

LOU A. ATIENZA, PETITIONER, VS. COMMISSION ON ELECTIONS AND ANTONIO G. SIA, RESPONDENTS.*G.R. No. 108533. December 20, 1994*

Ponente: KAPUNAN, J.

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Private respondent Antonio G. Sia was elected mayor of the Municipality of Madrilejos, Cebu in the 1988 local elections obtaining a plurality of 126 votes over his nearest rival, herein petitioner Lou A. Atienza.[1] Following Sia's proclamation by the Municipal Board of Canvassers, petitioner filed an election protest docketed as Election Case No. EC-5 with the Regional Trial Court questioning the results of the elections in a number of precincts in the municipality.[2] Consequently, in the revision ordered by the lower court, petitioner obtained a total of 2,826 votes, a plurality of 12 votes over the private respondent. On April 12, 1989 the Regional Trial Court rendered its decision declaring petitioner the winner of the municipal elections and ordering the private respondent to reimburse petitioner the amount of P300,856.19 representing petitioner's expenses in the election protest. Private respondent appealed the trial court's decision to the Commission on Elections (COMELEC) raising as errors 1) the computation of the number of votes received by the candidates; and 2) the alleged award of "excessive damages" in favor of the petitioner.[3] The case was docketed as EAC No. 20-89 and assigned to the COMELEC's Second Division.

Meanwhile, the Regional Trial Court granted petitioner's motion for execution pending appeal. However, private respondent filed a petition for certiorari and mandamus, docketed as SPC No. 19-91 questioning the order of execution pending appeal. Acting thereon, the COMELEC issued a preliminary injunction stopping the enforcement of the order of execution.

The COMELEC, en banc, on April 7, 1992 issued an Order setting aside the preliminary injunction and thereby allowing petitioner to assume as mayor of the Municipality of Madrilejos pending resolution of his appeal.[4] However, following the synchronized elections of May 11, 1992, the Presiding Commissioner of the COMELEC's Second Division issued an Order dated July 18, 1992 dismissing petitioner's appeal for being moot and academic pursuant to the Commission's decision in Resolution No. 2494 declaring the election protest and appeal cases - as well as petitions for special relief-arising out of the January 18, 1988 elections dismissed and terminated as of June 30, 1992.[5] Thereupon, private respondent sought clarification of the order of dismissal of EAC No. 20-89 referred to the protest case in the Regional Trial Court or to the appeal case in COMELEC. In response, the Second Division of COMELEC stated in its Order dated September 16, 1992 that "(t)he election protest cases mentioned in the aforecited order are those protest cases over which the Commission has original jurisdiction. Hence, it is only the appeal case that was dismissed for being moot and academic." On the private respondent's Motion for Reconsideration and/or Appeal to the Commission En Banc, wherein he pointed out that the appeal could not be simply dismissed because it would result to the affirmance of the monetary judgment of the trial court without considering its merits on appeal, respondent COMELEC issued an Order, dated 15 October 1992, certifying the case to the Commission en banc pursuant to Section 5, Rule 19 of the COMELEC's Rules of

Procedure.

On January 28, 1993, respondent Commission en banc released its questioned resolution, the dispositive portion of which states:

PREMISES CONSIDERED, the Commission RESOLVED, as it hereby RESOLVES, that the dismissal of the appeal by the Commission (Second Division) for being moot and academic because of the expiration of the term of office of the contested position did not thereby revive the vacated judgment of the Regional Trial Court, said appealed judgment to remain vacated, not having been resolved on the merits by the Commission for or against any of the parties; and the judgment directing the protestee-appellant to reimburse the protestant-appellee the amount of P300,856.19 representing his expenses in the election protest, is hereby REVERSED, said judgment not being in accordance with law in the absence of any evidence of any wrongful, or negligent act or omission on the part of the protestee appellant to justify the award.

