

**BENJAMIN F. ARAO, PETITIONER, VS. COMMISSION ON ELECTIONS
AND WARLITO PULMONES, RESPONDENTS.***G.R. No. 103877. June 23, 1992*

Ponente: BELLOSILLO, J.

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This petition for certiorari[1] seeks to set aside, for having allegedly been issued with grave abuse of discretion and/or in excess of jurisdiction, the Decision of respondent Commission on Elections (COMELEC) in EPC No. 88--1,[2] promulgated January 23, 1992, which reconsidered the Resolution of its First Division of December 11, 1991,[3] finding petitioner (protestee therein) "winner of the election protest by a margin of 378 votes in lieu of the original lead of protestee of 417 votes over protestant at the time of the former's proclamation by the City Board of Canvassers of Pagadian City," and declaring instead private respondent (protestant therein) duly elected mayor thereof.

Petitioner Benjamin Arao and private respondent Warlito Pulmones were candidates for the Office of City Mayor of Pagadian City in the January 18, 1988, local elections. After canvass, petitioner was shown to have garnered 12,447 votes, while private respondent, only 12,030 votes[4], or a margin of 417 votes in favor of petitioner. Consequently, on January 21, 1988, petitioner was proclaimed City Mayor-elect of Pagadian City[5].

On January 28, 1988, private respondent filed his Protest with COMELEC[6] more particularly alleging that "while fraud and anomalies were rampant in practically all the voting centers of Pagadian City, the violations were glaringly and notably perpetrated in the following districts and/or precincts, to wit: (a) [I]n all the three (3) precincts of Kawit District x x x (b) [I]n Tuburan District x x x particularly in Precincts 77 and 80 x x x (c) [I]n Bonifacio District, particularly Precinct 69 x x x (d) [I]n Sta. Lucia District, particularly Precinct No. 42 x x x (e) [I]n all of the seven (7) precincts in Sto. Niño District x x x (f) [I]n San Jose District, particularly Precinct No. 32 x x x (g) [I]n Precinct No. 33 at San Jose District x x x (h) [I]n Precinct No. 34 of San Jose District x x x (i) [I]n all of the precincts in San Pedro District x x x (j) [I]n Precincts 19 and 22 of Gatas District x x x (k) x x x in all the precincts in Balangasa District but more notably in Precincts 8 and 11 x x x"

On February 8, 1988, petitioner filed his Answer with Counterprotest[7]. However, COMELEC (First Division) dismissed the counterprotest per its Resolution of February 7, 1991, for failure to pay the required filing fee within the reglementary period[8].

On February 15, 1988, or after the 10-day period to file an election protest, private respondent filed an Amended Protest enumerating therein thirteen (13) precincts which were not previously specified: Precincts 1-A, 4, 6, 9, 17, 20, 21, 30, 31, 35, 36, 50 and 70[9]. Actually, other precincts, i.e., Precincts 101, 110, 111, 112, 113, 121, 122, 129, 137, 143, 153, 108 and 131, which were not particularly mentioned in the Petition, were included in the Amended Protest[10].

On March 3, 1988, petitioner filed his Protestee's Comments and Observations on the Amended Protest, although received by COMELEC only on April 4, 1988.[11]

On February 7, 1991, COMELEC (First Division) issued the following Resolution:

"Apparently, the Commission taking into consideration the comments and observations of protestee, was convinced that the amended protest was not admissible as the record failed to yield any formal order admitting the amended protest." [12]

On December 11, 1991, COMELEC (First Division) issued a Resolution par. 4 of which states:

"4. Protestant filed his Amended Protest on February 15, 1988, although there is nothing on record that shows the same was duly admitted; the record shows, however, that the Protestee submitted his 'Comments and Observations on the Amended Protest' in a formal document dated March 3, 1988 and received by this Commission on April 4, 1988." [13]

In holding that there was nothing on record showing that Protestant's Amended Protest was duly admitted, public respondent's First Division apparently overlooked its Order of April 7, 1988, which reads:

"For consideration is the Protestee's Comments and Observations on the Amended Protest dated March 3, 1988, filed by Counsel for Protestee praying that the amended protest dated February 15, 1988, filed by Protestant be denied admission. It appearing from the records of the case that Protestant's Amended Protest was filed in accordance with Sec. 17, Rule X of COMELEC Resolution No. 1996, the Commission hereby denies the herein Protestee's Comments and Observations on the Protestant's Amended Protest."

