

AURORA P. CRISPINO, PETITIONER, VS. HON. FORTUNATO V. PANGANIBAN, IN HIS OFFICIAL CAPACITY AS PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 33, BAUANG, LA UNION, AND EDGAR BACUN...

G.R. No. 106556. March 05, 1993

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

May a protestant be required, before the commencement of the revision of ballots, to introduce evidence to show that his election protest is meritorious?

This is the pivotal issue in the instant case.

Petitioner and private respondent were among the candidates for the Office of Municipal Mayor in the Municipality of Caba, Province of La Union, during the 11 May 1992 synchronized elections. Petitioner received 2,450 votes and won over the private respondent who garnered 2,438 votes. Petitioner was thus proclaimed the winning candidate.

Thereafter, private respondent seasonably filed with the court a quo an election protest [1] against the petitioner contesting the elections in all forty-eight (48) precincts of Caba on grounds of alleged anomalies and irregularities consisting of, inter alia, (a) massive vote buying, (b) massive disenfranchisement, (c) misreading or non-reading of votes cast in his favor, (d) ballot switching in favor of the petitioner, (e) mis-tallying of votes, (f) fraud and terrorism, (g) the use of the lansadera scheme during the voting, (h) the use of fake ballots, (i) the preparation of ballots before election day and (j) the allowing of voters to bring out ballots from the precincts. The case was docketed as Election Protest No. 5-BG.

Petitioner filed her Answer with Counterclaim.[2]

After the issues were joined, the trial court, presided over by respondent Judge Fortunato V. Panganiban, issued an order directing the (a) Municipal Treasurer of Caba to bring to the court the contested ballot boxes and other election documents, (b) Provincial Election Supervisor, Provincial Prosecutor and Provincial Treasurer to deliver to the court the keys of the ballot boxes and (c) Election Registrar of Caba to deliver to the court the list of voters with the voting records and the book of voters. On 2 June 1992, the court required the private respondent to deposit the amount of P14,400.00 for the revision expenses, which he complied with.

On 8 June 1992, before the revision of ballots could begin, petitioner filed an Urgent Motion with a Prayer For Restraining Order asking that the private respondent be required to present some evidence to show that the protest is meritorious and well-taken, and that a restraining order be issued suspending the revision of ballots pending the resolution of the said motion.[3] Private respondent filed an opposition thereto. On 11 June 1992, the trial court handed down an order denying the motion.[4] In support thereof, it cited Section 255 of the Omnibus Election Code (Batas Pambansa Blg. 881) and Sections 12 and 13 of the COMELEC Rules of Procedure. Additionally, it

declared that the petitioner is barred by estoppel because she even submitted the names of her representative and the latter's alternate to the Revision Committee. Petitioner immediately moved for a reconsideration[5] and even announced therein that "in order not to delay the prompt and expeditious disposition of this election protest, which is the rationale of the rule as enunciated in *Astorga vs. Fernandez, et al.*, 19 SCRA 331, ... the protestee hereby waives the cross-examination of the witnesses for the protestant. Protestee further waives the presentation of evidence to the contrary." [6] Such waiver was, however, made subject to the proviso that she "will avail of these rights at the trial of the protest on the merits." [7] Unsuccessful in the said bid because of the trial court's denial of the motion in its Order of 10 July 1992, [8] petitioner took this recourse under Rule 65 of the Rules of Court and urges Us to reverse this last order and that issued on 11 June 1992 because (a) the trial court acted in excess of or without jurisdiction and with grave abuse of discretion by failing to comply with the orderly and systematic procedure prescribed in Rule 35 of the COMELEC Rules of Procedure and (b) the assailed orders do not serve the interest of justice for they would allow the private respondent, as protestant, to refuse the taking of his deposition, and would grant the latter ample opportunity to manufacture evidence to suit the results of the revision; said orders likewise accorded him an undue advantage by letting him hide the supposed facts and circumstances surrounding the alleged frauds and irregularities.

We gave the petition due course after the filing of the Comment by the private respondent and the Reply thereto by the petitioner, and required the parties to simultaneously submit their respective Memoranda.

