

**CONRADO LINDO, PETITIONER, VS. COMMISSION ON ELECTIONS,
JUDGE NAPOLEON V. DILAG, IN HIS OFFICIAL CAPACITY AS
PRESIDING JUDGE OF BRANCH XV, REGIONAL TRIAL COURT OF
NAIC, CAVITE, ...***G.R. No. 127311. June 19, 1997*

Ponente: PUNO, J.

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In this petition for certiorari and prohibition, petitioner CONRADO LINDO seeks to annul the December 9, 1996 COMELEC Resolution lifting its injunction against the writ of execution pending appeal issued by Judge Napoleon Dilag, of the September 23, 1996 Decision declaring private respondent ROSARIO VELASCO as the duly-elected mayor of Ternate, Cavite and directing petitioner to vacate the Office of the Mayor.

The facts show that in the May 8, 1995 elections, petitioner CONRADO LINDO and private respondent ROSARIO VELASCO (incumbent mayor of Ternate, Cavite) were the main rivals for the position of Ternate mayor. On May 9, 1995, petitioner was declared by the board of canvassers as the duly elected mayor, garnering the highest number of votes at 2,711. Private respondent was second with 2,195 votes.

On May 19, 1996, private respondent, while still discharging her functions as Ternate mayor, filed an election protest with the RTC of Naic, Cavite, presided by Assisting Judge Emerito Agcaoili, contesting the results of the election in all the 19 precincts.

In June, 1995, prior to petitioner's assumption of the office of Ternate mayor, the ballot boxes of all the protested precincts were transferred from the office of the municipal treasurer to the office of the clerk of court, RTC Naic, for revision of the ballots. Only the ballots from 24 precincts were revised because private respondent abandoned her protest with respect to the other 15 precincts.

The revision showed a substantial variance between the number of votes as stated in the election returns and the number of votes as per physical count of the ballots in five (5) precincts,[1] thus:

FOR PETITIONER LINDO FOR RESPONDENT VELASCO

election physical election physical

returns count returns count

314 92 311 695

Thus, from the physical count of the votes, 222 votes were deducted from petitioner [314 - 222 = 92], while private respondent was credited with an additional 384 votes [311 + 384 = 695].

After the revision of the ballots by physical counting and appreciation of contested ballots, the results of voting[2] in all precincts were as follows:

RESULTS OF: LINDO VELASCO

physical

count 2,479 2,579

less: less:

appreciation 132 voided 32 voided

of ballots[3] ballots ballots

TOTAL: 2,347 votes 2,547 votes

In view of the above findings, Assisting Judge Emerito M. Agcaoili, in his September 23, 1996 Decision, declared private respondent as the duly elected mayor of Ternate, Cavite.[4] Petitioner was ordered to vacate the office of the Ternate mayor and turn it over to private respondent.

On September 27, 1996, petitioner filed a notice of appeal with the trial court and appealed the trial court's decision with the COMELEC. On the other hand, private respondent filed a motion for execution pending appeal. Its hearing was set on October 16, 1996.

At the hearing on the motion for execution, petitioner claimed that Judge Agcaoili only examined the photocopies of the ballots in deciding the case. Thereafter, respondent Judge Napoleon Dilag took over the protest case and on October 29, 1996 issued an Order[5] granting the motion for execution pending appeal upon private respondent's filing of a P100,000.00 cash bond. On the same date, Judge Dilag issued the writ of execution[6] directing the PNP Director of Cavite to implement the writ and install private respondent as mayor of Ternate, Cavite.

Petitioner filed a petition for certiorari and prohibition with the COMELEC,[7] with prayer for the issuance of a preliminary injunction to prevent the implementation of the Order and writ of execution. Petitioner reiterated the factual claim that the trial judge did not examine the original ballots in deciding the protest case. On November 7, 1996, the COMELEC issued a preliminary injunction.[8]

On December 9, 1996, COMELEC issued a Resolution,[9] which denied the petition for certiorari and lifted the preliminary injunction. It ruled that the trial court did not commit grave abuse of discretion in granting the motion for execution pending appeal since on the basis alone of the physical count of ballots, private respondent would still be ahead of petitioner by 90 votes. It also held that the examination of original ballots shall be made at the appeal proper to dispose of all the issues relative to the merits of the case.