Since the principal issue elevated to the Commission on Elections by the private respondent has been rendered moot and academic by the election of new municipal officials in the May 11, 1992 elections, the sole question for our determination is whether or not the Commission on Elections acted with grave abuse of discretion when it issued its Resolution of January 28, 1993 reversing the lower court's judgment awarding damages to herein petitioner after it had earlier dismissed EAC No. 20-89 for being moot and academic. Petitioner argues that when the appeal from the trial court's decision was dismissed for being moot and academic, it was as if "no appeal had ever been taken" and that the trial court's decision thereby remained "untouched," valid and subsisting.[6]

We disagree.

Immediately after the Commission on Elections issued its July 18, 1992 Order dismissing EAC No. 20--89, the private respondent filed a Motion for Clarification asking whether what was dismissed by the COMELEC in EAC No. 20-89 was the Election Protest Case No. EC-5 or just the appeal. In clarification, the COMELEC's Second Division immediately issued an order stating that the protest cases mentioned in its earlier order only included those cases in which the body possessed original jurisdiction, and hence it was only the appeal case which was dismissed for being moot and academic.[7] Moreover, in its assailed decision, the Commission stressed that its dismissal of the appeal obviously referred only to that part of the appealed judgment which was affected by the elections of May 11, 1992, i.e., the portion which adjudged petitioner as the winner in the election protest. Since the question relating to the lower court's award of P300,856.19 could not have been rendered moot and academic by the May 11, 1992 elections, the COMELEC pointed out that the second part of the lower court's decision was a matter which had nothing to do with the expiration of the term of office and could not have been dismissed by the said body.[8]

In support of his averments, however, petitioner cites *Yorac vs. Magallona*[9] as authority for his claim that "when the appeal is dismissed, 'the decision of the lower court shall stand,'" [10] and further contends that the following provision of the Rules of Court should be given suppletory effect, the Omnibus Election Code and the Comelec Rules of Procedure being bereft of any provision defining the effect of dismissal of cases before the said body. Section 2, Rule 50 of the said Rules states:

Section 2. Effect of Dismissal. Fifteen days after the dismissal of an appeal, the clerk shall return to the court below the record on appeal with a certificate under the seal of the Court showing that the appeal had been dismissed. Upon receipt of such certificate in the lower court the case shall stand there as though no appeal had been taken, and the judgment of the said court may be enforced with additional costs allowed by the court upon dismissal of the appeal.

We cannot accept the petitioner's theory. First, because the term of the disputed office had expired, there was

virtually nothing to enforce except the monetary judgment awarded by the trial court. The COMELEC immediately clarified that said monetary judgment, not having been mooted by the May, 1992 elections, was not and could not have been part of its earlier order. Under the circumstances, therefore, it would have been absolutely illogical to assume that the case stood originally as though no appeal had been taken to the Commission plainly because the decision on the main issue - the electoral protest - could not be enforced. On the other hand, had the case been dismissed for lack of merit, the lower court would have been duty-bound, at the very least, to enforce its original decision finding herein petitioner winner of the mayoralty post in the 1988 municipal elections in Madrilejos, Cebu.

Second, petitioner's citation of *Yorac vs. Magallona*[11] as authority for his main proposition is grossly inappropriate and misses the point in issue. The sole question in that case centered on an election protest involving the mayoralty post in Saravia, Negros Occidental in the general elections of 1955, which was rendered moot and academic by the expiration of the term of office in December, 1959.[12] It did not involve a monetary award for damages and other expenses incurred as a result of the election protest. In responding to the petitioner's contention that the issues presented before the court were novel and important and that the appeal should not be dismissed, the Court held - citing the same provision of the Rules of Court upon which petitioner staunchly places reliance - that a decision on the merits in the case would have no practical value at all, and forthwith dismissed the case for being moot. That is not the case here. In contradistinction to *Yorac*, a decision on the merits in the case at bench would clearly have the practical value of either sustaining the monetary award for damages or relieving the private respondent from having to pay the amount thus awarded.

This brings us to the substantive issue: Did the COMELEC abuse its discretion in reversing that portion of the trial court's decision awarding election expenses in the amount of P300,856.19?

