Salanga*, 21 SCRA 160, quoted by counsel for Protestee. As a matter of fact, We

reiterate what We said there: "To disqualify or not to disqualify is a matter of conscience" and is addressed primarily to the sense of fairness and justice of the judge concerned. We have to be shown acts or conduct of the judge clearly indicative of arbitrariness or prejudice before We can brand him with the stigma of being biased or partial and of violating his sworn duty to "administer justice without respect to person and do equal right to the poor and the rich." In the case at bar, none of the actuations of respondent judge alleged by Protestee sufficiently suggests any improper motive on his part. As We held in *Salanga*, "(i)t ill behooves this Court to tar and feather a judge as biased or prejudiced, simply because counsel for a party litigant happens to complain against him."

With regard to the contention of Protestee that reasons given by respondent judge in his order of March 24, 1975 to support the reinstatement of Protestant's motion for immediate execution of March 4, 1975 are apparently contrary to what the record shows, We prefer to attribute the seeming flaw pointed to by counsel to mere innocuous oversight, considering that after all the order now before Us is not on its face one of immediate execution pending appeal but an ordinary execution of a final and executory judgment. More on this anon.

But Protestee's charge that there is the "greatest probability" that respondent judge "was bought by Protestant" deserves special discussion. We must here make emphatic the Court's disapproval of any attempt to malign the integrity and honesty of members of the judiciary based on nothing more than alleged "nagging rumors", no matter of what degree of "notorious currency." While, of course, the resulting injury from the mere making of the charge may be assuaged by the "balm of a clear conscience", it is always difficult, if not impossible, to repair the damage done and to restore the position of the judge concerned to its pristine state, thereby to merit the confidence of litigants and of the people in general. Parties and their counsel must be extremely careful before making such kind of charges. The Court Will not hesitate to take every step needed to protect and vindicate the innocent judge and to impress the need for proper conduct on the false and reckless accuser. On its face, the charge herein is confessedly incapable of substantiation, based as it is on mere rumors, which is reason enough for it not to have been made at all. It is not only unfair to respondent judge, it is something that could be proper subject of action against Protestee when the court takes up the administrative complaint.

At this point, it may not be amiss to quote respondent judge's explanation of the charges against him, without necessarily considering the same as well taken, and just so his side may be duly recorded in this decision:

"Before the Court is a motion for disqualification or voluntary inhibition filed by the counsel for the protestee praying for the disqualification or voluntary inhibition of the Presiding Judge of this Court on the ground that an administrative complaint against him was filed by protestee Pedro E. Gahol in the Supreme Court copy of which is attached to the motion charging him with knowingly rendering and issuing an unjust judgment and interlocutory orders that obviously render the Honorable Presiding Judge incapable of acting with fairness and impartiality in this case (*Cresencio Paredes, et al. vs. Francisco Men Abad*, 56 SCRA 533).

A perusal of the motion and the administrative complaint attached thereto, shows that the latter was filed with and received by the Records Control Center of the Supreme Court on March 26, 1975 at 3:20 o'clock in the afternoon and the motion for disqualification or voluntary inhibition attaching the administrative complaint bearing the date and time of filing in the Supreme Court was filed and received by the Clerk of Court on the same day March 26, 1975 at 5:10 o'clock in the afternoon one (1) hour and 50 minutes after it was filed in Manila. Unless the movant took a helicopter from Manila to Lemery, Batangas, he could have not negotiated the distance in less than three (3) hours. The normal travel from Manila to Lemery by car is two (2) and 1/2 hours. The manner in which this motion was filed was, therefore, irregular and anomalous and motivated by sheer personal desire to catch the Presiding Judge by surprise, considering that he will resolve the pending motions the next working day. This is so made manifest when this motion with Annexes was kept not in the office of the Clerk of Court but in her house. It was only on Saturday March 29, 1975 when the Presiding Judge was about to work on the two motions pending before him for resolution, that he learned that this motion together with the administrative complaint was in the hands of the Clerk of Court.

