

**ROBERTO S. ALBERTO, PETITIONER, VS. COMMISSION ON ELECTIONS, HON. JUDGE ROSEMARIE ALONZO-LEGASTO, IN HER CAPACITY AS TRIAL JUDGE, METROPOLITAN TRIAL COURT BRANCH 41, QUEZON CITY...**

*G.R. No. 132242. July 27, 1999*

Ponente: ROMERO, J.

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**ROMERO, J.:**

Before us is a petition for certiorari and mandamus seeking the review and annulment of the Resolution[1] of the COMELEC dated January 20, 1998 which affirmed the Order[2] of the trial court dated June 26, 1997 in Election Case No. 97-697 entitled "Roberto S. Alberto, Sr. vs. Arnaldo A. Cando" denying herein petitioner's motion to photocopy the ballots.

Petitioner Roberto S. Alberto and private respondent Arnaldo A. Cando were candidates for Punong Barangay of Barangay Capri, Novaliches, Quezon City during the May 12, 1997 barangay elections. Cando won by a margin of forty six (46) votes and was proclaimed as the duly-elected Punong Barangay by the Board of Canvassers on May 16, 1997. On May 22, 1997, petitioner Alberto timely filed a verified Petition of Protest with the Metropolitan Trial Court of Quezon City alleging that in all the fourteen (14) precincts comprising Barangay Capri, massive fraud and illegal electoral practices were committed during the registration, the voting and the counting of the votes.

On June 18, 1997, petitioner filed an "Ex-Parte Urgent Motion to Photocopy Ballots,"[3] in order to aid his counsel in the preparation of his arguments and memorandum; private respondent Cando did not object to said motion verbally or in writing. On June 23, 1997, however, when the first ballot box was opened for the revision of ballots, public respondent judge orally denied the motion to photocopy the ballots. Later, on June 26, 1997, respondent judge issued the questioned order which read in part:

"xxx.

As regards the prayer to photocopy the ballots, the same is hereby denied considering the voluminous documents involved, sanctity of ballots and it will unduly delay the proceedings of the court.

SO ORDERED."

Aggrieved, petitioner Alberto filed a Petition for Certiorari and Mandamus with the COMELEC claiming that said order of the trial court was issued with grave abuse of discretion amounting to lack of jurisdiction and in disregard of law and jurisprudence. The COMELEC denied the petition, holding that respondent judge did not commit any grave abuse of discretion in denying the motion to photocopy the ballots, viz:

"Not every error in the proceeding, or every erroneous conclusion of law or of fact, is abuse of discretion (Villa Rey Transit, Inc. vs. Bello, 7 SCRA 735). For abuse of discretion to be present it must be grave and patent, and it must be shown that the discretion was exercised arbitrarily or despotically or absolutely without reason/basis

but by passion, prejudice or personal animosity. Ergo, the grant or denial of the motion of protestant to photocopy the ballots is a matter of discretion of the judge. In the instant case[,] there is no showing that the judge was not without reason or basis for denying the motion as she cited the "voluminous records, sanctity of ballots and the undue delay of the proceedings of the court." This may be or may not be erroneous[,] but as we said a petition for certiorari which is an extra-ordinary remedy are meant to cure errors of jurisdiction and not errors of judgment."[4]

Commissioner Teresita Dy-Liacco Flores dissented, stating that the grounds relied upon by the respondent judge were insufficient to justify the denial of the motion to photocopy the ballots. She reiterated the rule that laws and technical rules of evidence should be liberally applied especially so in election cases where public interest is involved.[5]

Hence, this petition.

We rule for the petitioner. As correctly pointed out by Alberto and dissenting Commissioner Dy-Liacco Flores, the reasons relied upon by the judge in denying his motion were erroneous or misplaced. First, that the documents to be photocopied were voluminous is not accurate because only fourteen (14) precincts with 3,402 ballots to be photocopied are involved in the instant case. Petitioner cited that, in another election case then pending before the COMELEC, *Brillante vs. Binay* (EPC No. 95-26), which involved the Office of the Mayor of Makati City, a total of 158,514 ballots from 1,712 precincts were allowed to be photocopied by the COMELEC. Indeed, as the dissenting Commissioner keenly observed, the number of ballots involved in the case at bar is too small compared to the number of ballots coming from entire provinces being revised and allowed to be photocopied by the Commission.

Second, as to the "sanctity of the ballots" relied upon by the lower court as another reason for denying the motion to photocopy the ballots, petitioner is correct in saying that there are adequate safeguards to preserve the sanctity of the ballots while the same are being photocopied. For one, the photocopying of the ballots will be done in public within court premises and in the presence of the revisor of private respondent Cando, the petitioner's representative as well as the representative of the court below. Moreover, the photocopying will be done simultaneous with the revision and recounting of the ballots; thus, the ballot boxes will be opened one at a time and after the ballots are revised, recounted, and photocopied, the same will be returned to the ballot box which they belong and said box will remain in the custody of the lower court until the termination of the case. Likewise, photocopying the ballots will be a hedge against possible loss, destruction, or alteration since there will be a certified true copy of the ballots reflecting the actual votes of the electorate in the barangay.