In the Resolution En Banc of this Court dated September 7, 1989, in G.R. No. 88036, where petitioner questioned the "transfer of the questioned ballot boxes to Cagayan de Oro in view of the serious peace and order problem in Pagadian City", it clearly appears that the Amended Protest was in fact admitted, thus -

"x x x Besides, the Order of April 7, 1988, admitting the amended protest was questioned only on May 11, 1989, when the herein petition was filed, or way beyond the 30-day reglementary period prescribed in Article IX-A, Section 7, of the Constitution."

On December 11, 1991, after revision of ballots and hearing, COMELEC (First Division) promulgated a Resolution the dispositive portion of which reads:

"WHEREFORE x x x the Commission (First Division) RESOLVES, as it hereby RESOLVES, to DISMISS Election Protest Case No. 88-1 and DECLARES protestee winner of the election protest by a margin of 378 votes in lieu of the original lead of protestee by 417 votes over protestant at the time of the former's proclamation by the City Board of Canvassers of Pagadian City." [14]

On December 16, 1991, private respondent filed his Motion for Reconsideration. [15]

Petitioner claims that on January 15, 1992, he filed a Memorandum in Opposition to the Motion for Reconsideration of private respondent [16] raising the following points:

- (a) examination and appreciation of ballots should have been confined to 31 protested precincts per original protest filed January 28, 1988, considering that amended protest was decreed as "not admissible" in the February 7, 1991, Resolution of COMELEC (First Division);
- (b) examination of ballots to determine identical handwritings should be limited to Precincts 19, 22, 8 and 11 as alleged in the original protest;
- (c) it was contrary to basic rules for COMELEC to pass upon ballots (in favor of protestee) as identical with each other when they were not even questioned by protestant, thus depriving protestee the right to present controverting evidence;
- (d) COMELEC failed to consider its records showing that there were 139 assisted illiterate or disabled voters,

hence, to invalidate their votes is technically a disenfranchisement and a subversion of sovereign will;

(e) it is statistically improbable for a candidate to have utilized 332 groups (persons) to write 723 allots (a ratio of 1 person for 2 ballots);

(f) mathematical computation of protestant in his motion for reconsideration is erroneous and self-serving; and,

(g) COMELEC should have credited 10 more votes for protestee as affirmed/admitted during the revision of ballots.

However, in his Comment, private respondent Pulmones denies all these averments of petitioner, and claims that they contain "baseless and unfounded" allegations which are precisely to be rejected in this petition.

On January 23, 1992, COMELEC En Banc promulgated its Decision thus -

"ACCORDINGLY, the Commission En Banc hereby renders judgment: a. GRANTING Protestant Pulmones' Motion for Reconsideration; b. DENYING Protestee Arao's Manifestation for the dismissal of Protestant's Motion for Reconsideration; c. AFFIRMING the factual findings of the Commission (First Division) relative to the examination of the contested ballots of both Protestant and Protestee; d. DECLARING Protestant Warlito Pulmones as the duly elected Mayor of Pagadian City in the January 18, 1988 elections with a margin of 516 votes against Protestee Benjamin F. Arao; and, e. ORDERING Protestee Arao to VACATE his office and surrender the same to Protestant Pulmones once this decision becomes final and executory." [17]

Meanwhile, on February 28, 1992, acting on the motion of Pulmones, respondent COMELEC granted the issuance of a writ of execution to enforce its Decision of January 23, 1992.

On March 4, 1992, petitioner filed with Us an urgent motion for the issuance of a writ of preliminary injunction or a temporary restraining order against the February 28, 1992, Order of public respondent.

On March 5, 1992, this Court issued a temporary restraining order as prayed for by petitioner, and required private respondent to comment thereon.

In his petition, Arao raises five issues which nevertheless may simply be reduced into whether respondent COMELEC gravely abused its discretion or exceeded its jurisdiction: (1) when it examined and invalidated 426 ballots for petitioner in precincts not included in the original protest but only in the amended protest filed beyond the ten-day period; (2) when it invalidated 466 ballots for petitioner as having identical handwritings although protestant did not raise such issues, nor impugn the validity of the ballots on such ground; and, (3) when it concluded that certain ballots were with identical handwritings, some marked, and others stray, and deducting them from the total votes of petitioner without stating the grounds therefor.