After a thorough scrutiny and analysis of the arguments adduced by the parties, this Court finds no sufficient statutory and jurisprudential basis to accommodate the plea of the petitioner. Both the history of our election laws on the matter in dispute and the pronouncements of this Court thereon, which We shall presently take a look into, sustain the stand of the private respondent and expose the hollowness of his adversary's theory.

The original Election Law in the Philippines was Act No. 1582 which was enacted by the Philippine Commission on 9 January 1907. [9] Section 27 thereof pertinently provided as follows:

"SEC. 27. Election contests. -- x x x Contests in all elections for the determination of which provision has not been made otherwise shall be heard by the Court of First Instance having jurisdiction in the judicial district in which the election was held, upon motion by any candidate voted for at such election, which motion must be made within two weeks after the election, and such court shall have exclusive and final jurisdiction and shall forthwith cause the registry lists and all ballots used at such election to be brought before it and examined, x x x."

Interpreting the said section, this Court, in answering the question of whether the trial court erred in opening the ballot boxes without further proof than the allegations of the protest, held in *Manalo vs. Sevilla*, [10] which was decided on 29 March 1913, that:

"We think not. The allegations of the protest are made under oath; they set out in detail the irregularities complained of. These allegations, if true, lay a sufficient foundation for the recount. This is especially the case in view of the wording of the statute."

Then, in *Hontiveros vs. Altavas*, [11] decided on the same date, this Court held further that:

"The law provides that upon the institution of the contest the court 'shall forthwith cause the registry lists and all ballots used at such election to be brought before it and examined ...' (Sec. 27.) The filing of the protest and the service of the same upon all candidates voted for gives the court jurisdiction to proceed to a final determination of the case, and having once acquired such jurisdiction the court is expressly empowered to examine all the ballots. The ballots cannot be examined without opening the boxes. The law does not require a *prima facie* showing other than the allegations in the protest of fraud or irregularities in order to authorize the opening of the boxes."

Act No. 1582 subsequently became Chapter 18 of the Revised Administrative Code of 1917 (Act No. 2711)[12] and the aforementioned Section 27 became, with modifications and amendments, Section 479 thereof. Section 479 provided, in part, as follows:

"SEC. 479. Contested election to office in general. -- Contests in all elections for the determination of which provision has not been made otherwise shall be heard by the Court of First Instance having jurisdiction in the judicial district in which the election was held, upon motion by any candidate voted for at such election. x x x Such court shall have exclusive and final jurisdiction, except as hereinafter provided, and shall forthwith cause the registration lists and all ballots used at such election to be brought before it and examined, x x x."

The ruling in *Hontiveros* was reiterated, in the light of Act No. 2711, in *De la Merced vs. Revilla*.[13] In time, Section 44 of Act No. 3030[14] amended Section 479 of Act No. 2711 by, among others, inserting the word registered before the word candidate.

Then, Section 25 of Act No. 3210[15] further amended said Section 479 by allowing the delivery to and the examination of the ballots by the court at the instance of any interested party or by the court itself. As thus amended, the second paragraph thereof provided:

"Such court shall have exclusive and final jurisdiction, except as hereinafter provided. Upon petition of an interested party, or of its own accord if the interests of justice require it, said court shall forthwith cause the registration lists, ballot boxes, ballots, and other documents used at such election to be brought before it and examined, x x x."

With the said amendment under Act No. 3210, this Court declared in *Cecilio vs. Belmonte*[16] that:

"There can be no doubt, in view of what was above stated, that in so far as it relates to the examination of the registration lists, ballot boxes, ballots and other documents used in the election, the provision of section 479 of the Election Law, as amended by section 25 of Act No. 3210, imposes upon the court an imperative duty, and the law does not require any more prima facie evidence than the allegation in the protest of the commission of frauds or irregularities in the count of the ballots in order to authorize the opening of the ballot boxes."

Chapter 18 of Act No. 2711 was further amended by Act No. 3387;[17] Section 479, however, remained substantially unaffected.