The filing of the administrative complaint against the Presiding Judge, because of the adverse decision to the protestee is personal. But whether the mere filing of the administrative or criminal complaint by the protestee is proof that the Presiding Judge was unfair and impartial so as to justify his disqualification and inhibition is the question in issue. The administrative complaint merely contains reckless allegations which were the concoctions of the imagination, and conjecture of a loser in an election protest. The allegations are not truths. They are mere conclusions unsupported by law and fact. They are even libelous and contemptuous which only a patient judge, whose conscience is clear, can bear. It is only the Honorable Supreme Court, upon investigation, that can judge the presiding Judge of this Court who is now unjustly maligned that he has knowingly rendered an unjust decision. But certainly, not the protestee nor his counsel.

"The protestee has no basis in charging the Presiding Judge with unfairness and partiality. On March 24, 1975, two motions of the protestants were heard by the Court. Counsel for the protestant appeared but counsel for the protestee failed to appear in spite of notice. The Court did not resolve the motion but instead gave the protestee three (3) days within which to file his opposition. The records of the Court also show that the protestee, Pedro E. Gahol together with his partisans were charged with violation of the Election Law and the Revised Penal Code in the following cases:

- Criminal Case No. 288-B, People vs. Pedro Gahol for violation of Section 68 in relation to Sections 230 and 233 of the election code;
- Criminal Case No. 289-B, People vs. Pedro E. Gahol for violation of Section 61 in relation to Sections 130 and 233 of the election code;
- Criminal Case No. 120-L, People vs. Pedro E. Gahol for Grave Coercion;
- Criminal Case No. 25-L, People vs. Pedro E. Gahol for violation of Section 61 of the Revised Election Code;
- Criminal Case No. 26-L People vs. Dioscoro Tordecilla for violation of Section 59 in relation to Section 231 Par. 27 of the election code;
- Criminal Case No. 27-L, People vs. Dioscoro Tordecilla for violation of Section 231 par. 36 of the election code;
- Criminal Case No. 28-L, People vs. Dioscoro Tordecilla for violation of Section 61 of the election code;
- Criminal Case No. 29-L, People vs. Sebastian Manalo for violation of Section 61 of the election code;
- Criminal Case No. 30-L, People vs. Sebastian Manalo for violation of Section 68 in relation to Sections 230 and 233 of the election code;
- Criminal Case No. 31-L, People vs. Sebastian Manalo for violation of Section 61 of the election code;
- Criminal Case No. 32-L, People vs. Cornelio Morales for violation of Section 231 par. 28 of the election code;
- Criminal Case No. 63-L, People vs. Macario Laro for violation of Article 153 of the Revised Penal Code;
- Criminal Case No. 83-L, People vs. Pedro E. Gahol for grave coercion;
- Criminal Case No. 84-L, People vs. Marciano Catapang for violation of Section 150 of Republic Act No. 6388;
- Criminal Case No. 99-L, People vs. Dioscoro Tordecilla for violation of Section 61 in relation to 230 and 233 of the election code;
- Criminal Case No. 100-1, People vs. Dioscoro Tordecilla for violation of Section 59 in relation to Section

230 and 231 of Republic Act No. 6388.

"The Court was aware that the protestant was preparing her ground to prove terrorism which was alleged in her Election Protest. But these cases were either dropped or dismissed or accused acquitted by the Court for lack of evidence. Criminal Case No. 120-L was forwarded to the Comelec for disposition in accordance with Presidential Decree No. 433. By that time when protestee Pedro Gahol obtained a decision in his favor and in favor of his partisans whose cases were also dropped or dismissed, Pedro E. Gahol made known to the public that the Presiding Judge of this Court was fail and impartial just and upright. He even thanked and congratulated the Presiding Judge publicly but the Presiding Judge rebuked him saying that there was no cause to thank the judge for he owes no favor from him. Now that the decision is adverse to him he claims that the Presiding Judge is unfair, partial and knowingly rendered an unjust decision. Under the circumstances, there can be no logic in the position now taken by the protestee.

There is no basis in fact and in law for the disqualification of the Presiding Judge. To voluntarily inhibit himself on the ground of "delicadeza" is beside the point. It is a manifestation of weakness of character to face and encounter realities. It is dereliction of duty, pure and simple. Delicadeza is only subordinate to the call of duty, and the Presiding Judge has chosen the latter. The Presiding Judge owns no material wealth for his children to inherit and the only precious legacy he can bequeath to his family and children after he is gone in this world is the riches of his honor, of his character and of his soul." (Pages 162-166, Record.)

