

HALIM ASMALA, PETITIONER, VS. COMMISSION ON ELECTIONS AND HADJI HUSNI MOHAMMAD, RESPONDENT.

G.R. No. 126221. April 28, 1998

Ponente: PURISIMA, J.

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PURISIMA, J.:

At bench is a special civil action for certiorari under Rule 65, in conjunction with Section 2, Rule 39, Revised Rules of Court, and Section 1, Rule 37 of the 1993 Comelec Rules of Procedure, to review and annul the Resolution of respondent Commission on Elections which set aside the Order, dated March 28, 1996, of Branch 11 of the Regional Trial Court in Basilan Province, directing execution of the judgment of said court which found and adjudged the herein petitioner, Halim Asmala, as the duly elected Vice Mayor of the Municipality of Tuburan, Province of Basilan, and ordering his proclamation.

The antecedent facts are, as follows:

In the elections of May 8, 1995, eight candidates vied for the position of Vice Mayor for the Municipality of Tuburan, Province of Basilan. The canvass of votes by the Municipal Board of Canvassers, indicated that :

Hadji Husni Mohammad garnered 3,065 votes,

Emmanuel “Manny” Alano 2,912 votes, and

Halim Asmala got 2,542 votes.

On the basis of the aforesaid results of canvass of votes, Hadji Husni Mohammad was proclaimed, and later he assumed office as Vice Mayor of Tuburan.

On May 22, 1995, Halim Asmala filed an election protest with the Regional Trial Court of Basilan. Docketed as Election Case No. 4-95, the protest alleged that election fraud and other irregularities tainted the election and canvass of votes. On the same day, another candidate, Emmanuel Alano, also filed his protest. Docketed as Election Protest No. 6-95, it was consolidated with Election Protest No. 4-95.

During the hearing, the court a quo found that several ballots were written by just one hand while other ballots were prepared by only two persons. Consequently, such ballots were invalidated.

On February 14, 1996, the trial court rendered its decision in said election cases, crediting Halim Asmala, the herein petitioner, with 2,130 votes, Emmanuel Alano with 1, 920 votes and Hadji Husni Mohammad with 1,729 votes, and adjudging petitioner the duly elected Vice Mayor of Tuburan, Province of Basilan.

On February 26, 1996, after the promulgation of the aforementioned decision, private respondent Hadji Husni Mohammad filed his Notice of Appeal with the same Regional Trial Court.

On the following day, February 27, 1996, petitioner presented a Motion for Execution Pending Appeal. Thereto, private respondent Mohammad interposed his opposition, theorizing that his perfected appeal divested the trial

court of jurisdiction to resolve the Motion for Execution Pending Appeal.

In his Rejoinder to Respondent's Opposition to the Motion for Execution Pending Appeal, petitioner placed reliance on the ruling of this court in *Edding vs. COMELEC*, 246 SCRA 502 to the effect that the mere filing of a Notice of Appeal does not divest the trial court of jurisdiction over the case and to resolve pending incidents, including motions for execution of judgment pending appeal.

In his Comment on the Rejoinder, the private respondent opined that the case of *Edding* aforecited is inapplicable for the reason that the motion for execution in question was filed after perfection of his appeal.

On March 28, 1996, after due hearing, the trial court came out with a Special Order, granting the Motion for Execution Pending Appeal, of petitioner who was required to post therefor a bond in the amount of P30,000.00, and instructing the sheriff concerned to install petitioner as Vice Mayor of Tuburan, Province of Basilan, after the latter's proclamation by the Commission on Elections, and taking oath of office.

On April 1, 1996, the trial court, after approving the property bond posted by petitioner, authorized him to assume office. Also on the same day, private respondent filed a Petition for Certiorari with the Commission on Elections, theorizing that the assailed Order of March 28, 1996 of the trial court was issued without or in excess of jurisdiction, considering that his appeal was perfected by the mere filing of the Notice of Appeal and payment of the necessary appeal fees.

