MARIVIC ZARATE, PETITIONER, VS. COMMISSION ON ELECTIONS AND JULIAN LALLAVE, JR., RESPONDENTS.

G.R. No. 129096. November 19, 1999

Ponente: PURISIMA, J.

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PURISIMA, J.:

Before the Court is a Petition for Certiorari under Rule 65 of the Rules of Court ascribing grave abuse of discretion to the Commission on Elections in issuing its Resolution, dated April 24, 1997, annulling and setting aside the decision of the Municipal Trial Court of Malasiqui, Pangasinan, and declaring the private respondent, Julian Lallave, Jr., the duly elected Sangguniang Kabataan (SK) Chairman of Barangay Ican, Malasiqui, Pangasinan.

The antecedent facts are as follows:

During the 1996 Sangguniang Kabataan elections, respondent Julian Lallave, Jr. won over the petitioner, Marivic Zarate, by a single vote. The former garnered a total of forty-six (46) votes as against the latter's forty-five (45) votes. Accordingly, the Barangay Board of Canvassers proclaimed respondent Lallave, Jr. the duly elected SK Chairman.

On May 16, 1996, petitioner lodged his election protest before the Municipal Trial Court of Malasiqui, Pangasinan, docketed as SK Election Protest No. 04; alleging inter alia:

> "5. That during the counting, tallying and canvassing of votes for each of the candidates, respondent-members of the Board of Election Tellers counted, credited and/or declared valid three (3) or more votes that read "JL" in favor of respondent Julian Lallave, Jr., when they should have voided the same or excluded as valid votes. Thus, the result of the counting is 46 for protestee and 45 for the protestant;
>
> 6. That the votes bearing "JL" are stray votes and are therefore null and void. They are marked ballots because the votes (sic) can identify the vote as his. More importantly, there is no candidate with a name or nickname "JL". Law and jurisprudence declare such type of votes irregular, anomalous and void;
>
> 7. That had the three (3) or more ballots/votes bearing "JL" been voided or excluded among the valid votes cast, the votes should be :
>
> 45- for Marivic A. Zarate
>
> 46- for Julian Lallave, Jr.
>
> (This is on the assumption that there are only three (3) "JL" votes).
>
> and protestant should have been proclaimed as the SK Chairman of Brgy. Ican, Malasiqui, Pangasinan."

On September 9, 1996, the Municipal Trial Court a quo rendered a decision annulling and setting aside the proclamation of the private respondent Julian Lallave, Jr. Eight of the original forty-six ballots of the latter were declared marked, thereby reducing his number of votes to thirty-eight (38). On the other hand, of petitioner's

forty-five (45) votes, one was invalidated. Petitioner Zarate was therefore, adjudged winner with forty-four (44) votes as against the thirty-eight (38) of Lallave, Jr. The dispositive portion of the decision below ruled:

> "WHEREFORE, the proclamation of protestee Julian Lallave, Jr. is hereby annuled/ set aside. Protestant, Marivic Zarate, is hereby declared/proclaimed as the duly elected SK Chairman of Brgy. Ican, Malasiqui, Pangasinan.
>
> No pronouncement as to costs.
>
> SO ORDERED."

Dissatisfied with the aforesaid disposition by the trial court, the private respondent appealed to the Commission on Elections, theorizing that subject five ballots marked Exhibits "A", "B", "C", "D", and "E", bearing the initials "JL", should have been credited in his favor considering that such initials sufficiently identify him as the candidate intended to be voted for as he was the only one of the three candidates with the initials "JL". He also contended that the ballots marked Exhibits "F", "G" and "H" were not marked ballots as the names written thereon, "Julian, Jr. de Real", "I Notno Lallave" and "Nono de Real", sufficiently identify him, the same being his nickname and middle name, respectively, "de Real" being his middle name (his mother's surname) and he is known in their locality as "Nono."

On the other hand, petitioner maintained that the Trial Court of origin was correct in invalidating the said ballots in question, pursuant to paragraph 14, Section 211 of the Omnibus Election Code (Batas Pambansa Blg. 881, as amended).[1]

The respondent Commission was not convinced, however. It did not uphold the findings and conclusion arrived at by the Municipal Trial Court. On April 24, 1997, the COMELEC En Banc came out with its assailed Resolution, annulling and setting aside the decision a quo and declaring the private respondent, Julian Lallave, Jr., as the duly elected SK Chairman. The respondent COMELEC ratiocinated and disposed as follows:

> "After a careful and thorough review of the assailed decision, we find the ballots marked as Exhibits `A', `B', `C', `D', and `E' containing JL initials valid for the petitioner. Section 211, par. 14 of the Omnibus Election Code provides that "Any vote containing initials only or which is illegible or which does not sufficiently identify the candidate for whom it is intended shall be considered as stray vote but shall not invalidate the whole ballot. Obviously, while JL initials appeared in the aforesaid exhibits, it should be noted that petitioner Julian Lallave, Jr., is the only candidate who possesses the JL initials and in our view, ballots containing such initials SUFFICIENTLY IDENTIFY petitioner as the candidate intended to be voted for SK Chairman."

