

ANITA M. SEARES, PLAINTIFF, VS. THE HON. JUDGE HAROLD M. HERNANDO, AS JUDGE OF THE CFI OF ABRA, BRANCH I, AND SOLOMON LALUGAN, RESPONDENTS.*G.R. No. L-56314. December 14, 1981*

Ponente: ABAD SANTOS, J.

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In this petition "for Certiorari, Prohibition and Disqualification", which was filed with the Commission on Elections on November 15, 1980, and certified to this Court by the Commission in an order dated February 6, 1981, pursuant to the case of Pimentel vs. Comelec (G. R. Nos. 53581-83, December 19, 1980, 101 SCRA. 769), the petitioner seeks to set aside the order dated November 3, 1980, and the decision dated November 7, 1980, of respondent Judge Harold M. Hernando of the Court of First Instance of Abra, Branch I; in Election Case No. 3, on the ground that the same were "rendered with grave abuse of discretion and/or lack of jurisdiction."

Petitioner Anita Seares and private respondent Solomon Lalugan were the candidates for mayor of the Municipality of Lagayan, Abra, in the elections held on January 30, 1980. On January 31, 1980, the Municipal Board of Canvassers of Lagayan declared that Solomon Lalugan obtained 1,286 votes as against 394 votes garnered by Anita Seares. Charging irregularities in the voting and in the counting of the votes, Anita Seares filed with the Court of First Instance of Abra on February 11, 1980, a verified petition of protest contesting the validity and regularity of the election proceedings in all the eight (8) voting centers of the Municipality of Lagayan, Abra. On March 6, 1980, Solomon Lalugan filed his answer to the petition of protest. Issues having been joined, the Court of First Instance of Abra ordered the production of the ballot boxes and of all the documents used in the election and created a committee of revisors under whose supervision the petitioner-protestant segregated, identified, marked and photographed all the ballots which she wanted to question. Thereafter, the committee submitted its report to the court which then set the date for the reception of evidence.

The protestant presented her direct evidence and rested her case. The protestee then presented his evidence and, on November 3, 1980, rested his case. The transcript of the stenographic notes shows that on the same day, the counsel for the protestant, Atty. Constante Pimentel, manifested in open court that from the evidence presented by the protestee, he discovered that about 200 to 300 persons who were not registered voters were allowed to vote in the subject voting centers. Consequently, he verbally moved for the reopening of the ballot boxes and for a period of three (3) days within which to segregate the ballots of the alleged non-registered voters and to present his evidence relative thereto. Counsel for the protestant likewise moved that he be given twenty (20) days after his presentation of additional evidence within which to submit his written memorandum. Counsel for the protestee, Atty. Crisostomo Pariñas opposed the motion for reopening of the ballot boxes on the ground that it would put no end to the case and that the evidence sought to be presented by the protestant was not in the nature of rebuttal evidence and should have therefore been presented at the time of her presentation of direct evidence.

Acting on the verbal motion presented by the protestant and the opposition interposed by the protestee, the trial

court, pre-sided by the herein respondent Judge Harold M. Hernando, ruled that since the evidence sought to be presented by the protestant was not rebuttal in nature, the same should have been presented before the protestant had rested her case. Furthermore, the respondent judge held that the alleged unregistered voters could well be those persons authorized by illiterate voters to vote for them. Accordingly, the respondent judge verbally denied the protestant's oral motion for the reopening of the ballot boxes and for a period of three (3) days within which to present her evidence relative to the alleged unregistered voters.

Counsel for the protestant verbally sought reconsideration of the oral order of denial. He admitted that the evidence which he wanted to present was in the nature of additional evidence but he pointed out that he discovered said evidence only after the pro-testee had presented witnesses who testified that they voted even though their names did not appear in the registry of voters. As regards the respondent judge's assumption that the alleged un-registered voters could well be persons who assisted illiterate voters, counsel for the protestant contended that the minutes of voting did not reflect the alleged fact that illiterates voted with the assistance of other persons. Despite said explanations, the respondent judge denied the protestant's motion for reconside-ration in a ruling dictated in open court, on the ground that the reopening of the ballot boxes would violate Sec. 8, Rule V of Comelec Resolution No. 1451 which requires that the presentation and reception of evidence in election cases should be completed within 30 days from the commencement thereof. The judge, how-ever, gave the protestant fifteen (15) days from receipt of his order within which to question the same on certiorari.

