

AQUILES U. REYES, PETITIONER, VS. REGIONAL TRIAL COURT OF ORIENTAL MINDORO, BRANCH XXXIX, COMMISSION ON ELECTIONS, ADOLFO G. COMIA, AND THE SANGGUNIAN BAYAN OF NAUJAN, ORIENTA...

G.R. No. 108886. May 05, 1995

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for certiorari, prohibition and mandamus which seeks (1) the annulment of the decision, dated June 23, 1992, of the Regional Trial Court (Br. 39) of Calapan, Oriental Mindoro, annulling the proclamation of petitioner as the eighth member of the Sangguniang Bayan of Naujan, Oriental Mindoro; (2) the annulment of the decision of the Commission on Elections (COMELEC), dated January 22, 1993, dismissing petitioner's appeal from the trial court's decision; (3) the issuance of a writ of mandamus to compel respondent Sangguniang Bayan to recognize petitioner as the duly elected member thereof; and (4) the issuance of a writ of prohibition against respondent Adolfo G. Comia, enjoining him from continuing in office as member of the Sangguniang Bayan of Naujan, Oriental Mindoro.

The facts are as follows:

Petitioner Aquiles Reyes and private respondent Adolfo Comia were candidates for the position of member of the Sangguniang Bayan of Naujan, Oriental Mindoro in the May 11, 1992 synchronized elections.

On May 13, 1992, during the proceedings of the Municipal Board of Canvassers, private respondent moved for the exclusion of certain election returns, on the ground of serious irregularity in counting in favor of petitioner Aquiles Reyes votes cast for "Reyes" only, considering that there was another candidate (Epitacio Reyes) bearing the same surname. However, without resolving his petition, the Municipal Board of Canvassers proclaimed on the same day petitioner as the eighth winning candidate with 7, 205 votes. On May 25, 1992 petitioner took his oath of office.

On June 1, 1992, private respondent filed an election protest before the trial court. He alleged that "a vital mistake [had been] committed by the Board of Canvassers in the mathematical computation of the total number of votes garnered by petitioner [now private respondent]." Private respondent alleged:

5. That in the said Statement of Votes by City/Municipality or Precinct or C.E. Form No. 20-A, it is reflected therein that the total number of votes garnered by the petitioner is only 858 votes, when in fact and in truth, after reviewing and correcting the computation of the actual votes garnered by the petitioner the total votes to be counted in his favor is 915 votes;

6. That the Municipal Board of Canvassers and the Election Registrar of Naujan, Oriental Mindoro, after having been informed of the said discrepancies, manifested in the presence of Municipal Trial Court Judge TOMAS C. LEYNES, that it was an honest mistake committed in the computation and the addition of the total number of

votes appearing in C.E. Form No. 20-A.;

7. That after correcting the total number of votes garnered by the petitioner, it appears now that the total votes cast in his favor in all precincts is 7,233 votes which is more than 28 votes over the total of 7,205 votes garnered by respondent Aquiles U. Reyes, who was proclaimed as Elected Sangguniang Bayan Member of Naujan, Oriental Mindoro occupying the 8th position.

On June 4, 1992, petitioner filed a motion to dismiss private respondent's petition on the ground that it was filed beyond the reglementary period of ten days from proclamation. On June 15, 1992, however, the trial court denied his motion.

On the other hand, the Municipal Board of Canvassers filed its answer in which it admitted that it had made a mistake in crediting private respondent with only 858 votes when he was entitled to 915 votes in the Statement of Votes (C.E. Form No. 20-A).

On June 23, 1992, the trial court rendered its decision annulling the proclamation of petitioner and declaring private respondent as the eighth winning candidate for the position of councilor of the Sangguniang Bayan of Naujan, Oriental Mindoro. A copy of the decision was served on petitioner on June 26, 1992.

Petitioner filed a notice of appeal to the COMELEC. In addition, he filed a petition for mandamus and prohibition in the Court of Appeals, to compel the Sangguniang Bayan to recognize him as the duly proclaimed member of that body and prohibit it from further recognizing private respondent.

On August 26, 1992, the Court of Appeals dismissed the petition because of petitioner's pending appeal in the COMELEC. The appellate court cited Supreme Court Circular 28-91 which prohibits the filing of multiple petitions involving the same issues.

Petitioner filed a motion for reconsideration but his motion was denied. The appellate court's decision became final and executory on December 10, 1992.

Meanwhile, the Sangguniang Bayan met in inaugural session on July 3, 1992, during which private respondent was recognized as the eighth member of the body and thereafter allowed to assume office and discharge its functions. On July 13, 1992, it informed petitioner that it had recognized the private respondent as its member.