Failing to obtain a decision in her favor, Marivic Zarate found her way to this Court via the present petition, theorizing that the respondent Commission on Elections acted wth grave abuse of discretion, and posing as issues:

> (1) WHETHER THE BALLOTS BEARING THE "JL" INITIALS ARE MARKED BALLOTS, AND
>
> (2) WHETHER THE COMELEC CORRECTLY RULED THAT THE VOTES CONTAINING THE INITIALS "JL" FOR THE POSITION OF SK CHAIRMAN SHOULD BE COUNTED IN FAVOR OF PRIVATE RESPONDENT.

Although not raised as an issue here, the Court can motu proprio consider and resolve the question of jurisdiction.

As can be gleaned unerringly from the antecedent facts and proceedings aforestated, the appeal interposed by the private respondent to the Commission on Elections from the decision of the Trial Court of origin in subject election case, was not referred to a division of the Commission but was, instead, submitted to the Commission En Banc, which decided against the petitioner in the Resolution of April 24, 1997. Such recourse by the private respondent transgressed Section 3, Subdivision C of Article IX of the Constitution which expressly provides:

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> Sec. 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.

In Sarmiento vs. Commission on Elections, and companion cases (212 SCRA 307, 313-314 [1992]), this Court said:

> "It is clear from the abovequoted provision of the 1987 Constitution that election cases include pre-proclamation controversies, and all such cases must first be heard and decided by a Division of the Commission. The Commission, sitting en banc, does not have the authority to hear and decide the same at the first instance. In the COMELEC RULES OF PROCEDURE, pre-proclamation cases are classified as Special Cases and, in compliance with the above provision of the Constitution, the two (2) Divisions of the Commission are vested with the authority to hear and decide these Special Cases. Rule 27 thereof governs Special Cases; specifically, Section 9 of the said Rule provides that appeals from rulings of the Board of Canvassers are cognizable by any of the Divisions to which they are assigned and not by the commission en banc. Said Section reads:
>
> `SEC. 9. Appeals from rulings of Board of Canvassers. - (a) A party aggrieved by an oral ruling of the board of canvassers who had stated orally his intent to appeal said ruling shall, within five days following receipt of a copy of the written ruling of the board of canvassers, file with the Commission a verified appeal, furnishing a copy thereof to the board of canvassers and the adverse party.
>
> (b) The appeal filed with the Commission shall be docketed by the Clerk of Court concerned.
>
> (c) The answer/opposition shall be verified.
>
> (d) The Division to which the case is assigned shall immediately set the case for hearing.'
>
> xxx xxx xxx

A motion to reconsider the decision or resolution of the Division concerned may be filed within five (5) days from its promulgation. The Clerk of Court of the Division shall, within twenty-four (24) hours from the filing thereof, notify the Presiding Commissioner of such fact; in turn, the latter shall certify the case to the Commission en banc. Thereafter, the Clerk of Court of the Commission shall calendar the motion for reconsideration for the resolution of the Commission en banc within ten (10) days from the certification.

Indisputably then, the COMELEC en banc acted without jurisdiction, or with grave abuse of discretion, when it resolved the appeals of petitioners in the abovementioned Special Cases without first referring them to any of its Divisions. Said resolutions are, therefore, null and void and must be set aside. Consequently, the appeals are deemed pending before the Commission for proper referral to a Division."

WHEREFORE, the Petition is GRANTED; the Decision of the COMELEC En Banc, dated April 24, 1997, in SPR No. 40-96, is SET ASIDE; and respondent Commission is ordered to assign SPR No. 40-96 to a Division, which is hereby directed to resolve the same with reasonable dispatch. No pronouncement as to costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Buena, Gonzaga-Reyes, Ynares-Santiago, and De Leon, Jr., JJ., concur.
Pardo, J., no part.

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[1] Section 211. Rules for the appreciation of ballots. --- xxx

(14) Any vote containing initials only or which is illegible or which does not sufficiently identify the candidate for whom it is intended shall be considered as a stray vote but shall not invalidate the whole ballot.

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