The Omnibus Election Code provides:

Actual or compensatory damages may be granted in all election contests or in quo warranto proceedings in accordance with law.[13]

Provisions for actual or compensatory damages under the law are embodied in various Civil Code articles allowing claims for damages under specific circumstances. Thus, Article 2176 provides:

Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties is called a quasi delict, and is governed by the provisions of this chapter.

Specifically, Article 2199 of the Civil Code mandates that:

Except as provided by law or by stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved. Such compensation is referred to as actual or compensatory damages.

Thus, in addition to specific provisions of law allowing actual or compensatory damages in certain situations, the Civil Code elaborates that the proper setting for allowance of actual or compensatory damages occurs in breaches of obligations, i.e., in cases of contracts and quasi-contracts,[14] and in crimes and quasi-delicts, where the defendant may be held liable for all damages which are the natural and probable consequences of the act or omission complained of.[15] Given this setting, it would appear virtually impossible for a party in an election protest case to recover actual or compensatory damages in the absence of the conditions specified under Articles 2201 and 2202 of the Civil Code, or in the absence of a law expressly providing for situations allowing for the recovery of the same. It follows, naturally, that in most election protest cases where the monetary claim does not

hinge on either a contract or quasi-contract or a tortious act or omission, the claimant must be able to point out to a specific provision of law authorizing a money claim for election protest expenses against the losing party. This, petitioner has been unable to do.

The country's early election laws contained provisions requiring the furnishing of a bond or cash deposit for purposes of payment of expenses and costs incidental to election contests and appeals.[16] The Administrative Code of 1917 for instance provides:

Sec. 482. Bond or Cash Deposit Required of Contestants. Before the Court shall entertain any such contest or counter-contest or admit an appeal, the party filing the contest, counter-contest or appeal shall give bond in an amount fixed by the court with two sureties satisfactory to it, conditioned that he will pay all expenses and costs incident to such motion or appeal, or shall deposit cash in court in lieu of such bond. If the party paying such expenses and costs shall be successful, they shall be taxed by the court and entered and be collectible as a judgment against the defeated party.

The Election Law of 1938 (Commonwealth Act No. 357) contained the same provision with a minor modification providing for increasing or decreasing the bond or cash deposit "as the course of the contest may require." This provision was repeated in toto in the Revised Election Code of 1947.[17] Republic Act No. 6388, and the Election Code of 1971,[18] P.D. No. 1296, and the 1978 Election Code contained provisions allowing awards for moral and exemplary damages "as the Commission may deem just if the aggrieved party has included (such) in his pleadings,"[19] but left out the provision for bond and cash deposits found in the earlier election codes. The provisions for moral and exemplary damages as well as the early provisions requiring the furnishing of a bond to cover expenses related to election contests have all but disappeared in the current Omnibus Election Code.

It may be argued that the provisions for the furnishing of a bond or cash deposit which were deleted from the 1981 Omnibus Election Code, nonetheless, appear in the Comelec Rules of Procedure. Section 1 of Rule 42 of the said rules for instance provides:

Section 1. Filing fees for election contests, quo warranto, and petitions for certiorari, prohibition or mandamus.
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(b) Cash Deposits. -- In any protest or counter protest or protest-in-intervention not requiring ballot revision the following cash deposits shall be paid by the interested party:

(1) For each election contest .. P 1,000.00;

(2) For each counter protest or protest-in-intervention .. P 1,000.00.

(c) In any protest, counter-protest or protest-in-intervention requiring ballot revision the following cash deposits shall be paid by the interested party:

(1) For each election contest .. P 5,000.00;

(2) For each counter protest or protest-in-intervention .. P 5,000.00.

The cash deposits prescribed above shall be applied to the payment of all expenses incidental to such protest, counter-protest or protest-in-intervention. When circumstances so demand, additional cash deposits may be required. Any unused balance thereof shall be returned to the protestant, counter-protestant or protestant-in-intervention, as the case may be.

(d) In case of revision of ballots, there shall be deposited the sum of P350.00 for every ballot box for the compensation of the revisors at the rate of P100.00 each and as reserve for expenses.