With respect to the third reason cited by the trial court in denying the motion, that to allow the photocopying of the ballots would delay the proceedings, the same is likewise without basis for, as petitioner stressed, the same will be done simultaneously with the revision of the ballots of each precinct. In fact, as pointed out by Commissioner Dy-Liacco Flores, after the motion was filed and the revision proceedings commenced, herein petitioner already brought with him to the court the photocopier and the operator of the machine so that the process can be accomplished immediately.

In its Resolution, the Comelec affirmed the trial court's denial of petitioner's motion explaining that the photocopying of ballots in an election protest case is not a matter of right, but rather, is subject to the discretion of the judge. According to the COMELEC, since nowhere in the COMELEC Rules of Procedure or in the Omnibus Election Code and other related election laws is the right to photocopy ballots granted, the respondent judge properly exercised her discretion in denying petitioner's motion based on the grounds or reasons she cited in her decision. As correctly pointed out by the petitioner, however, while it may be true that there is no specific COMELEC rule governing the photocopying of ballots, it has become a practice allowed by the Commission

itself in numerous election cases. The same is true in the proceedings of the House of the Representatives Electoral Tribunal and the Regional and Metropolitan Trial Courts. Furthermore, photocopying the ballots is not entirely without legal basis as Rule 27 of the Rules of Court expressly allows it as a mode of discovery, viz:

"Section 1. Motion for production or inspection; order. - Upon motion of any party showing good cause therefor, the court in which an action is pending may (a) order any party to produce and permit the inspection and copying or photographing, by or on behalf of the moving party, of any designated documents, papers, books, accounts, letters, photographs, objects or tangible things, not privileged, which constitute or contain evidence material to any matter involved in the action and which are in his possession, custody or control; xxx xxx. The order shall specify the time, place and manner of making the inspection and taking copies and photographs, and may prescribe such terms and conditions as are just."

Just as the court may allow, for good cause shown, the reproduction of relevant evidence in the custody of any party, so may it allowed the same with respect to evidence in its custody. Although the grant of such motion is admittedly discretionary on the part of the trial court judge, nevertheless, it cannot be arbitrarily or unreasonably denied because to do so would bar access to relevant evidence that may be used by a party-litigant and hence, impair his fundamental right to due process. In this case, photocopying the ballots is the only way by which the petitioner can secure the evidence needed to support his claim that certain irregularities in the voting took place. Since after the revision and recount, the ballots are required to be returned to their respective ballot boxes, the photocopies will serve as admissible secondary evidence which may be used for future reference by the party-litigants, as well as the court itself, in the appreciation of the ballots cast. Equally important is the fact that by securing a certified true copy of the ballots subject of the controversy, all parties concerned will be assured that, in case of loss or destruction of the ballots, reliable copies would still be available.

It is doctrinal that election cases involve public interest; thus, laws governing election contests must be liberally construed to the end that the will of the people in the choice of public officials may not be defeated by mere technical objections.[6]

The possible delay and potential threat to the sanctity of the ballot which the grant of the motion to photocopy the ballots might engender are indeed valid concerns, but as earlier explained, such concerns of the trial judge are unfounded because sufficient safeguards may be put in place to ensure that the proceedings shall be expeditious and the handling of the ballots adequately guarded and supervised.

There is no gainsaying the fact that trial courts and other bodies hearing election cases are mandated by law to resolve such cases expeditiously and promptly. In *San Juan vs. Abordo*,[7] this Court has had occasion to rule that "election contests should be rapidly and economically decided, avoiding unnecessary delays. In this way, the uncertainty as to the result of the election is done away with, the ardor of party contests is quenched, and political repose is so necessary to the progress of the country, is restored in the community." However, at the same time, courts should not lose sight of the contending parties' right to avail of every reasonable opportunity to support their claim to the office in question. It should be stressed that the prompt resolution of election cases must not be accomplished at the expense of determining the true choice of the electorate. Thus, the courts and other electoral bodies are enjoined, not only to maintain their sense of urgency in resolving election cases, but also to explore every reasonable and feasible means of ascertaining which candidate was duly elected because, in the final analysis, it is the will of the people that is the ultimate concern. As Justice Vitug aptly stated in *Mentang vs. Commission on Election*: [8]

"Above and beyond all, the determination of the true will of the electorate should be paramount. It is their voice, not ours or of anyone else, that must prevail. This, in essence, is the democracy we continue to hold sacred."

It is ironic that the very evil sought to be prevented by the trial judge in the first place has come about when she refused to grant the unopposed motion to photocopy the ballots in question.

WHEREFORE, in view of the foregoing, the petition is GRANTED and the January 20, 1998 resolution of the COMELEC is REVERSED. The trial court is directed to allow the photocopying of the ballots in question.

No costs.

**SO ORDERED.**

Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Buena, Gonzaga-Reyes, and Ynares-Santiago, JJ., concur.

Davide, Jr., C.J., on leave.

Pardo, J., no part. Was COMELEC Chairman.

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[1] Rollo, pp. 104-107.

[2] Ibid., pp. 54-55.

[3] Ibid., pp. 46-47.

[4] Ibid., pp. 106-107.

[5] Ibid., pp. 109-110.

[6] *Binco Jr. vs. COMELEC*, 242 SCRA 273 (1995).

[7] 50 Phil. 703 (1927).

**[8] 229 SCRA 666 (1994).**

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