Before resolving these issues, a distinction should at the outset be drawn between an original action for certiorari, as in this case brought under Sec. 7, Art. IX-A, 1987 Constitution, and an appeal by certiorari or petition for review. In the special civil action for certiorari, the main issue is lack of jurisdiction or grave abuse of discretion amounting to excess of jurisdiction, while an appeal by certiorari or petition for review is limited to the consideration of questions of law. Thus, in the oft-cited case of Padilla vs. COMELEC, [18] We ruled:

"The principal relief sought by petitioner is predicated on the certiorari jurisdiction of this Court as provided in Section 11, Article XII-C, 1973 Constitution. It is, as explained in Aratuc vs. Commission on Elections (88 SCRA 251), 'not as broad as it used to be' under the old Constitution and it 'should be confined to instances of grave abuse of discretion amounting to patent and substantial denial of due process' x x x Moreover, the legislative construction x x x of the constitutional provision has narrowed down 'the scope and extent of the inquiry the Court is supposed to undertake to what is strictly the office of certiorari as distinguished from review.' And in Lucman vs. Dimaporo x x x a case decided under the Constitution of 1935, this Court,

speaking through then Chief Justice Concepcion, ruled that 'this Court cannot x x x review rulings or findings of fact of the Commission on Elections' x x x as there is 'no reason to believe that the framers of our Constitution intended to place the [said] Commission - created and explicitly made independent by the Constitution itself - on a lower level' than statutory administrative organs (whose factual findings are not 'disturbed by courts of justice, except when there is absolutely no evidence or no substantial evidence in support of such findings') x x x x Factual matters were deemed not proper for consideration in proceedings brought either 'as an original action for certiorari or as an appeal by certiorari . . . [for] the main issue in . . . certiorari is one of jurisdiction - lack of jurisdiction or grave abuse of discretion amounting to excess of jurisdiction' while 'petitions for review on certiorari are limited to the consideration of questions of law.'

The aforementioned rule was reiterated in the cases of *Ticzon* and *Bashier* x x x x Indeed, as early as the year 1938, applying Section 4, Article VI of the 1935 Constitution x x x this Court held that the Electoral Commission's 'exclusive jurisdiction' being clear from the language of the provision, 'judgment rendered . . . in the exercise of such an acknowledged power is beyond judicial interference, except . . . 'upon a clear showing of such arbitrary and improvident use of the power as will constitute a denial of due process of law' x x x x Originally lodged in the legislature that exclusive function of being the 'sole judge' of contests 'relating to the election, returns and qualifications' of members of the legislature was transferred 'in its totality' to the Electoral Commission by the 1935 Constitution. That grant of power, to use the language of the late Justice Jose P. Laurel, 'was intended to be as complete and unimpaired as if it had remained originally in the legislature . . . ' x x x x These observations remain valid and applicable to the exercise of that function, as now vested in the respondent Commission by the 1973 Constitution."

Earlier, in *Sidro v. Commission on Elections*,^[19] it was held -

"x x x x This Court has invariably followed the principle that in the absence of any jurisdictional infirmity or an error of law of the utmost gravity, the conclusion reached by respondent Commission on a matter that falls within its competence is entitled to the utmost respect. So it has been reiterated time and time again."

Although the *Padilla* case hereinbefore quoted was decided under the 1973 Constitution, the doctrine therein enunciated is still applicable under the 1987 Constitution considering that Sec. 11, Art. XII-C of the 1973 Constitution, invoked therein has been retained in the 1987 Constitution except for the limitation "as may be provided by this Constitution or by law". Consequently, unless it is shown that the Constitution itself or any law modifies the provision that "x x x any decision, order, or ruling of each Commission^[20] may be brought to the Supreme Court on certiorari by the aggrieved party within thirty days from receipt of a copy thereof," and none is pointed to Us, our interpretation of the pertinent provisions adverted to in both Constitutions, as well as our adherence thereto, cannot be any less firm and faithful.

