

GREGORIO N. ARUELO, JR., PETITIONER, VS. THE COURT OF APPEALS, PRESIDING JUDGE, REGIONAL TRIAL COURT OF BULACAN, BRANCH 17, MALOLOS BULACAN, AND DANILO F. GATCHALIAN, RESPONDENTS.

G.R. No. 107852. October 20, 1993

Ponente: QUIASON, J.

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QUIASON, J.:

This is a petition for certiorari and prohibition under Rule 65 of the Revised Rules of Court, to set aside the Decision of the Court of Appeals dated November 24, 1992 in CA-G.R. SP No. 28621, which ruled that the answer and counter-protest of respondent Danilo F. Gatchalian was filed timely and ordered the Regional Trial Court, Branch 17, Malolos, Bulacan to continue with the proceedings in Civil Case No. 343-M-92, the protest case filed by petitioner Gregorio N. Aruelo, Jr.

Aruelo and Gatchalian were rival candidates in the May 11, 1992 elections for the office of Vice-Mayor of the Municipality of Balagtas, Province of Bulacan. Gatchalian won over Aruelo by a margin of four votes, such that on May 13, 1992, the Municipal Board of Canvassers proclaimed him as the duly elected Vice-Mayor of Balagtas, Bulacan.

On May 22, 1992, Aruelo filed with the Commission on Elections (COMELEC) a petition docketed as SPC No. 92-130, seeking to annul Gatchalian's proclamation on the ground of "fraudulent alteration and tampering" of votes in the tally sheets and the election returns.

On June 2, 1992, Aruelo filed with the Regional Trial Court, Branch 17, Malolos, Bulacan, a petition docketed as Civil Case No. 343-M-92 protesting the same election. Aruelo, however, informed the trial court of the pendency of the pre-proclamation case before the COMELEC.

On June 10, 1992, Gatchalian was served an Amended Summons from the trial court, giving him five days within which to answer the petition. Instead of submitting his answer, Gatchalian filed on June 15, 1992 a Motion to Dismiss claiming that: (a) the petition was filed out of time; (b) there was a pending protest case before the COMELEC; and (c) Aruelo failed to pay the prescribed filing fees and cash deposit on the petition.

Meanwhile in SPC Case No. 92-130, the COMELEC on June 6, 1992 denied Aruelo's petition for non-compliance with Section 20 of R.A. No. 7166, which requires the submission of the evidence and documents in support of the petition to annul Gatchalian's proclamation (Rollo, p. 42).

The trial court, on the other hand, issued an order dated July 10, 1992, denying Gatchalian's Motion to Dismiss and ordering him to file his answer to the petition within five days from notice, otherwise, "a general denial shall be deemed to have been entered" (Rollo, p. 45). The trial court also directed Aruelo to pay the deficiency in his filing fees, which the latter complied with. Gatchalian filed a Motion for Reconsideration of the order but the trial court denied the same on August 3, 1992.

On August 6, 1992, Gatchalian filed before the Court of Appeals, a petition for certiorari docketed as CA-G.R. SP No. 28621, which alleged grave abuse of discretion on the part of the trial court in denying his Motion to Dismiss and his Motion for Reconsideration.

Earlier, that is on July 23, 1992, Gatchalian filed before the trial court a Motion for Bill of Particulars, which was opposed by Aruelo. The trial court denied Gatchalian's motion in an order dated August 5, 1992, a copy of which was received by him on August 6, 1992.

On August 11, 1992, Gatchalian submitted before the trial court his Answer with Counter-Protest and Counterclaim, alleging inter alia, that Aruelo was the one who committed the election fraud and that were it not for the said fraud, Gatchalian's margin over Aruelo would have been greater. Gatchalian prayed for the dismissal of the petition, the confirmation of his election and the award of damages. On the day the answer was filed, the trial court issued an order admitting it, and without Gatchalian's specific prayer, directed the revision of ballots in the precincts enumerated in Gatchalian's Counter-Protest and Construction. For this purpose, the trial court ordered the delivery of the contested ballot boxes to the Branch Clerk of Court.

On August 14, 1992, Aruelo filed with the trial court a Motion to Reconsider As Well As To Set Aside "Answer with Counter-Protest and Counterclaim" Filed Out of Time by Protestee. The trial court, on September 2, 1992, denied Aruelo's motion and forthwith scheduled the constitution of the revision committee.

On September 28, 1992, Aruelo prayed before the Court of Appeals for the issuance of a temporary restraining order or a writ of preliminary injunction to restrain the trial court from implementing the Order of August 11, 1992, regarding the revision of ballots. The Court of Appeals belatedly issued a temporary restraining order on November 9, 1992, after actual revision of the contested ballots ended on October 28, 1992.