On August 20, 1996, after submission by the parties of their respective memoranda, the COMELEC granted the petition of private respondent and set aside the questioned Order, dated March 28, 1996, on the ground of lack of jurisdiction of the respondent trial court to issue the same.

Undaunted, petitioner found his way to this court via the instant petition for certiorari, filed on September 19, 1996.

On September 21, 1996, two days after the institution of this case, private respondent Mohammad moved for the execution of the August 20, 1996 COMELEC Resolution, setting aside the Order of Execution pending appeal of the Regional Trial Court in Election Protest Case No. 4-95; contending that the said COMELEC Resolution had become final and executory pursuant to Section 13(a), Rule 18 of the 1993 COMELEC Rules of Procedure.

Although copy of the said motion for execution was mailed to the lawyer of petitioner, it contained no notice of hearing. It was only on September 26, 1996, when petitioner's counsel received a copy thereof by registered mail.

On September 27, 1996, the herein petitioner, through counsel, submitted to COMELEC his Opposition to the Motion for Execution, inviting attention to his Petition for Certiorari before this court, seeking to set aside and annul subject COMELEC Resolution of August 20, 1996.

But, as it turned out, on September 24, 1996, the COMELEC issued ex parte its assailed Order granting private respondent's motion for execution.

On the same day, September 24, 1996, the COMELEC caused the issuance of the corresponding writ of execution, which, then, prompted petitioner to file in this case a Supplemental Petition, praying for a Temporary Restraining Order to forestall implementation of the COMELEC Resolution in question.

The issue raised in the original petition is - whether or not the COMELEC exceeded its jurisdiction and/or committed grave abuse of discretion amounting to lack of jurisdiction in setting aside the Special Order issued on March 28, 1996 by the Regional Trial Court of Basilan for the immediate execution pending appeal of the decision in favor of the herein petitioner, as protestant in Election Case No. 4-95.

The Supplemental Petition posits the issue of whether the respondent COMELEC acted with grave abuse of discretion amounting to lack of jurisdiction in granting private respondent's motion for execution of its Resolution of August 20, 1996, notwithstanding the pendency of the present Petition for Certiorari assailing the said COMELEC Resolution.

Petitioner maintains that the court a quo was competent to act upon and grant the motion for execution pending appeal of its February 14, 1996 decision in Election Case No. 4-95.

On the other hand, in his Petition before the COMELEC, private respondent argued that the respondent Regional Trial Court lost jurisdiction to grant the Motion for Execution Pending Appeal of the protestant (now petitioner) in view of the perfection by protestee (now private respondent) of the appeal before the COMELEC.

According to private respondent, a day before protestant Halim Asmala filed a Motion for Execution Pending Appeal, he (protestee) had perfected his appeal, by filing a Notice of Appeal and paying the requisite appeal fees to the COMELEC, thereby divesting the trial court of jurisdiction to act on the said Motion for Execution Pending Appeal.

However, both in his Memorandum before the COMELEC, and his Comment on the Petition here, private respondent Mohammad conceded that petitioner's Motion for Execution Pending Appeal was seasonably filed within the five day period for perfecting an appeal. This development can be gleaned from the Consolidated Comment sent in by the private respondent, to wit :

"...private respondent never questioned the trial court's authority and jurisdiction to entertain a motion for execution pending appeal- for as long as the said Motion was filed within the five (5) day period for perfecting an appeal as was admittedly done by petitioner Asmala."

It is then decisively clear that the parties recognize the jurisdiction of the trial court to order execution pending appeal of its judgment of February 14, 1996.