What is certain from the above disquisition is that the extraordinary power of this Court to pass upon an order or decision of COMELEC should be exercised restrictively, with care and caution, while giving it the highest regard and respect due a constitutional body. For, not every abuse of discretion justifies the original action of certiorari; it must be grave. Nor any denial of due process within its ambit; it must be patent and it must be substantial. The test therefore is whether petitioner has demonstrated convincingly that COMELEC has committed grave abuse of discretion or exceeded its jurisdiction amounting to patent and substantial denial of due process in issuing the challenged decision. Here, petitioner has utterly failed.

As regards the first issue of petitioner, it appears that the original Protest of private respondent Pulmones did in fact cover all the forty-five (45) precincts the COMELEC took cognizance of in resolving EPC No. 88-1. As alleged in par. 5 of his Protest -

"5. That while fraud and anomalies were rampant in practically all the voting centers of Pagadian City, the violations were glaringly and notably perpetrated in the following districts and/or precincts x x x x"

The prayer in the same Protest also confirms that it refers to forty-five (45) precincts as it seeks the "opening and recounting of votes cast in all 3 precincts in Kawit District; Precs. 77 and 80 in Tuburan District; Precs. 77, 42, 58, 80 and 70 all of Pagadian City; Prec. 69 of Bonifacio District; Prec. 42 and all precincts in Sta. Lucia District; all seven precincts in the District of Sto. Niño; Precs. 32, 33 and 34, and all precincts of San Jose District; all the precincts in San Pedro District; Precs. 19 and 32 and all other precincts in the Gatas district; and Prec. 8 and 11 and all other precincts of Balangasan District, all of Pagadian City" (underscoring supplied). Specifically, the precincts covered are: (a) all precincts of Kawit (63, 64 and 65); (b) two in Tuburan (77 and 80); (c) one in Bonifacio (69); (d) all in Sta. Lucia (42 and 50); (e) all in Sto. Niño (11-A, 12, 13-A, 14, 15 and 16); (f) all in San Jose (30, 31, 32, 33, 34, 35 and 36); (g) all in San Pedro (52, 53, 54, 55, 56, 57, 58, 59, 60, 61 and 62); (h) all in Gatas (17, 18, 19, 20, 21 and 22); (i) all in Balangasan (1-A, 4, 6, 8, 9 and 11); and, (j) Prec. 70 (unspecified district). The sum total of these precincts is forty-five (45), which tallies with the total number of precincts contested by protestant, now private respondent.

It may be noted that while protestant did attempt to introduce new precincts in his Amended Protest filed on February 15, 1988, namely, Precincts Nos. 101, 111, 112, 113, 121, 122, 129, 137, 143, 153, 108 and 131, which were not enumerated in the original Protest, these precincts were not taken into consideration by COMELEC in deciding EPC No. 88-1. Hence, the first issue clearly appears to be based on a wrong premise.

On the second issue, the failure or omission of protestant to raise the question of identical handwriting or of impugning the validity of the ballots on that ground, resulting in the invalidation of 466 ballots for petitioner, does not preclude respondent COMELEC from rejecting them on that ground.

Unlike an ordinary suit, an election protest is of utmost public concern. The rights of the contending parties in the position aspired for must yield to the far greater interest of the citizens in the sanctity of the electoral process. This being the case, the choice of the people to represent them may not be bargained away by the sheer negligence of a party, nor defeated by technical rules of procedure. Thus, COMELEC cannot just close its eyes to the illegality of the ballots brought before it, where the ground for the invalidation was omitted by the protestant. As held in *Yalung v. Atienza*:^[21]

"x x x Inasmuch as it is not necessary to specify in detail in the motion of protest in which of the ballots the frauds and irregularities were committed, such a procedure being well-nigh impossible, and it being enough to allege in what the fraud and irregularity consisted, and that had it not been for such anomalies, the result of the election would have been otherwise, all of which have been alleged in the motion of protest in question, the court or the commissioners appointed by the same may revise all the ballots, admitting the valid and legal ones and rejecting the others, with a view to arriving at the lawfully expressed will of the electors. The institution of popular suffrage is one of public interest and not a private interest of the candidates, so that if in the revision of the ballots some illegal ballots are found which have not been specifically impugned in the motion of protest, the court may reject them *motu proprio*, since it is not essential that the contestant set forth the grounds of his contest with the same precision required of a pleading in ordinary civil cases (20 Corpus Juris, 227; underscoring supplied).