Then came the first Election Code during the Commonwealth era (C.A. No. 357) which was approved on 22 August 1938. Section 169 thereof not only preserved the essence of Section 479 of Act No. 2711, as amended, but also categorically allowed the recounting of ballots after examination. Said Section 169 reads:

"SEC. 169. Judicial counting of votes in contested elections. -- Upon the petition of any interested party, or motu proprio, if the interests of justice so require, the court shall immediately order that the copies of the registry lists, the ballot boxes, the election statements, the voters' affidavits, and the other documents used in the election be produced before it and that the ballots be examined and the votes recounted, x x x."

After the inauguration of the Philippine Republic, Section 169 was incorporated into The Revised Election Code of 1947[18] as Section 175:

"SEC. 175. Judicial counting of votes in contested elections. -- Upon the petition of any interested party, or motu proprio, if the interests of justice so require, the court shall immediately order that the copies of the registry lists, the ballot boxes, the election statements, the voters' affidavits, and the other documents used in the election be produced before it and that the ballots be examined and the votes recounted, x x x."

Expounding thereon, this Court declared in *Pareja vs. Narvasa*:[19]

"Time and again, this Supreme Court has declared in numerous cases that, when there is an allegation in an

election protest that would require the perusal, examination, or counting of ballots as evidence, it is the ministerial duty of the trial court to order the opening of the ballot boxes and the examination and counting of the ballots deposited therein.

The doctrine has been laid down under legal provisions existing before the enactment of the Election Code. The latter embodied expressly the mandatory provision which was only implicit in former election laws.

Section 175 of the Election Code reads as follows:[20]

x x x

The above-quoted provision contemplates two cases in which 'the court shall immediately order * * * that the ballot boxes * * * be produced before it and that the ballots be examined and the votes recounted'; first 'upon the petition of any interested party,' and second, 'or motu proprio, if the interests of justice so require.'

Under the first case, the mere 'petition of any interested party,' of course, in accordance with the pleadings, is by itself enough. The limitations implicit in the pronouncements made by the Supreme Court as to the effect that the allegations of the protest must show the need of counting and examining the ballots have been eliminated by the drafters of the Election Code. Their evident purpose was to cut short all technicalities and controversies on legal niceties standing in the way of a prompt examination and counting of the ballots and early disposal of protests, and to avoid the recurring petitions filed with the Supreme Court."

The rationale for the doctrine was further elucidated on in *Astorga vs. Fernandez*[21] wherein this Court stated: "x x x Obviously the simplest, the most expeditious and the best means to determine the truth or falsity of this allegation is to open the ballot box and examine its contents. To require parol or other evidence on said alleged irregularity before opening said box, would have merely given the protestee ample opportunity to delay the settlement of the controversy, through lengthy cross-examination of the witnesses for the protestant and the presentation of testimonial evidence for the protestee to the contrary. As held in *Cecillo vs. Belmonte*, (supra.), this 'would be to sanction an easy way to defeat a protest.'"

The aforequoted Section 175 was incorporated as Section 221 of the Election Code of 1971.[22] Although the latter was not carried over to the 1978 Election Code,[23] the Commission on Elections, pursuant to the powers vested upon it by the said law and its constitutional power to enforce and administer all laws relative to the conduct of elections,[24] promulgated on 26 February 1980 Resolution No. 1451, Section 9, Rule VI of which preserves the foregoing statutory provisions on election protests and, in effect, the doctrine first enunciated in *Manalo vs. Sevilla*.[25] Said Section reads as follows:

"SEC. 9. Custody of ballot boxes, election documents and paraphernalia. -- Where allegations in a protest or counter-protest so warrant, or whenever in the opinion of the Court, the interest of justice so demands, it shall immediately order the book of voters, ballot boxes and their keys, ballots and other documents used in the election to be brought before it. x x x."

This provision was revived as a statutory rule in the current Omnibus Election Code (Batas Pambansa Blg. 881). Section 255 thereof reads as follows:

"SEC. 255. Judicial counting of votes in election contest. -- Where allegations in a protest or counter-protest so warrant, or whenever in the opinion of the court the interests of justice so require, it shall immediately order the book of voters, ballot boxes and their keys, ballots and other documents used in the election be brought before it and that the ballots be examined and the votes recounted."