On the other hand, the COMELEC's First Division dismissed on January 22, 1993 petitioner's appeal on the ground that he had failed to pay the appeal fee within the prescribed period.

Petitioner then brought the present action. Petitioner contends that both the trial court and the COMELEC's First Division committed a grave abuse of discretion, the first, by assuming jurisdiction over the election contest filed by private respondent despite the fact that the case was filed more than ten days after petitioner's proclamation, and the second, i.e., the COMELEC's First Division, by dismissing petitioner's appeal from the decision of the trial court for late payment of the appeal fee.

We find the petition to be without merit.

First. The Solicitor General, in behalf of the COMELEC, raises a fundamental question. He contends that the filing of the present petition, without petitioner first filing a motion for reconsideration before the COMELEC en banc, violates Art. IX, A, §7 of the Constitution^[1] because under this provision only decisions of the COMELEC en banc may be brought to the Supreme Court on certiorari.

This is correct. It is now settled that in providing that the decisions, orders and rulings of COMELEC "may be brought to the Supreme Court on certiorari" the Constitution in its Art. IX, A, §7 means the special civil action of

certiorari under Rule 65, §1.[2] Since a basic condition for bringing such action is that the petitioner first file a motion for reconsideration,[3] it follows that petitioner's failure to file a motion for reconsideration of the decision of the First Division of the COMELEC is fatal to his present action.

Petitioner argues that this requirement may be dispensed with because the only question raised in his petition is a question of law. This is not correct. The questions raised by petitioner involve the interpretation of constitutional and statutory provisions in light of the facts of this case. The questions tendered are, therefore, not pure questions of law.

Moreover, that a motion for reconsideration before the COMELEC en banc is required for the filing of a petition for certiorari is clear from the following provisions of the Constitution:

Art. IX, C, §2. The Commission on Elections shall exercise the following powers and functions:

x x x x x x x x

(2) Exercise exclusive original jurisdiction over all contests relating to the elections, returns, and qualifications of all elective regional, provincial, and city officials, and appellate jurisdiction over all contests involving elective municipal officials decided by trial courts of general jurisdiction, or involving elective barangay officials decided by trial courts of limited jurisdiction.

Decisions, final orders, or rulings of the Commission on election contests involving elective municipal and barangay offices shall be final, executory, and not appealable.

Id. §3. The Commission on Elections may sit en banc or in two divisions, and shall promulgate its rules of procedure in order to expedite disposition of election cases, including pre-proclamation controversies. All such election cases shall be heard and decided in division, provided that motions for reconsideration of decisions shall be decided by the Commission en banc.

Conformably to these provisions of the Constitution all election cases, including pre-proclamation controversies, must be decided by the COMELEC in division. Should a party be dissatisfied with the decision, he may file a motion for reconsideration before the COMELEC en banc. It is, therefore, the decision, order or ruling of the COMELEC en banc that, in accordance with Art. IX, A, §7, "may be brought to the Supreme Court on certiorari." [4]

Second. Even on the merits we think the First Division of the COMELEC properly dismissed petitioner's appeal from the decision of the trial court because of his failure to pay the appeal fee within the time for perfecting an appeal. Rule 22, §9 of the COMELEC Rules of Procedure expressly provides:

Sec. 9. Grounds for dismissal of appeal. - The appeal may be dismissed upon motion of either party or at the instance of the Commission on any of the following grounds:

(a) Failure of the appellant to pay the appeal fee;...

In accordance with §2(b) of COMELEC Resolution No. 2108-A, the appeal fee must be paid within the period to perfect the appeal. Thus:

Sec. 2. When docket and other fees shall be paid. -

....

(b) The appeal fees prescribed in section 3 of Rule 22 of the COMELEC Rules of Procedures shall be paid within the period to perfect the appeal. . . .

The period to perfect the appeal is understood to be the period within which to file the notice of appeal.

On the other hand, Rule 22, §3 of the Rules of Procedure of the COMELEC provides:

Notice of Appeal. - Within five (5) days after promulgation of the decision of the court, the aggrieved party may file with said court a notice of appeal, and serve a copy thereof upon the attorney of record of the adverse party.

This resolution, which was promulgated on July 14, 1989, superseded COMELEC Resolution No. 1456[5] on which petitioner relies for his contention that the fee is to be paid only upon the filing of the appeal brief.

