

**MELODY B. BATOY, PETITIONER, VS. REGIONAL TRIAL COURT,
BRANCH 50, LOAY, BOHOL, PRESIDED OVER BY HON. DIONISIO R.
CALIBO, JR., AS ACTING PRESIDING JUDGE, 13TH MUNICIPAL
CIRCUIT T...**

G.R. No. 126833. February 17, 2003

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure of the Order[1] of the Regional Trial Court of Bohol, Branch 50, dismissing the petition for certiorari in Special Civil Action No. 0016 and its Order[2] denying the motion for reconsideration[3] of said order filed by petitioner Melody B. Batoy.

The petition at bench stemmed from the following factual backdrop: Petitioner and private respondent Jeanfree Sarmiento were among the candidates for the position of Barangay Chairman in Barangay Dasitam, Baclayon, Bohol, during the May 6, 1996 Sangguniang Kabataan (SK) elections. Private respondent garnered twenty (20) votes over petitioner's nineteen (19) votes, and the former was consequently proclaimed by the Board of Election Tellers as the duly elected SK Chairman of Barangay Dasitam. [4]

On May 9, 1996, petitioner filed an election protest with the 13[th] Municipal Circuit Trial Court of Loay-Alburquerque- Baclayon, Loay, Bohol (MCTC), alleging, inter alia, that:

a)

The Board of Election Tellers failed to appreciate in favor of protestant one (1) ballot which wrote and/or contained protestant's name near the space provided for the chairman; and

b)

The same Board of Election Tellers failed to appreciate in favor of protestant one (1) ballot which, although incorrectly written, nonetheless when read, has a sound similar to the name of protestant.[5]

However, petitioner failed to append to her election protest a certification of non-forum shopping as mandated by Supreme Court Administrative Circular No. 04-94. Private respondent filed a Motion to Dismiss and/or Answer, on the grounds that:

- The petition states no cause of action; and

- The petition does not comply with the Supreme Court's Adm. Circular No. 04-94 Re: Anti-Forum Shopping.[6]

On May 20, 1996, petitioner submitted to the court the requisite Certification of Non-Forum Shopping[7] and filed an opposition[8] to the motion to dismiss claiming that her failure to comply with Supreme Court

Administrative Circular No. 04-94 was merely a technical deficiency.

The MCTC issued an Order dated May 23, 1996 granting the motion to dismiss of private respondent and dismissing the election protest of petitioner.[9] The latter filed a motion for reconsideration[10] of said order, insisting that her failure to submit the requisite certification on non-forum shopping had already been cured when she filed the requisite certification on May 20, 1996 but the MCTC issued an order denying said motion.[11] Petitioner received a copy of said order on June 4, 1996. Instead of appealing said order of the MCTC to the Commission on Elections, petitioner filed with the Regional Trial Court a Petition for Certiorari, Prohibition and Mandamus, for the nullification of the aforesaid orders of the MCTC on June 20, 1996.[12] Petitioner alleged, inter alia, that the MCTC committed a grave abuse of its discretion amounting to excess or lack of jurisdiction in issuing the said orders. Private respondent filed an Answer and/or Motion to Dismiss[13] the petition, alleging, inter alia, that petitioner had a plain, speedy and adequate remedy via an appeal to the Commission on Elections (COMELEC) from the order of dismissal of the MCTC but failed to avail of said remedy; hence, her petition with the RTC was improper. Private respondent likewise averred that the MCTC did not commit any grave abuse of its discretion in issuing the assailed orders. On September 11, 1996, the RTC issued an Order[14] dismissing the petition, on the grounds that: (a) it had no jurisdiction over the petition; (b) the MCTC did not commit grave abuse of discretion amounting to excess or lack of jurisdiction in dismissing petitioner's election protest; and, (c) the remedy of petitioner was to appeal to the COMELEC from said orders and not to file with the RTC a petition for certiorari, prohibition and mandamus, under Rule 65 of the 1997 Rules of Civil Procedure. Petitioner filed a motion for reconsideration [15] of said order but the RTC issued an order[16] denying said motion.

Petitioner filed the instant petition assailing the orders of the RTC and contending that she had substantially complied with Administrative Circular No. 04-94 when she filed the requisite certification of non-forum shopping during the pendency of her election protest. She avers that the MCTC should have proceeded with her election protest and resolved it on its merits instead of dismissing the same conformably with the pronouncement of this Court in *Loyola vs. Court of Appeals*. [17] Her proper remedy from the assailed orders of the MCTC was to file a petition for certiorari, prohibition and mandamus under Rule 65 of the Rules of Court instead of an appeal to the COMELEC because the MCTC committed grave abuse of discretion amounting to excess or lack of jurisdiction in issuing said orders.