The foregoing premises considered, We are of the opinion and We, therefore, hold, that the petition for the disqualification of respondent judge should be dismissed.

ON THE ISSUE OF IMMEDIATE EXECUTION

Actually, this issue has three aspects, namely: (1) Did respondent judge rule correctly when he held that his decision of February 25, 1975 is already final and executory for failure of the Protestee to duly perfect his appeal? (2) Assuming the negative, is there legal basis for immediate execution of said decision pending the resolution of Protestee's appeal in the Court of Appeals? and (3) Does this Supreme Court have jurisdiction over the remedies sought by Protestee, considering that apparently the same are in aid of the appellate jurisdiction of the Court of Appeals?

- 1 -

Section 227 of the Election Code of 1971 provides:

"SEC. 227. Appeal from the decision in election contests. - From any decision rendered by the Court of First Instance in the cases stated in Sections two hundred nineteen and two hundred twenty hereof, except the election of municipal or municipal district vice-mayors and councilors, the aggrieved party may appeal to the Court of Appeals or to the Supreme Court, as the case may be, within five days after receipt of a copy of the decision: Provided, That no motion for reconsideration shall be entertained by the lower court.

The appeal shall proceed as in criminal case and shall be decided within three months in cases of municipal or municipal district officials, and within six months in cases of provincial or city officials after the case has been submitted for decision."

In other words, the period for appeal from the decision herein involved is five (5) days from notice thereof to the appellant. On the other hand, "the appeal shall proceed as in a criminal case" and relatedly, Section 223 of the same Code provides:

"SEC. 223. Bond or cash deposit. — Before the court shall take cognizance of a protest, or a counter-protest, or

admit an appeal, the party who has filed the pleading or interposed the appeal shall file a bond with two sureties satisfactory to the Court and for such amount as it may fix, to answer for the payment of all expenses and costs incidental to said protest or appeal including any amount for moral and exemplary damages that may be adjudicated by the court, or shall deposit with the court cash in lieu of the bond as the court may order. The court in which the contest is pending shall for good reason order from time to time that the amount of the bond or cash deposit be increased, or order the disposition of such deposit as the course of the contest require. . ."

Construing these provisions together, as We must, it is clear, that there are two steps required for the perfection of the appeal in question, namely: (1) the filing of a notice of appeal within five (5) days from notice of the decision to appellant and (2) the filing and approval of an appeal bond in such amount as the court may fix to answer for the liabilities mentioned in the law. This second requisite is an innovation of the procedure prescribed in the former election laws under which all that was needed was the filing of a notice of appeal within fifteen (15) days from notice of the decision to appellant. The additional requirement under the new law of an appeal bond is intended to discourage frivolous and time-consuming appeals, which were the bane of the electoral protest proceedings under previous laws which enabled protestees-appellants to continue staying in office for almost the duration of the term in dispute, thus depriving the successful protestant and the electorate of the right to have the duly elected official serve earlier as he should.

It is true that there is no period fixed in the law for the filing of the appeal bond. But the silence of the provision is no reason why a reasonable construction thereof, conducive to giving it effect and in line with public policy and known practices and rules governing similar situations, cannot be evolved in order that a definite rule on the matter in dispute may be formulated and observed. In this connection, We hold that together with the notice of appeal or at the latest within the five (5) day period for appeal, the appellant must give notice of his readiness to file the required appeal bond by filing a motion with the trial court to fix the amount thereof. With the notice of appeal and the motion to fix the amount of the bond thus filed, the appeal is deemed taken, but it shall be considered perfected only upon the approval of the bond. Therefore, the record of the case may not be elevated to the appellate court until after such approval.

With these points settled, the next pertinent inquiry for the purposes of the case at bar is, after the court has fixed the amount of the bond, when must it be filed? Undoubtedly it must be filed within the period fixed by the court, and if the court omits to fix it, then within a reasonable period, which considering the period fixed by the law for the appeal, must mean not more than five (5) days from notice of the court's order fixing the amount, without prejudice, of course, that in unusual instances where the amount of the bond is extraordinarily big and there might be difficulty in immediately obtaining the corresponding bond, the appellant may ask for and the court may grant a reasonable period in the sound discretion of the judge, in the light of the particular circumstances of the case.