Meanwhile, Gatchalian filed with the Court of Appeals on September 21, 1992 another petition for certiorari (CA-G.R. SP No. 28977), again alleging grave abuse of discretion on the part of the trial court in issuing the Order dated August 5, 1992, which denied his Motion for Bill of Particulars. The Court of Appeals, in its Resolution dated September 28, 1992, dismissed this petition for lack of merit.

On November 24, 1992, the Court of Appeals rendered a decision in CA-G.R. SP No. 28621, denying Gatchalian's petition, but declared, at the same time, that Gatchalian's Answer With Counter-Protest and Counterclaim was timely filed. The appellate court also lifted the temporary restraining order and ordered the trial court to "proceed with dispatch in the proceedings below" (Rollo, p. 212).

Hence, this petition.

Aruelo claims that in election contests, the COMELEC Rules of Procedure gives the respondent therein only five days from receipt of summons within which to file his answer to the petition (Part VI, Rule 35, Sec. 7) and that this five-day period had lapsed when Gatchalian filed his answer. According to him, the filing of motions to dismiss and motions for bill of particulars is prohibited by Section 1, Rule 13, Part III of the COMELEC Rules of Procedure; hence, the filing of said pleadings did not suspend the running of the five-day period, or give Gatchalian a new five-day period to file his answer.

We do not agree.

Petitioner filed the election protest (Civil Case No. 343-M-92) with the Regional Trial Court, whose proceedings are governed by the Revised Rules of Court.

Section 1, Rule 13, Part III of the COMELEC Rules of Procedure is not applicable to proceedings before the regular courts. As expressly mandated by Section 2, Rule 1, Part I of the COMELEC Rules of Procedure, the

filing of motions to dismiss and bill of particulars, shall apply only to proceedings brought before the COMELEC. Section 2, Rule 1, Part I provides:

"SEC. 2. Applicability - These rules, except Part VI, shall apply to all actions and proceedings brought before the Commission. Part VI shall apply to election contests and quo warranto cases cognizable by courts of general or limited jurisdiction."

It must be noted that nowhere in Part VI of the COMELEC Rules of Procedure is it provided that motions to dismiss and bill of particulars are not allowed in election protests or quo warranto cases pending before the regular courts.

Constitutionally speaking, the COMELEC can not adopt a rule prohibiting the filing of certain pleadings in the regular courts. The power to promulgate rules concerning pleadings, practice and procedure in all courts is vested on the Supreme Court (Constitution, Art VIII, Sec. 5 [5]).

Private respondent received a copy of the order of the Regional Trial Court denying his motion for a bill of particulars on August 6, 1992. Under Section 1 (b), Rule 12 of the Revised Rules of Court, a party has at least five days to file his answer after receipt of the order denying his motion for a bill of particulars. Private respondent, therefore, had until August 11, 1992 within which to file his answer. The Answer with Counter-Protest and Counterclaim filed by him on August 11, 1992 was filed timely.

The instant case is different from a pre-proclamation controversy which the law expressly mandates to be resolved in a summary proceeding (B.P. Blg. 881, Art. XX, Sec. 246; COMELEC Rules of Procedure, Part V, Rule 27, Sec. 2; *Dipatuan v. Commission on Elections*, 185 SCRA 86 [1990]). Pre-proclamation controversies should be summarily decided, consistent with the legislators' desire that the canvass of the votes and the proclamation of the winning candidate be done with dispatch and without unnecessary delay. Questions as those involving the appreciation of the votes and the conduct of the balloting, which require more deliberate and necessarily longer consideration, are left for examination in the corresponding election protest (*Abella v. Larrazabal*, 180 SCRA 509 [1989]; *Alonto v. Commission on Elections*, 22 SCRA 878 [1968]).

An election protest does not merely concern the personal interests of rival candidates for an office. Over and above the desire of the candidates to win, is the deep public interest to determine the true choice of the people. For this reason, it is a well-established principle that laws governing election protests must be liberally construed to the end that the popular will, expressed in the election of public officers, will not, by purely technical reasons, be defeated (*Unda v. Commission on Elections*, 190 SCRA 827 [1990]; *De Leon v. Guadiz, Jr.*, 104 SCRA 591 [1981]; *Macasundig v. Macalangan*, 13 SCRA 577 [1965]; *Corocoro v. Bascara*, 9 SCRA 519 [1963]).

We find no grave abuse of discretion on the part of the Court of Appeals.

WHEREFORE, the petition is hereby DISMISSED.

SO ORDERED.

Cruz, (Chairman), and Bellosillo, JJ., concur.

Davide, Jr., in the result.

Griño-Aquino, J., on leave.

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