The records show that petitioner received a copy of the decision of the trial court on June 26, 1992. However, he paid the appeal fee of P1,020.00 only on August 6, 1992. In other words, petitioner allowed forty (40) days to lapse when the appeal fee should have been paid within five (5) days after promulgation of the trial court's decision.

Petitioner claims that he acted on advice, presumably of COMELEC officials, to wait until the records of the appealed case was received from the Regional Trial Court, so that it could be docketed and given a case number before paying the appeal fee. But there is nothing in the record to show this or that petitioner offered to pay the appeal fee within the appeal period. He has not identified the person who allegedly gave him the erroneous advice.

Petitioner also prays that a re-canvass be conducted in all the electoral precincts of Naujan, Oriental Mindoro in view of the joint-affidavit executed by the members of the Municipal Board of Canvassers on October 12, 1993 in which they stated:

That the respondent Board, per verification from the Comelec records of Naujan, after receipt of the sworn letter-complaint of Mr. Aquiles U. Reyes, aside from the matters already alluded to above found that the "40" votes he garnered in Precinct No. 37, and the "31" votes in Precinct 41-A that should have been credited, transcribed or recorded in complainant's favor in the Statement of Votes (C.E. Form No. 22-A) on the basis of the Election Returns (C.E. Form No. 9), thru honest mistake was erroneously and inadvertently transcribed or recorded in good faith and without malice due to mental and physical fatigue and exhaustion by the Board of Canvassers and its staff in favor of candidate Jeremias Nacorda of Sangguniang Bayan Member of the Municipality of Naujan in the Statement of Votes (C.E. form No. 22-A) of said precincts, and what should have been credited and reflected as candidate Nacorda's vote in the Statement of Votes (C. E. Form No. 22--A) on the basis of the Election Returns (C.E. Form No. 9) are "9" votes in Precinct 37 not "40" votes, and "8" votes in Precinct No. 41-A and not "31" votes, certification is hereto attached issued by the Election Officer of Naujan that candidate Nacorda per Comelec records shown in the Election Returns (C.E. Form No. 9) only garnered "9" votes in Precinct 37, and "8" votes in Precinct 41-A and marked as Annex "1" and made as integral part of this joint-affidavit.

This issue was raised in the Addendum to Appellant's Brief[6] in the COMELEC Case EAC No. 9-92. With the dismissal of that case by the COMELEC's First Division, there is no basis for petitioner's present contention.

Third. Petitioner also assails the decision of the trial court as having been rendered without jurisdiction. He contends that the election protest of private respondent was filed more than ten days after his (petitioner's) proclamation.

Petitioner is, however, estopped to raise this question now. He did not only appeal from the decision of the trial court to the COMELEC raising this question, but he also filed a petition for mandamus and prohibition in the Court of Appeals. Having decided on this course of action, he should not be allowed to file the present petition

just because he lost in those cases.

WHEREFORE, the petition is DISMISSED for lack of merit.

SO ORDERED.

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

Davide, Jr., J., out of town.

Francisco, J., on leave.

[1] Art. IX, A, §7, provides: "Each Commission shall decide by a majority vote of all its Members any case or matter brought before it within sixty days from the date of its submission for decision or resolution. A case or matter is deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the rules of the Commission or by the Commission itself. Unless otherwise provided by this Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Supreme Court on certiorari by the aggrieved party within thirty days from receipt of a copy thereof."

[2] Galido v. COMELEC, 193 SCRA 78 (1991); Rivera v. COMELEC, 199 SCRA 178 (1991).

[3] 1 REGALADO, REMEDIAL LAW COMPENDIUM 459-460 (1988).

[4] Cf. Sarmiento v. COMELEC, 212 SCRA 308 (1992); Ong, Jr. v. COMELEC, 216 SCRA 806 (1992).

[5] Resolution No. 1456, promulgated on October 16, 1980, provided:

SEC. 6. Filing of briefs and appeal fee. The Manager, Electoral Contests Adjudication Office, upon receipt of the complete record of the case shall notify the appellant or his counsel to file with said office within thirty (30) days from receipt of such notice fifteen (15) copies of his brief accompanied by proof of service thereof upon the appellee or appellees in accordance with Sec. 9 hereof. The appellant shall also pay an appeal fee of P250.00 with the Cash Division, Administrative Services Department of the Commission upon the filing of his brief. The appeal shall be deemed perfected upon payment of the required appeal fee.

Within thirty (30) days from receipt of the brief of the appellant, the appellee shall file fifteen (15) copies of his brief accompanied by proof of service thereof upon the appellant or appellants in accordance with Sec. 9 hereof.

[6] EAC No. 9-92, Records, pp. 42-43.

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