A corollary inquiry, like that which has arisen in this case, is, what is supposed to be the rule, should the appellant's bond happen to be defective in one way or another? Obviously, as is the usual well known and established practice, if it is not the rule, in similar situations under other laws requiring the filing of bonds, the appellant should be given reasonable opportunity to correct his bond. Again, this is a matter addressed to the sound discretion of the court which decreases in inverse proportion to the gravity of the defect. In other words, the court enjoys greater latitude of discretion to allow a correction when the defect is not very substantial and less discretion when the defect is more substantial, to the point of not having any discretion at all when the discrepancy in the amount of the bond actually filed and that required is such that it appears to the court that either the shortage is done on purpose as a dilatory move or it is incapable of being covered.

Applying the foregoing construction to the incident before Us regarding the appeal bond of Protestee, there should be no doubt that said appellant has sufficiently complied with the legal requisites for the acceptance of his appeal.

It is a fact that he filed his notice of appeal within two (2) days (March 6, 1975) from notice of the decision, which was on March 4, 1975. On the same day that he filed said notice, he also filed a motion asking the court to fix the amount of his appeal bond. The Court fixed this on March 6, 1975 at P30,000, albeit mentioning that appellant "may" file P15,000 of it in cash and the remainder in surety bond. When on March 8, 1975, Protestee asked for clarification as to whether or not it was possible for him to file only a surety bond for the whole amount of P30,000, the court came out with an order saying that its previous order was clear enough, in view of which, Protestee assumed that such ruling was tantamount to an affirmative resolution of his query, and so, he filed as P30,000 surety bond on March 10, 1975. The record does not show that respondent judge has disapproved this surety bond of P30,000. In fact, at the hearing in this Court on May 12, 1975, respondent judge, who was personally present pursuant to the resolution of the Court of May 5, 1975, informed the Court, in answer to a question of the writer of this opinion, that his real intention was to allow the filing of even only a surety bond. And there being no question that the said P30,000 surety bond was filed within a reasonably short period after the amount thereof was fixed (two days), it is evident that the filing of said bond complies with the law.

Protestant insists, however, that the terms of liability stated in the bond does not conform with what is required by law. While the law specifies that the bond is to answer "for the payment of all expenses and costs incidental to (the) . . . appeal, including any amount for moral and exemplary damages that may be adjudicated by the court", the Protestee's surety bond only answers for "whatever award the Court may render against the appellant/protestee under this appeal". We feel that the noted discrepancy is purely formal and not substantial. In any event, Protestee may be allowed to amend his bond to make it literally in conformity with the provision invoked by Protestant.

In view of these considerations, it is Our considered view that respondent judge erred in declaring the appeal of Protestee not to be in accordance with law and also in declaring his decision final and executory, for which reason, the assailed order of April 10, 1975, in so far as it disapproves Protestee's appeal must be set aside.

Coming now to the other important issue as to whether or not Protestant may have the decision in her favor executed pending the appeal of Protestee, after careful consideration of all the attendant and relevant circumstances and mature deliberation, the Court holds that the trial court did not commit grave abuse of discretion in allowing the same. Of course, the order of April 10, 1975 is rather equivocal, but precisely because it can support either an immediate execution or a final one, the ambiguity may be overlooked and the dispositive portion thereof may be deemed as providing merely for an immediate execution pending appeal. For Us to recognize Protestant's right to an immediate execution and yet outlaw the order of April 10, 1975 merely because of its inaccuracy in its dispositive portion, arising from the trial court's misconception of the true status of Protestee's appeal, would be of no ultimate consequence, since all that would have to be done then is for the respondent judge to issue another order reiterating the pertinent premises for an immediate execution already given by him in his previous order. Such rigid compliance with technicalities productive of unnecessary sacrifice of time and of substantial justice must be discouraged.

