

EDUARDO V. ROQUERO, PETITIONER, VS. COMMISSION ON ELECTIONS, REYNALDO A. VILLANO, AND HONORABLE OSCAR P. BARRIENTOS, PRESIDING JUDGE, RTC, BRANCH 82, MALOLOS, BULACAN, RESPONDENTS.

G.R. No. 128165. April 15, 1998

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

This petition for certiorari and prohibition impugns the Resolution of respondent Commission on Elections (COMELEC) dated January 28, 1997, dismissing the petition for certiorari and prohibition filed by petitioner Eduardo V. Roquero.

The relevant antecedents are as follows:

Petitioner Eduardo V. Roquero and private respondent Reynaldo A. Villano were candidates for Mayor of San Jose del Monte, Bulacan during the local elections held on May 8, 1995.

On July 18, 1995, respondent COMELEC issued an order directing the Municipal Board of Canvassers (MBC) to reconvene, prepare the certificate of canvass and proclaim the winning candidates in said municipality.

On July 19, 1995, the MBC proclaimed petitioner Roquero as the duly elected Mayor of San Jose del Monte, Bulacan garnering 20,131 votes to private respondent Villano's 18,312 votes.

Thereafter, or on July 24, 1995, private respondent Villano filed a motion for reconsideration of the COMELEC Order dated July 18, 1995.

Said motion for reconsideration was denied by the COMELEC on September 8, 1995 in a resolution received by private respondent Villano on September 11, 1995.

On October 10, 1995, private respondent filed a petition for certiorari before this Court assailing the COMELEC's denial of his motion for reconsideration.

On January 30, 1996, this Court issued a resolution dismissing said petition. A reconsideration of the same resolution was denied on April 16, 1996. This resolution was received by private respondent Villano on May 7, 1996.

On May 17, 1996, private respondent Villano filed an election protest before the Regional Trial Court of Malolos, Bulacan, Branch 82, docketed as Election Case No. 01-M-96.

On June 4, 1996, before summons were served to petitioner Roquero, private respondent Villano filed a supplemental petition enumerating the 104 precincts of San Jose del Monte he was contesting.

On June 14, 1996, petitioner Roquero filed an answer with omnibus motion and counter-protest.

On July 15, 1996, petitioner filed a motion to dismiss on the ground that the election protest did not allege facts

constituting a cause of action for an election protest and that the election protest was filed beyond the ten-day reglementary period for filing the same.

On August 29, 1996, respondent judge Oscar P. Barrientos issued an order denying petitioner Roquero's motion to dismiss. A subsequent Order dated September 3, 1996 was likewise issued directing the parties to nominate their respective representatives to serve as members of the Committee on Revision which was set to start its revision and/or recounting of ballots on September 16, 1996.

Aggrieved by the issuance of the foregoing orders, petitioner Roquero filed a petition for certiorari and prohibition before respondent COMELEC, docketed as SPR No. 38-96 on the following grounds, to wit:

- A. Respondent Court committed grave abuse of discretion tantamount to lack or excess of jurisdiction in not dismissing protestant's petition/protest for failure to state ultimate facts to constitute a cause of action.
- B. Respondent Court committed grave abuse of discretion tantamount to lack or excess of jurisdiction in admitting protestant's supplemental petition/protest which was filed without leave of court.
- C. Respondent Court committed grave abuse of discretion tantamount to lack or excess of jurisdiction by giving due course to protestant's supplemental petition/protest despite that the same was filed outside of the reglementary period.
- D. Respondent court abused its discretion tantamount to lack or excess of jurisdiction by setting the revision or recounting of ballots in violation of Sec. 2, Rule 35 in conjunction with Sec. 2, Rule 17 of the Comelec Rules of Procedure.[1]

On January 28, 1997, respondent COMELEC issued the questioned resolution (1) dismissing the petition for lack of merit and (2) directing the RTC to proceed with the revision of ballots and decide the election protest with dispatch.[2]

In brushing aside petitioner Roquero's claim that respondent Villano's protest was filed out of time, the COMELEC ratiocinated:

Anent Protestee's further allegations that the protest (together with the supplement) was filed out of time and that the said supplement was filed by lawyers who had not entered their appearance, the same are instantaneously rejected because by law and jurisprudence which need no citation for being so elementary, in the computation of the period, the first day shall be excluded and the last day included. Suffice is it to say that said protest was filed on time as after having received the Supreme Court resolution denying their motion to dismiss on May 7, 1996 an election protest had been filed in this Court on May 17, 1996.[3]

Hence, the present petition raising the following issues:

WHETHER OR NOT THE COMELEC COMMITTED GRAVE ABUSE OF DISCRETION IN RULING THAT THE MERE ALLEGATION OF FRAUD IS SUFFICIENT TO OPEN THE BALLOT BOX.

WHETHER OR NOT THE COMELEC COMMITTED GRAVE ABUSE OF DISCRETION IN RULING THAT PRIVATE RESPONDENT'S ELECTION PROTEST STATES A CAUSE OF ACTION.

WHETHER OR NOT THE COMELEC COMMITTED GRAVE ABUSE OF DISCRETION IN NOT RULING THAT THE PRIVATE RESPONDENT'S SUPPLEMENTAL PROTEST IS INADMISSIBLE FOR HAVING BEEN FILED WITHOUT LEAVE OF COURT.

WHETHER OR NOT THE COMELEC COMMITTED GRAVE ABUSE OF DISCRETION IN NOT RULING THAT THE PRIVATE RESPONDENT'S ELECTION PROTEST WAS FILED OUT OF TIME.[4]

The main question to be resolved is: Was the election protest filed by private respondent Villano filed on time?

The COMELEC, in ruling that the election protest was filed on time, merely reckoned the 10-day period from May 7, 1996 (which was the receipt by respondent Villano of this Court's resolution denying his motion for reconsideration of the resolution dismissing his petition) to May 17, 1996 when he filed his election protest. In computing the 10-day period, the COMELEC did not consider the running of the period from the date of proclamation of the petitioner candidate to the date the pleading was filed with the COMELEC to annul or suspend the proclamation; and from the time private respondent received the ruling of the COMELEC denying the petition, to the time he filed the petition before this Court questioning the COMELEC's ruling.

Section 251 of the Omnibus Election Code provides:

SEC. 251. Election contests for municipal offices.- A sworn petition contesting the election of a municipal officer shall be filed with the proper regional trial court by any candidate who has duly filed a certificate of candidacy and has been voted for the same office, within ten days after proclamation of the results of the election. (Art. XVIII, Sec. 190, 1978 EC)

Petitioner Roquero was proclaimed by the MBC as the duly elected mayor of San Jose del Monte, Bulacan on July 19, 1995. Five (5) days later, or on July 24, 1995, private respondent Villano filed with respondent COMELEC a pre-proclamation motion for reconsideration assailing the latter's order directing the MBC to proclaim petitioner Roquero as the winning candidate for the mayoralty of the said municipality. Consequently, only five (5) days of the ten (10) day reglementary period to file an election protest remained.

Section 248 of the same Election Code is clear and provides thusly:

Sec. 248. Effect of filing petition to annul or to suspend the proclamation.- The filing with the Commission of a petition to annul or to suspend the proclamation of any candidate shall suspend the running of the period within which to file an election protest or quo warranto proceedings.

Applying the above provision to the instant case, the ten (10) day reglementary period was suspended during the pendency of the pre-proclamation case in the COMELEC and in this Court, until private respondent Villano received a copy of this Court's Resolution dated April 16, 1996 denying his motion for reconsideration on May 7, 1996. Verily, on May 7, 1996, the five-day remainder of the reglementary period to file an election protest resumed to run again and expired on May 12, 1996. Private respondent Villano therefore belatedly filed his election protest on May 17, 1996, five (5) days after the deadline for filing the same.[5]

The rule prescribing the ten-day period is mandatory and jurisdictional, and the filing of an election protest beyond the period deprives the court of jurisdiction over the protest.[6] Violation of this rule should not be taken lightly nor should it be brushed aside as a mere procedural lapse that can be overlooked. The rule is not a mere technicality but an essential requirement, the non-compliance of which would oust the court of jurisdiction over the case.