(e) If a claim for damages and attorney's fees are set forth in a protest, counter?protest or protest-in-intervention, an additional filing fee shall be paid at the rate of P300.00 for the first one hundred fifty thousand pesos and P4.00 for every one thousand pesos over the fist P150,000.00.

An examination of the above quoted provision, however, reveals that the bonds or cash deposits required by the COMELEC Rules of Procedure are in the nature of filing fees, not damages. These filing fees obviously refer to the expenses incurred by the COMELEC in the course of administering election cases and are species different from the bond or cash deposit required by previous election laws which are clearly in the nature of actual and compensatory damages.[20] Plainly then, the deposit requirements under previous election laws which were obviously compensatory damages, were repealed or abrogated as a result of their non-inclusion both in the Election Code of 1978 and the Omnibus Election Code of 1981. If their non-inclusion in the 1978 statute was a mere legislative lapse, then the previous provisions on bonds or cash deposits would have been included in the Omnibus Election Code. Their non-inclusion, and the omission of provisions allowing for moral and exemplary damages in the Omnibus Election Code, furthermore clearly underscores the legislative intent to do away with provisions for damages other than those specified in Section 259 of the Omnibus Election Code. In fact, the COMELEC, in justifying its deletion of actual damages in its assailed en banc resolution, ignored the fees provision of its Comelec Rules of Procedure and explained that the bond or cash deposit provisions of previous election laws were abrogated by their non-inclusion in the current law.

In fine, Section 259 of the Omnibus Election Code merely provides for the granting of actual and compensatory damages in accordance with law. That it was the intent of the legislature to do away with provisions indemnifying the victorious party for expenses incurred in an election contest in the absence of a wrongful act or omission clearly attributable to the losing party cannot be gainsaid. The intent, moreover, to do away with such provisions merely recognizes the maxim, settled in law that a wrong without damage or damage without wrong neither constitutes a cause of action nor creates a civil obligation.

Finding no reversible error in the assailed resolution, the instant petition is hereby DISMISSED.

SO ORDERED.

Narvasa, C.J., Padilla, Bidin, Regalado, Romero, Bellosillo, Melo, Quiason, Puno, Vitug, and Mendoza, JJ., concur.

Feliciano, J., on leave.

Davide, Jr., J., no part.

[1] Rollo, p. 5.

[2] Id.

[3] Rollo, p. 153; Brief for protestant-appellee, p. 8.

[4] Rollo, p. 203; Annex "G".

[5] The Second Division's Order dated 18 July 1992 states:

Pursuant to Resolution No. 2494, promulgated by the Commission en banc on July 16, 1992, declaring that election protest and appeal cases, as well as petitions for special relief, arising out of the January 18, 1988 elections are deemed dismissed and terminated as of June 30, 1992, the above-entitled case is hereby considered MOOT and ACADEMIC. (Rollo p. 204, Annex "H").

[6] Rollo pp. 47-48.

[7] Rollo, p. 203.

[8] Rollo, p. 14.

[9] 3 SCRA 76 (1961).

[10] Rollo, p. 48.

[11] Supra, note 6.

[12] Id.

[13] B.P. Blg. 881, sec. 259.

[14] Civil Code, art. 2201.

[15] Id., art. 2202.

[16] Act No. 1582 (1907); Administrative Code of 1916 (Act No. 2657); Administrative Code of 1917 (Act. No. 2711); Commonwealth Act No. 357 (1938); Republic Act No. 180 (1947).

[17] Republic Act No. 180, June 21, 1947.

[18] Sec. 223 of the Election Code of 1971 provides:

Before the Court shall take cognizance of a protest or a counter protest or a protest in intervention, 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 such amount it may fix, to answer for the payment of all expenses and costs incidental to said protest including any amount for moral and exemplary damages that may be adjudicated by the court. xxx. (Emphasis supplied).

[19] P.D. 1296, sec. 194.

[20] See supra, Note 18, and compare with Section 1, Rule 42 of the Comelec Rules of Procedure. The first provision refers to the filing of a bond with two sureties and is found in the same provision allowing for moral and exemplary damages while the latter (see text for Sec. 1, Rule 42) refers to filing fees.

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