The petition is denied.

The RTC correctly dismissed the petition for certiorari filed therewith by petitioner. This Court held in *Melo vs. Court of Appeals, et al.*, [18] that the requirement under Administrative Circular No. 04-94 for a certificate of non-forum shopping is mandatory. The subsequent compliance with said requirement does not excuse a party's failure to comply therewith in the first instance. In those cases where this Court excused the non-compliance with the requirement of the submission of a certificate of non-forum shopping, it found special circumstances or compelling reasons which made the strict application of said Circular clearly unjustified or inequitable. In this case, however, the petitioner offered no valid justification for her failure to comply with the Circular. Her only excuse is that she overlooked the deficiency of her election protest and discovered the same after the private respondent had filed her motion to dismiss the election protest. Such an excuse is patently flimsy and totally unacceptable. If the Court accepts petitioner's justification for her failure to comply with the Circular, it would be undermining the policy of the law and frustrating the objective sought to be attained by the requirement.

Petitioner's reliance of the pronouncement of this Court in *Loyola vs. Court of Appeals, et al.*, [19] is misplaced. In said case, the protestant submitted the requisite certification within the ten-day period for the filing of an election protest. In this case, petitioner submitted to the MCTC the requisite certification only on May 20, 1996, long after the lapse of the ten-day period for her to file an election protest. The ten-day period for her to file her

defective election protest was not suspended when she filed her election protest on May 9, 1996. The submission by petitioner of the requisite certificate after the reglementary ten-day period for the filing of an election protest did not operate as a substantial compliance with the Circular.[20] The MCTC, therefore, correctly dismissed the election protest of petitioner. Hence, the RTC cannot be faulted for dismissing the petition for certiorari of petitioner.

The RTC correctly dismissed the petition for certiorari for the added reason that it had no appellate jurisdiction over said petition. Section 49 of Resolution No. 2824 of the COMELEC governing the barangay elections on May 6, 1996, promulgated on February 6, 1996, provides that the COMELEC has appellate jurisdiction over decisions of the MCTC or MTC on election protests:

“SEC. 49. Finality of proclamation. The proclamation of the winning candidates shall be final. However, the Metropolitan Trial Courts/Municipal Trial Courts/Municipal Circuit Trial Courts (MeTC/MTC) shall have original jurisdiction over all election protest cases, whose decision shall be final. The Commission en banc in meritorious cases may entertain a petition for review of the decision of the (MeTC/MTC/MCTC) in accordance with the comelec rules of procedures. An appeal bond of P2,000.00 shall be required, which shall be refundable if the appeal is found meritorious.”

The resolution applies also to a final order of the MCTC dismissing an election protest. Petitioner did not perfect her appeal from the MCTC to the COMELEC. Instead, the petitioner filed her petition for certiorari with the RTC. The erroneous filing by the petitioner of her petition with the RTC did not toll the running of the period for petitioner to perfect her appeal to the COMELEC.[21] Because of petitioner’s failure to perfect her appeal to the COMELEC within the period granted therefor, the Order of the MCTC dismissing her election protest had become final and executory.

In any case, considering that the term of office of the officials elected during the May 6, 1996 Sangguniang Kabataan Elections had long expired, [22] this petition has long become moot and academic. [23]

ACCORDINGLY, the instant petition is hereby DISMISSED.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Quisumbing, and Austria-Martinez, JJ., concur.

[1] Issued by Judge Feliciano S. Maisog, Jr.; Annex L, Petition.

[2] Annex L, Petition.

[3] Annex N, Petition.

[4] Rollo, pp. 33-34.

[5] Rollo, p. 34.

[6] Rollo, p. 37.

[7] Rollo, p. 41.

[8] Annex E, Petition.

[9] Annex F, Petition.

[10] Annex G, Petition.

[11] Annex D, Petition.

[12] Annex J, Petition.

[13] Annex L, Petition.

[14] Annex M, Petition.

[15] Annex M, Petition.

[16] Annex N, Petition.

[17] 245 SCRA 477 (1995).

[18] 318 SCRA 94 (1999).

[19] Supra.

[20] Tomarong vs. Lubguban, 269 SCRA 624 (1997).

[21] Caluoag vs. Comelec, 274 SCRA 405 (1997).

[22] Section 50 of COMELEC Resolution No. 2824. - The Term of Office. The SK chairman and members shall hold office for a term of three (3) years; Provided, that the officials first elected shall assume office on June 1, 1996.

[23] Trinidad vs. COMELEC, 315 SCRA 175 (1999).

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