In *Lim vs. COMELEC*,[7] citing *Kho vs. COMELEC*,[8] this Court reiterated the long standing rule that a counterprotest must be filed within the period provided by law, otherwise, the court acquires no jurisdiction to entertain it.[9]

Relatedly, if the docket fees are not fully paid on time, even if the election protest is timely filed, the court is deprived of jurisdiction over the case.[10]

The Court would like to take note also of petitioner Roquero's contention that private respondent Villano should have filed his election protest on September 17, 1995 (should be September 16, 1995), five (5) days after he received a copy of the COMELEC resolution denying his motion for reconsideration on September 11, 1995.

The running of the reglementary period to file an election protest is tolled by a party's elevation to the Supreme Court of a COMELEC decision or resolution of a pre-proclamation case. The appeal by certiorari to this Court is part of an entire proceeding. The case is not terminated until this Court has rendered judgment. Consequently, the computation of the ten-day period, or the remainder of said period for filing an election contest, as in this case, does not commence to run until this Court hands down its verdict.[11]

Anent the rest of the errors raised, we find no reason to discuss the same, they having been rendered moot and inutile by the preceding disquisition.

For all the foregoing, this Court holds that respondent COMELEC committed grave abuse of discretion in denying petitioner Roquero's petition for certiorari and prohibition.

WHEREFORE, the present petition for certiorari is hereby given DUE COURSE and is accordingly GRANTED. The Resolution dated January 28, 1997 of respondent Commission on Elections in SPR No. 38-96 and the Orders dated August 29, 1996 and September 3, 1996 of the Regional Trial Court of Malolos, Bulacan, Branch 82, in Election Case No. 01-M-96 are hereby ANNULLED and SET ASIDE. Necessarily, Election Case No. 01-M-96 is ordered DISMISSED for lack of jurisdiction.

SO ORDERED.

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

Davide, Jr., J., see separate opinion.

[1] Rollo, p. 23.

[2] Id., at 28.

[3] Id., at 24.

[4] Id., at 7-8.

[5] Please see *Gallardo v. Rimando*, 187 SCRA 463 [1990].

[6] *Asuncion v. Segundo*, 124 SCRA 729 [1983]; *Robes v. COMELEC*, 123 SCRA 193 [1983]; *Conui-Omega v. Samson*, 9 SCRA 493 [1963].

[7] G.R. No. 129040, November 17, 1977.

[8] G.R. No. 124033, September 25, 1997.

[9] See also *Maliwanag vs. Herrera*, 25 SCRA 175 [1968].

[10] *Calucag vs. COMELEC*, G.R. No. 123673, June 19, 1997; *Loyola vs. COMELEC*, G.R. No. 124137, March 25, 1997.

[11] See note 4, *supra*.

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SEPARATE OPINION

DAVIDE, JR., J.:

I concur with the majority that the election protest filed on 17 May 1996 by private respondent Villano with the Regional Trial Court of Malolos, Bulacan was indeed filed late, but for another reason.

The MBC of San Jose del Monte, Bulacan, proclaimed petitioner victorious on 19 July 1995 pursuant to the 18 July 1995 Order of the COMELEC directing the MBC to reconvene, prepare the certificate of canvass and proclaim the winning candidates. The motion to reconsider said order filed on 24 July 1995 did not suspend the running of the period to file an election protest as there was no indication that private respondent had likewise asked to annul the proclamation, pursuant to Section 248 of the Omnibus Election Code which explicitly provides that it is the “filing with the Commission of a petition to annul or suspend the proclamation of any candidate” which “suspend[s] the running of the period within which to file an election protest or quo warranto proceedings.” Neither was the period to file the election protest tolled by the pendency before this Court of the special civil action for certiorari private respondent filed to impugn the COMELEC order of 8 September 1995 denying private respondent’s motion to reconsider the 18 July 1995 order since this Court did not issue a temporary restraining order.

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