Furthermore, as stressed by petitioner, this Court succinctly stated in *Edding vs. Commission on Elections*, 246 SCRA 502, that:

"The settled rule is that the mere filing of a notice of appeal does not divest the trial court of its jurisdiction over a case and resolve pending incidents. Where the motion for execution pending appeal was filed within the reglementary period for perfecting an appeal, as in the case at bench, the filing of a notice of appeal by the opposing party is of no moment and does not divest the trial court of its jurisdiction to resolve the motion for immediate execution of the judgment pending appeal because the court must hear and resolve it for it would become part of the records to be elevated on appeal. Since the court has jurisdiction to act on the motion at the time it was filed, that jurisdiction continued until the matter was resolved and was not lost by the subsequent action of the opposing party. (*Eudela vs. Court of Appeals*, 211 SCRA 546 and *Cebu Contractors Consortium vs. Court of Appeals*, 216 SCRA 597, 601)"

The aforecited case of *Edding* made reference to the earlier case of *Relampagos vs. Cumba*, 243 SCRA 690, which enunciated a similar doctrine, and overturned the ruling in *Garcia vs. de Jesus and Tobon Uy vs. Comelec*, 206 SCRA 779 and *Veloria vs Comelec*, 211 SCRA 907.

In the *Relampagos* case, this Court held that "any motion for execution pending appeal must be filed before the period for the perfection of the appeal. Pursuant to Section 23 of the Interim Rules Implementing B.P. Blg. 129, which is deemed of supplementary effect to the COMELEC Rules of Procedure, in accordance with section 1, Rule 41 of the latter, an appeal would be deemed perfected on the last day for any of the parties to appeal. (emphasis supplied) x x x Upon perfection of the appeal, the trial court was divested of its jurisdiction over the case. Since the motion for execution pending appeal was filed x x x after the perfection of the appeal, the trial

court could no longer validly act thereon.” This ruling was reiterated in the more recent case of *Conrado Lindo vs. Comelec, Judge Napoleon Dilag, etc. and Rosario Velasco*, G.R. No. 127311, June 19, 1997.

And so, what remains for determination is the timeliness of filing of the Motion for Execution Pending Appeal under scrutiny.

It should be noted that the trial court promulgated on February 26, 1996 its subject judgment dated February 14, 1996. Under Rule 35, Section 22 of the 1993 Comelec Rules of Procedure, the parties have five (5) days from service of judgment to interpose an appeal before the Comelec. Therefore, the parties had five (5) days from February 26, 1996, to perfect an appeal.

Although it is beyond cavil that the private respondent sent in his Notice of Appeal on time; having filed the same on the day the judgment appealed from was promulgated, the appeal was deemed perfected, with respect to him only. Such appeal did not deprive petitioner of the right to avail himself of the entire period of five days within which to appeal, if he so desired. In the case of *Valencia vs. Court of Appeals*, 184 SCRA 561; this Court ruled, that:

“Under the present procedure, an appeal is perfected upon the expiration of the last day to appeal by any party. It is not perfected on the date the notice of appeal was filed. x x x The fact that plaintiff filed a notice of appeal x x x did not, as already stated, result in the perfection of the appeal. Despite plaintiff’s having filed his notice of appeal, defendants, had they been so minded, could still have availed of the right, up to their last day to appeal x x x to also file their notice of appeal or to file a motion for new trial or to move for execution as in fact they did, since plaintiff’s appeal has not yet been perfected. x x x”

Thus, when petitioner filed his Motion for Execution pending appeal on February 27, 1996, the trial court still had jurisdiction over the case because as to him (petitioner), appeal was not yet perfected. In such a scenario below, the trial court had undoubtedly the jurisdiction and competence to act on petitioner’s Motion for Execution Pending Appeal, since it had not lost jurisdiction over the case, at the time of filing of subject motion.

All things studiously considered and viewed in proper perspective, the ineluctable conclusion is that the respondent COMELEC acted with grave abuse of discretion amounting to absence of jurisdiction in setting aside subject March 28, 1996 Order of execution pending appeal on jurisdictional grounds.

WHEREFORE, the questioned Resolution issued on August 20, 1996 by respondent Commission on Elections is SET ASIDE and the order of execution pending appeal, issued in favor of the herein petitioner in Election Case No. 4-95 by the Regional Trial Court of the Province of Basilan, is hereby reinstated and upheld.

This decision is immediately executory.

SO ORDERED.

Narvasa, C.J., Regalado, Davide, Jr., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Martinez, and Quisumbing, JJ., concur.

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