Before the protestant could receive the written order of denial, she was notified by telegram, on November 7, 1980, that the de-cision in the case would be promulgated on that day. It was only on the following day, November 8, 1980, that she received the written order of denial dated November 3, 1980, and learned that the respondent judge had added in said order the following: "This case is now considered submitted for decision. Notify by telegrams the opposing counsels that promulgation shall take place on November 7, 1980. No postponement shall be entertained."

On November 10, 1980, protestant's counsel received the decision dated November 7, 1980, which dismissed the election protest and upheld the election of Solomon Lalugan as Municipal Mayor of Lagayan, Abra. Five days thereafter, or on November 15, 1980, counsel for the protestant filed with the Commission on Elections the instant petition for certiorari, prohibition and dis-qualification. A copy of the petition was received by the respondent judge on November 18, 1980 — as noted in his order dated November 24, 1980. In another order of the same date, said judge declared his decision dated November 7, 1980, as final and executory and directed the Deputy Clerk of Court to furnish a copy of the decision to the Commission on Elections, the Ministry of Local Government and Community Development and the Commission on Audit.

On December 2, 1980, the Second Division of the Commission on Elections issued an order restraining the respondent judge from conducting further proceedings in Election Protest No. 3 and requiring him, as well as private respondent Solomon Lalugan, to answer the petition for certiorari, prohibition and disqualification.

On December 19, 1980, the petitioner, thru counsel, filed with the Commission on Elections a petition to declare the respondent judge in contempt for having declared as final and executory, in his order dated November 24, 1980, his decision dated November 7, 1980, despite receipt of a copy of the petition for certiorari, prohibition and disqualification.

The respondent judge and the private respondent filed their answers to the petition on December 29, 1980, and January 13, 1981, respectively.

Respondent Judge Hernando did not file any answer to the petition to declare him in contempt despite notices given by the Commission on Elections. On January 19, 1981, the Com-mission on Elections received a telegram

from the Clerk of Court of the Court of First Instance of Abra informing the commission that Judge Hernando was no longer reporting for duty. [On December 16, 1980, this Court ordered Judge Harold M. Hernando to refrain from discharging the functions of his office in view of the information filed against him in Criminal Case No. 2264 before the Sandiganbayan for violation of R. A. No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act.]

On January 23, 1981, counsel for the petitioner filed with the Commission on Elections a motion to certify the records of the case to this Court. And in an order dated February 6, 1981, the Commission on Elections did so pursuant to the Pimentel ruling.

The respondents were required to file their comments to the petition. In a manifestation dated March 30, 1981, Judge Hernando stated that he was adopting the comment he had filed with the Commission on Elections. Private respondent Solomon Lalugan filed his comment on April 13, 1981. On June 18, 1981, We sent for a copy of the transcript of the stenographic notes taken during the hearing on November 3, 1980, which was actually received on September 14, 1981.

While the issues raised in this petition may be resolved in the review of the decision on appeal, the peculiar circumstances and nature of the case require that the same be now laid to rest in this special civil action for certiorari. Consequently, We give due course to the petition which is impressed with merit.

The respondent judge's refusal to allow the presentation of the newly discovered evidence concerning the alleged unregistered voters, as well as the undue haste with which he rendered the decision in the electoral protest manifested his arbitrariness and are indicative of grave abuse of discretion amounting to lack of jurisdiction.

The first reason given by the respondent judge in denying the protestant's motion was that the evidence sought to be pre-sented was not rebuttal in nature and could not therefore be allowed after the protestant had finished presenting her direct evidence. But the protestant never claimed that the evidence sought to be presented was of that nature. She admitted that the same was additional evidence which was discovered only after the protestee had presented witnesses whose testimony revealed the fact that many unregistered voters (numbering around 200-300) actually voted in Lagayan.