In respect to immediate execution, the position of Protestee is that the Election Code does not contemplate the same. We do not see it that way. On the contrary, it appears to Us that its evident objective and purpose to cure a malady and a pernicious situation obtaining under the previous legislation are sufficiently discernible if not directly verbalized in two parts of the Code. We have already mentioned Section 223 which requires the filing by appellant of an appeal bond sufficient to cover all expenses incidental to the protest, including moral and exemplary damages. Then there is the more than implicit language of Section 218 to the following effect.

"SEC. 218. Assumption of office notwithstanding an election contest. — Every candidate for a provincial, city, municipal or municipal district office duly proclaimed elected by the corresponding board of canvassers shall

assume office, notwithstanding the pendency of the courts of any contest against his election, without prejudice to the final decision thereon and applicable provisions of the Rules of Court regarding execution of judgment pending appeal.

The title itself of this provision readily reveals the idea that the pendency of an electoral protest is not an obstacle to the assumption of office. From the very nature of things, this assumption cannot refer to that by the protestee, for it is he who is in office by virtue of the proclamation by the board of canvassers. Indubitably, the assumption of office herein referred to as possible "notwithstanding an election protest" is that of the protestant, which is made possible by the "provisions of the Rules of Court regarding execution of judgment pending appeal", which is none other than Section 2 of Rule 39 providing as follows:

"SEC. 2. Execution pending appeal. — On motion of the prevailing party with notice to the adverse party the court may, in its discretion, order execution to issue even before the expiration of the time to appeal, upon good reasons to be stated in a special order. If a record on appeal is filed thereafter, the motion and the special order shall be included therein."

True it is that according to Section 224 of the Election Code, "(t)he party who in the judgment has been declared elected shall have the right to assume office as soon as the judgment becomes final," but said provision is a general one defining the effect of a final judgment on the right of the winner to assume the contested office as the de jure elected official to serve up to the end of the term. This provision must necessarily yield to the aforementioned more specific injunction of Section 218 which refers in particular to assumption of office notwithstanding the pendency of a protest. And as we have already pointed out this innovative provision Section 223 is the product of the bad experience of the people under the previous election laws. Public policy underlies it. To paraphrase Estrada,[1] which echoed Lagumbay[2], something had to be done to strike the death blow at the "pernicious grab-the-proclamation-prolong-the-protest" technique often, if not invariably, resorted to by unscrupulous politicians who would render nugatory the people's verdict against them and persist in continuing in an office they very well know they have no legitimate right to hold. To ignore these ponderous considerations and to uphold the theory of Protestee that the very nature of the matter in dispute in election contests, the holding of a public office and the performance of its functions, makes gravely doubtful the propriety of an execution pending appeal, what with the possible placing of the corresponding powers of government in the hands of one who might ultimately turn out not to be really entitled to the position, is to negate the unquestionable and patent intent of the legislature to give as much recognition to the worth of a trial judge's decision as that which is initially ascribed by the law to the proclamation by the board of canvassers. Why should the proclamation by the board of canvassers suffice as basis of the right to assume office, subject to future contingencies attendant to a protest, and not the decision of a court of justice? Indeed, when it is considered that the board of canvassers is composed of persons who are less technically prepared to make an accurate appreciation of the ballots, apart from their being more apt to yield to extraneous considerations, and that the board must act summarily, practically racing against time, while, on the other hand, the judge has the benefit of all the evidence the parties can offer and of admittedly better technical preparation and background, apart from his being allowed ample time for conscientious study and mature deliberation before rendering judgment, one cannot but perceive the wisdom of allowing the immediate execution of decisions in election cases adverse to the protestees, notwithstanding the perfection and pendency of appeals therefrom, as long as there are, in the sound discretion of the court, good reasons therefor.