The COMELEC Rules of Procedure, promulgated pursuant to its constitutional and statutory powers, more specifically under Sections 2(1) and 3, Article IX-C of the 1987 Constitution and under Section 52(c) of the Omnibus Election Code, expressly provides in Section 6 of Rule 20:

"SEC. 6. Revision of ballots. – When the allegations in a protest or counter--protest so warrant, or whenever in the opinion of the Commission or Division the interest of justice so demands, it shall immediately order the ballot boxes containing ballots and their keys, list of voters with voting records, book of voters, and other documents used in the election to be brought before the Commission, and shall order the revision of the ballots. x x x."

While the abovementioned rule pertains to election protests falling within the exclusive original jurisdiction of the Commission, the same procedure is prescribed for election contests which are within the exclusive original jurisdiction of courts of general jurisdiction[26] as well as election contests within the exclusive original jurisdiction of courts of limited jurisdiction.[27]

The election protest filed by the private respondent falls within the exclusive original jurisdiction of a court of general jurisdiction since the contest involves the election of a municipal official.[28] Hence, Rule 35 of the COMELEC Rules of Procedure shall apply. Pursuant to Section 12 thereof, and in the light of the above settled doctrine laid down by this Court in *Manalo vs. Sevilla* and respected all the way to *Mogueis vs. Court of Appeals*, We conclude that the respondent trial court did not act with grave abuse of discretion in issuing the (a) Order of 11 June 1992 denying the petitioner's 8 June 1992 urgent motion to require the private respondent to present evidence to establish the merit of his protest before the commencement of the revision of the ballots, and (b) Order of 10 July 1992 denying the motion for reconsideration of such denial. To heed petitioner's cause would certainly lead to the overturning of a long-settled statutory principle and judicial doctrine, and would open the floodgates to dilatory strategies which *Astorga vs. Fernandez* precisely sought to prevent.

WHEREFORE, for lack of merit, the instant petition is DISMISSED with costs against the petitioner.
SO ORDERED.

Feliciano, (Acting Chairman), Bidin, Romero, and Melo, JJ., concur.

[*]Associate Justice Hugo E. Gutierrez, Jr., Chairman, is on terminal leave

[1] Annex "A" of Petition; Rollo, 15-18.

[2] Annex "B", Id.; Id., 19-22.

[3] Annex "C" of Petition; Rollo, 23-25.

[4] Annex "D", Id.; Id., 32-34.

[5] Annex "E", Id.; Id. 35-37.

[6] Id., 36-37.

[7] Id., 37.

[8] Annex "F" of Petition; Rollo, 39.

[9] LAUREL, J.B. JR., *Philippine Election Laws*, 1940., 63.

[10] 24 Phil. 609, 617, 625 [1913].

[11] 24 Phil. 632, 647-648 [1913].

[12] Effective 1 October 1917.

[13] 40 Phil. 190 [1919].

[14] Approved on 2 March 1922.

[15] Approved on 6 December 1924.

[16] 48 Phil. 243, 253 [1925].

[17] Approved on 3 December 1927.

[18] R.A. No. 180, approved on 21 June 1947.

[19] 81 Phil. 22, 26-27 [1948].

[20] Section 175 of R.A. No. 180 is quoted.

[21] 19 SCRA 331, 335 [1967].

[22] R.A. No. 6388.

[23] P.D. No. 1296.

[24] Section 2(1), Article XII-C, 1973 Constitution.

[25] See, *Jaguros vs. Villamor*, 134 SCRA 553 [1985]; *Mogueis vs. Court of Appeals*, 136 SCRA 285 [1985].

[26] Section 12, Rule 35, COMELEC Rules of Procedure.

[27] Section 14, Rule 37, *Id.*

[28] Section 2(2), Article IX-C of the 1987 Constitution and Section 1, Rule 35 of the COMELEC Rules of Procedure.

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