Hence this petition for certiorari and prohibition where petitioner contends that the COMELEC erred:

- (1) in allowing the implementation of the writ of execution which was issued without payment by private respondent of the cash bond required in the Order;
- (2) when it sustained the execution of the trial court's decision despite the COMELEC's finding that the decision was based only on the xerox copy of the contested ballots and that fake and spurious ballots may have been introduced in the ballot boxes to increase the votes of private respondent;
- (3) when it refused to open the ballot boxes and examine the original ballots to determine whether there were spurious ballots used to increase private respondent's votes;

(4) when it ruled that the good reason for the execution of the decision pending appeal is that the result of the physical count alone shows that fraud was perpetrated, especially with the increase of votes of the proclaimed candidate.

(5) in applying Rule 39 of the Rules of Court.

We find no merit in the petition.

First. The records reveal that the writ of execution was issued on October 29, 1996 but was implemented only on October 30 after private respondent paid the P100,000.00 cash bond. It also appears that though the PNP Director of Cavite was deputized to implement the writ, it was the sheriff who actually executed the writ.

Second and Third. Petitioner claims that the COMELEC issued the preliminary injunction after finding that the trial court did not examine the original ballots, but relied only on the xerox copies in deciding the protest.[10] Although subsequently COMELEC lifted the injunction, it still made a finding that fake and spurious ballots may have been introduced in the ballot boxes to increase the votes of private respondent.[11] Thus, petitioner contends that the COMELEC should not have allowed the execution of the decision pending appeal and should have opened the ballot boxes to determine the authenticity of the ballots therein.

The contention has no merit.

COMELEC's statement that fake and spurious ballots may have been introduced to increase the votes of protestant was taken out of context. Thus, it cannot be made as basis for denying the execution pending appeal. To be precise, the COMELEC merely said that there is a possibility that fake and spurious ballots were placed in the ballot box to increase private respondent's votes, but the COMELEC correctly ruled that an examination of the ballots to resolve the petition for certiorari is not proper at said time for the only issue it resolved was whether there was a grave abuse of discretion in granting the execution pending appeal.

In his petition for certiorari before the COMELEC,[12] petitioner mainly anchored his opposition to the order of execution pending appeal on his allegation that the trial judge did not examine the original ballots, but relied only on the xerox copy of the ballots in deciding the protest case. However, this contention raises a factual issue and its determination is best left in the appeal pending before the COMELEC. Its resolution will involve the merit of the case. We are only concerned with the issue of whether grave abuse of discretion was committed in ordering execution pending appeal. As will be discussed later, there was a good reason for ordering execution pending appeal.

Thus, petitioner's recourse would be to pursue his appeal with the COMELEC, where the opening of the ballot boxes and the examination of original ballots may be made so that the true will of the electorate can be finally ascertained.

It also bears emphasis that Rule 143 of the Rules of Court allows execution pending appeal in election cases upon good reasons stated in the special order.[13] In its Order of execution,[14] respondent RTC Judge Dilag cited two reasons to justify execution of his decision pending appeal, viz: (1) the grant of execution would give substance and meaning to the people's mandate, especially since the RTC has established private respondent's right to office, and; (2) barely 18 months is left on the tenure of the Ternate mayor and the people have the right to be governed by their chosen official. In the recent case of *Gutierrez v. COMELEC*,[15] the same grounds for execution pending appeal of the decision in the protest case were relied upon by the trial court and we found them to be valid reasons for execution.

Fourth. We do not agree with the reason cited by COMELEC in granting the execution pending appeal, i.e., that even on the basis of the physical count alone, private respondent would still have emerged the winner. This

rationale disregards the fact that should ballots be found to be void after an examination of the original ballots, these ballots shall be deducted from the result of the physical count and could tilt the balance in favor of petitioner. Be that as it may, as discussed earlier, we find that the reasons cited by the trial court in its order of execution constitute good reasons to justify execution of its decision pending appeal.