Thus, the next issue for Our determination is whether or not respondent judge gravely abused his discretion in finding that there are special reasons supporting the immediate execution of his decision. In this connection, it must be stated that in order to satisfy Ourselves as to whether or not His Honor has acted properly, We asked for the elevation of the whole record below, including the disputed ballots. We have duly studied the same. And in the light thereof, We do not feel justified at this stage to hold that the decision in question suffers from obvious

flaws rendering it reversible by the appellate court. This We say without in any manner suggesting how Protestee's appeal should be decided. With particular reference to respondent court's finding that a considerable number of ballots in many precincts involved in the protest were written by the same hand and, therefore, illegal, it is significant that at the hearing of May 12, 1975, respondent judge declared in no uncertain terms that he personally studied the ballots which the two handwriting experts had separately and individually found to be written by the same hand, although the said experts did not agree as to the number thereof, and that he was satisfied that his findings on the point are correct. After examining the ballots Ourselves, We cannot say, on the whole, that the combined opinions of the experts and His Honor are patently incorrect. We would rather leave that for final determination in the appeal which is the more appropriate forum therefor. This is equally true with the other conclusions of the trial court resulting in the nullification ordered in the decision in question of the results of the election in eight precincts. And as regards, the special reasons for immediate execution enumerated in the impugned order, We consider them sufficiently relevant and justified by the attendant circumstances of the subject protest. By and large, the discretion exercised by respondent court is adequately grounded. But as a measure of protection for Protestee in the event his appeal succeeds, We believe it should be but proper to require Protestant to file a cash bond to answer for whatever damages Protestee might suffer by reason of the immediate execution herein sanctioned.

With respect to the contention of Protestee that respondent court lost jurisdiction to grant the execution prayed for by Protestant the moment Protestee filed his notice of appeal and appeal bond, the settled jurisprudential rule interpretative of Section 2 of Rule 39 is that the authority of trial courts to apply said provision ceases only after the appeal is perfected.[3] Applying this construction to Section 218 of the Election Code, it is obvious that in the instant case, the appeal of protestee has not yet been perfected, since the trial court has not yet actually given its formal approval of the surety bond he has filed.

REGARDING THE JURISDICTION OF THIS COURT

In many respects, the remedies sought in the instant petitions may be said to be in aid of the appellate jurisdiction of the Court of Appeals to which the appeal of Protestee will be elevated. As a rule, particularly when there are material facts in dispute, cases of this nature should be filed with the Court of Appeals. Under existing jurisprudence, however, the jurisdiction of said appellate court in the premises is concurrent with the Supreme Court, specially because of the importance and far reaching effects of the questions herein involved.[4]

Before closing this opinion, it may not be amiss to state that the Court has found the pleadings and memoranda of the parties to be well prepared and very useful and the zeal and industry of both counsels to be worthy of special mention. It is to be hoped that with such able assistance, the appeal in the Court of Appeals will be resolved within the remaining period of the term in dispute which ends on December 31, 1975.

JUDGMENT

IN VIEW OF ALL THE FOREGOING, the petitions herein are dismissed in the sense herein indicated, that is, in so far as respondent court has ordered the execution of its decision, the same to be construed as merely an immediate execution pending the termination of Protestee's appeal, and the restraining order issued by Us on April 18, 1975 is hereby lifted effective immediately. The trial court's order of April 10, 1975 is however set aside insofar as it declares the decision of February 25, 1975 final, and respondent judge is ordered to give due course to Protestee's appeal, after it has acted on the P30,000 surety bond submitted by him. For the protection of Protestee in the eventuality that he wins in his appeal, Protestant should be, as she is hereby required, as a further condition for the issuance of the writ of immediate execution aforementioned, to file a cash bond in favor of Protestee in the amount of Thirty Thousand (P30,000) Pesos to answer for whatever damages he might suffer in consequence of the issuance of said writ. This decision is immediately executory.

All the records elevated to this Court, including the ballots and ballot boxes and the other contents thereof pursuant to the resolution of May 5, 1975 and the letter of the Clerk of Court of May 23, 1975 are ordered returned to the court from which they came.

Costs against petitioner.

Fernando, Chairman, Antonio, Concepcion, Jr., and Martin, JJ., concur.

[1] Estrada vs. Sto. Domingo, 28 SCRA 890.

[2] Lagumbay vs. Comelec, L-25444, Jan. 31, 1966, 16 SCRA 175.

[3] Alkuino vs. Arrieta 9 SCRA 458, citing Presco vs. Castelo, 48 O.G. 2193.

[4] Breslin vs. Luzon Stevedoring Co., 84 Phil. 618.

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