"In the case of *Lucero vs. De Guzman* (45 Phil., 852), this court stated the following: 'The purpose of the legislature in declaring that contests should not be conducted upon pleadings or by action was to free the courts as far as possible from the technicalities incident to ordinary proceeding by action and to enable the courts to administer justice speedily and without complication.'

"The trial court, then, did not err in taking into account in the revision of the ballots, irregularities not set forth in the motion of protest."

With regard to the third issue, the complaint of petitioner against the alleged omission of COMELEC to state the

reasons for its conclusion that certain ballots were with identical handwritings, some marked and others stray, does not in any magnitude diminish the straightforward statement of the public respondent that "it painstakingly examined and appreciated individually the contested ballots for both protestant and protestee in accordance with existing norms x x x x"[22]

Petitioner did not question this alleged irregularity by bringing the matter to the attention of COMELEC (First Division) immediately after the promulgation of its Resolution. The Resolution containing the alleged jurisdictional defect was promulgated on December 11, 1991. However, it was not until he filed his petition on February 17, 1992, that petitioner complained for the first time. Certainly, that Resolution having been rendered by a division of COMELEC could have been subject of a motion for reconsideration. Admittedly, petitioner did not take steps to have the matter reconsidered by public respondent before coming to Us.

Having been declared winner in the Resolution of December 11, 1991, petitioner would not ordinarily be expected to initiate a motion for reconsideration. Nonetheless, he could have brought up his objections in his Memorandum in opposition to the Protestant's Motion for Reconsideration so that public respondent could have properly ruled thereon. Consequently, petitioner may be deemed to have waived his right to question the Resolution when he failed to act accordingly despite the opportunity so to do. He should not be permitted, in other words, to remain mute and unaffected in the face of a perceived jurisdictional defect and, worse, profit from his quiescence, only to grumble in the end when it turns out to be prejudicial to his interest. As it has been said, "[n]either equity nor the law relieves those who seek aid in Court merely to avoid the effects of their own negligence x x x" (Lipscomb v. Talbott, 243 Mo 1, 36 [1912]).

WHEREFORE, finding no abuse of discretion, muchless grave, patent and substantial, the petition is DENIED.

The temporary restraining order issued by this Court on March 3, 1992, is hereby lifted and set aside.

SO ORDERED.

Narvasa, C.J., Gutierrez, Jr., Cruz, Paras, Feliciano, Padilla, Bidin, Griño-Aquino, Medialdea, Regalado, Davide, Jr., and Romero, JJ., concur.

Nocon, J., on leave.

[1] Filed pursuant to Sec. 7, Art. IX-A, 1987 Constitution.

[2] Annex "I", Petition, Rollo, pp. 197-203.

[3] Annex "F", Petition, Rollo, pp. 83-162.

[4] Erroneously alleged in par. IV.1, Petition, as "12,034".

[5] Annex "F", Petition, Rollo, pp. 83-162.

[6] Annex "A", Petition; Protest, par. 5; Rollo, pp. 45--49.

[7] Annex "B", Petition, Rollo, pp. 53-60.

[8] Annex "E", Petition, Rollo, pp. 75-81.

[9] Annex "C", Petition, Rollo, pp. 61-72.

[10] Ibid.

[11] Resolution, COMELEC (First Division), prom. December 11, 1991, p. 3.

- [12] Annex "E", Petition, Rollo, pp. 75-81.
- [13] Annex "F", Petition, Rollo, pp. 83-162.
- [14] Annex "F", Petition, Rollo, pp. 83-162.
- [15] Annex "G", Petition, Rollo, pp. 163-169.
- [16] Annex "H", Petition, Rollo, pp. 170-195.
- [17] Annex "I", Petition, Rollo, pp. 197-203.
- [18] G.R. Nos. 68351-52, July 9, 1985; 137 SCRA 424.
- [19] G.R. No. 64033, July 25, 1983; 123 SCRA 759.
- [20] Art. IX, 1987 Constitution refers to Constitutional Commissions, namely, the Civil Service Commission (par. B), the Commission on Elections (par. C) and the Commission on Audit (par. D).
- [21] 52 Phil. 781 (1929).
- [22] Resolution, COMELEC (First Division), of December 11, 1991, p. 8.

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