Finally, petitioner alleged that the COMELEC erred in applying Section 2, Rule 39 of the Rules of Court, which provides:

“Sec. 2. Execution pending appeal. - On motion of the prevailing party with notice to the adverse party, the court may, in its discretion, order execution to issue before the expiration of the time to appeal, upon good reasons to be stated in a special order. If a record on appeal is filed thereafter, the motion and special order shall be included therein.”

He urges that this rule does not apply to decisions in election cases where courts should resolve the motion for execution before the expiration of the time to appeal. It is pointed out that under our election laws, a party only has five (5) days to appeal and it would not be practicable and convenient to require the trial court to decide the motion for execution during said short time. Hence, petitioner contends that Section 2, Rule 39 applies only in civil cases where the period to appeal (15 days) is longer.

The contention is untenable. In a long line of cases, we have consistently held that Section 2, Rule 39 of the Rules of Court applies suppletorily to election cases.[16] It is also settled that as long as the motion for execution pending appeal is filed before the perfection of appeal, the writ of execution may issue after the period of appeal.[17] In *Universal Far East Corporation v. Court of Appeals*,[18] where the motion for execution was resolved more than four (4) months after the expiration of the period to appeal, we recognized that even in civil cases where the period to appeal (15 days) is longer, the ruling on the motion for execution cannot always be made within 15 days. Thus:

“It may be argued that the trial court should dispose of the motion for execution within the reglementary fifteen-day period. Such a rule would be difficult, if not impossible, to follow. It would not be pragmatic and expedient and could cause injustice. Hurried justice is not always authentic justice.”

“The motion for execution has to be set for hearing. The good reasons for execution pending appeal have to be scrutinized. These things cannot be done within the short period of fifteen days. The trial court may be confronted with other matters more pressing that would demand its immediate attention.”

IN VIEW WHEREOF, the petition is DISMISSED. The temporary restraining order issued by this Court on December 23, 1996 is LIFTED. Petitioner CONRADO LINDO is ordered to vacate the office of the mayor of Ternate, Cavite, and surrender said position to private respondent ROSARIO VELASCO pending the resolution of his appeal with the COMELEC. Public respondent Commission on Elections is mandated to resolve with reasonable dispatch petitioner’s pending appeal. No costs.

SO ORDERED.

Narvasa, C.J., Padilla, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Vitug, Kapunan, Mendoza, Francisco, Hermosisima, Jr., Panganiban, and Torres, Jr., JJ., concur.

[1] Precinct nos. 1, 6, 8-A, 9-I and 14.

[2] See pp. 8-9 of RTC Decision; Rollo, at pp. 59-60.

[3] During the appreciation of the ballots, some were voided by the RTC after finding that they were marked or an individual ballot is written by more than one person.

[4] Rollo, pp. 52-60.

[5] Rollo, pp. 120-123.

[6] Id., pp. 124-126.

[7] Id., pp. 127-139.

[8] Order granting writ of preliminary injunction; Rollo, pp. 140-141.

[9] Rollo, pp. 37-48.

[10] Order granting writ of preliminary injunction; Rollo, p. 140.

[11] p. 11 of December 9, 1996 COMELEC Resolution; Rollo, at p. 47.

[12] Rollo, p. 127.

[13] Cf. Section 2, Rule 39, Rules of Court; Gutierrez v. COMELEC, G.R. No.126298, March 25, 1997; Malaluan v. COMELEC, 254 SCRA 397, 412 [1996]; Abeja v. Tanada, 236 SCRA 60, 70 [1994], citing Garcia v. de Jesus, 206 SCRA 779, 791 [1992]; in relation to Section 1, Rule 43, COMELEC Rules of Procedure.

[14] Rollo, pp. 120-123.

[15] G.R. No. 126298, March 25, 1997.

[16] Gutierrez v. COMELEC, G.R. No. 126298, March 25, 1997; Malaluan v. COMELEC, 254 SCRA 397, 412 [1996]; Abeja v. Tanada, 236 SCRA 60, 70 [1994], citing Garcia v. de Jesus, 206 SCRA 779, 791 [1992]; in relation to Section 1, Rule 43, COMELEC Rules of Procedure.

[17] Universal Far East Corporation v. Court of Appeals, 131 SCRA 642, 646 [1984].

[18] Id.

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