The respondent judge erred when he held as an absolute rule that the presentation of additional evidence could not be allowed after the party had finished presenting his direct evidence. For a trial judge has the discretion to allow, in the furtherance of justice, the presentation of additional evidence after the parties have produced their respective direct proofs (Sec. 1 [f], Rule 30, Rules of Court).

The second reason advanced by the respondent judge to justify his denial of the protestant's motion was that the alleged unregistered voters could very well be those authorized by illiterate voters to prepare and cast their ballots for them.

But the protestant's counsel pointed out — without contradiction from the protestee — that the minutes of voting in all the 8 voting centers did not indicate that illiterate voters actually voted in the subject voting centers with the assistance of other persons. In the face of such circumstance, the judge's assumption that the alleged 200-300 unregistered voters were persons authorized by illiterate voters to vote for them was clearly unfounded and speculative.

Apparently aware of the insufficiency of the reasons given by him in denying the motion to be allowed to present additional evidence, the respondent judge advanced another ground to support his denial of the protestant's motion for reconsideration of the order of denial, namely: that to allow the presentation of additional evidence would violate Sec. 8, Rule V of Comelec Resolution No. 1451 which requires that the presentation and reception

of evidence in election cases should be completed within 30 days from the commencement thereof. But such requirement had already been violated long before the day it was being invoked. For while the presentation of the protestant's evidence began on April 17, 1980, the protestee rested his case only on November 3, 1980. The 30-day requirement has to be subordinated to a more substantial requirement, namely: to ascertain in a more accurate way the will of the voters each of which is a particle of sovereignty. Thus, We hold as arbitrary the act of the respondent judge invoking the 30-day requirement (which he had already long violated) without regard for a substantive necessity. For plainly the pre-sentation of evidence concerning the alleged 200-300 unregistered voters (constituting almost 20% of the total number of voters who actually voted in the municipality of Lagayan) could result in a more accurate determination of the will of the people. Moreover, the judge's avowal of speedy disposition of the electoral protest was betrayed by his own act. For while he denied the requested period of three (3) days; he nevertheless gave the protestant a much longer period of fifteen (15) days within which to question the order of denial on certiorari.

The pattern of arbitrariness pursued by the respondent judge became more manifest when, after denying the protestant's motion to present additional evidence and giving her 15 days from receipt of the written order of denial within which to question the same on certiorari, in apparent bad faith he inserted in the written order of denial a statement declaring the case submitted for decision on November 3, 1980 and ordering promulgation on November 7, 1980 without postponement. The respondent judge obviously acted in unseemly haste.

Finally, in an attempt to prevent the nullification of his order of denial, the respondent judge, upon notice of the filing of the special civil action of certiorari, immediately declared his decision as final and executory and insisted, in his answer to the petition for certiorari, that the issue of the validity of said order of denial had become moot and academic.

Finding grave abuse of discretion in the respondent judge's acts of denying the protestant's motion to be allowed to present evidence relative to the alleged 200-300 unregistered voters and of precipitately rendering his decision in the subject electoral protest, We hold as null and void the respondent judge's order dated November 3, 1980 and his decision dated November 7, 1980.

WHEREFORE, the order dated November 3, 1980 and the decision dated November 7, 1980 in Election Case No. 3 are declared null and void and respondent Judge Harold M. Hernando, or whoever succeeds him as Judge of the Court of First Instance of Abra, Branch I, is directed to conduct further proceedings in said case by ordering the re-opening of the ballot boxes in the eight (8) voting centers and giving the petitioner-protestant a reasonable period within which to present her evidence relative to the alleged 200-300 unregistered voters. No costs.

SO ORDERED.

Fernando, C.J., Teehankee, Barredo, Aquino, Concepcion, Jr., Fernandez, Guerrero, Melencio-Herrera, Ericta, Plana, and Escolin, JJ., concur.

De Castro, J., concurring in the result.

Makasiar, J., in the result.

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CONCURRING IN THE RESULT

DE CASTRO, J.:

While I believe the COMELEC ought to have taken cognizance of the present petition, being of the opinion that it is not without jurisdiction to do so, as I have expressed in my dissenting opinion in the Pimentel case. I concur in the result.

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