WENCESLAO P. TRINIDAD, PETITIONER, VS. THE COMMISSION ON ELECTIONS, THE PASAY CITY BOARD OF ELECTION CANVASSERS AND JOVITO CLAUDIO, RESPONDENTS.

G.R. No. 134657. December 15, 1999

Ponente: BUENA, J.

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BUENA, J.:

This is a petition for certiorari, prohibition and mandamus with prayer for temporary restraining order and/or preliminary injunction seeking to set aside the resolution of the Commission on Elections En Banc dated July 29, 1998 dismissing the petition for annulment of proclamation of Jovito O. Claudio and the supplemental petition for correction of the statement of votes as well as affirming the proclamation of Claudio in SPC No. 98-144 entitled "Wenceslao Trinidad, et al. vs. Pasay City Board of Canvassers, et al."

The undisputed facts of the case are as follows:

Petitioner Wenceslao Trinidad and private respondent Jovito Claudio both ran for the position of mayor of Pasay City in the May 11, 1998 elections.

On May 18, 1998 private respondent Claudio was proclaimed by the Pasay City Board of Canvassers as the elected mayor with 55,325 votes[1] over petitioner Trinidad's 55,097 votes.

On May 23, 1998, petitioner filed a petition for correction of manifest errors and annulment of proclamation.[2] Alleged as grounds, among others, were the double canvassing of five election returns and the inclusion of a bogus election return in the canvass. Petitioner claimed that, after the questioned errors have been corrected, he would obtain a plurality of 54,916 votes as against private respondent's 54,857.

On June 8, 1998, petitioner filed a supplemental petition averring an error in the Summary of Statement of Votes for District II of Pasay City (No. 094338). It was alleged that in the said summary of statement of votes Trinidad gathered 1009 votes per Statement of Vote (SOV) No. 094284. But in SOV No. 094284 it was reflected therein that he obtained 1099 votes.[3]

On June 9, 1998, an order was issued by the COMELEC requiring the parties to file their simultaneous memoranda within five days after which the case will be deemed submitted for resolution with or without memoranda.[4]

The Pasay City Board of Canvassers filed its Answer on even date.[5]

Thereafter, or on June 15, 1998, private respondent Claudio filed his answer/memorandum (with counter-petition for correction).[6]

In the counter-petition it was stated that some statements of votes contained errors which, if corrected, would entitle Claudio to an additional forty (40) votes but would result in petitioner's being deducted thirteen (13) votes.

Petitioner contested the filing of private respondent's answer/memorandum (with counter-petition for correction) in his Manifestation and Comments dated July 18, 1998.[7] In the said pleading, petitioner reiterated his plea for the addition of 90 votes to his total and manifested two (2) new errors, namely: (1) the election returns from five precincts were not canvassed and (2) there were some discrepancies in the election returns of nine precincts. These errors as well as the uncanvassed returns, if corrected and accounted for in the total number of votes, would allegedly give petitioner an edge of eighteen (18) votes over private respondent: 55,229 votes to Claudio's 55,211 votes.

The COMELEC rendered its decision on July 29, 1998, the dispositive portion of which reads as follows:

> "WHEREFORE, the Commission authorizes the Pasay City Board of Canvassers to re-convene and re-canvass the Election Returns correcting the manifest clerical errors therein and also correcting the discrepancy between SOV 094284 and SOV 094338, as above indicated.
>
> "ACCORDINGLY, the Commission hereby DISMISSES the petition for annulment of proclamation of respondents Jovito O. Claudio and Reynaldo Mateo and the Supplemental Petition for correction of the Summary of the Statement of Votes. We AFFIRM the proclamation of respondents Claudio and Mateo with the margin of votes indicated above.
>
> "SO ORDERED."[8]

Hence this petition.

The sole issue:

> WHETHER OR NOT RESPONDENT COMMISSION ON ELECTION EN BANC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN AFFIRMING THE PROCLAMATION OF RESPONDENT JOVITO CLAUDIO AS ELECTED MAYOR OF PASAY CITY

The petition must fail.

In support of the ground raised above, petitioner contends that there was an incomplete canvassing of votes because five (5) precincts of Pasay City were never canvassed. These precincts were 448-A/448-A-2, 688-A-5, 725-A-4, 95-A/96-A, and 351-A. Canvassing of these precincts was overlooked when five precincts were doubly canvassed.

The issue on incomplete canvassing was raised for the first time in the Manifestation and Comments filed by petitioner.

We take pains to emphasize that the same was filed only on July 18, 1998, thirty-four (34) days after the case had been submitted for resolution on June 14, 1998.[9] When a case is already deemed submitted for decision or resolution, the court can only consider the evidence presented prior to this period. It can not and must not take into account evidence presented thereafter without obtaining prior leave of court. For as held in the case of Arroyo vs. House of Representatives Electoral Tribunal,[10]

> "(t)he rule in an election protest is that the protestant or counter protestant must stand or fall upon the issues he had raised in his original or amended pleading filed prior to the lapse of the statutory period for filing of protest or counter protest."

A pre-proclamation controversy praying for the correction of manifest errors must be filed not later than five (5) days following the date of proclamation[11] while an election protest must be filed within ten (10) days after the proclamation of the results of the election.[12]

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At this juncture, we have to point out that the said Manifestation and Comments, whether it be considered a pre-proclamation controversy or an election protest, was filed beyond the reglementary period to do so.

The COMELEC has not ruled on the matter of the five uncanvassed election returns. It was alleged in the memorandum filed by the Solicitor General that the "eight (8) precincts [for the five uncanvassed election returns and the three erroneous statements of votes] were not raised before the Commission en banc."[13] The Commission on Elections may suspend its rules of procedure so as not to defeat the will of the electorate.

Petitioner contends that there was no need to suspend the COMELEC rules of procedure in order to resolve the issues raised in the Supplemental Petition.

We find that there was a need to do so.

Contrary to what the COMELEC perceived, the Supplemental Petition is a petition for correction of manifest errors, not a petition for declaration of nullity. It squarely falls within the definition provided in the case of Mentang vs. Commission on Elections,[14]

> "(c)orrection of manifest errors has reference to errors in the election returns, in the entries of the statement of votes by precinct/per municipality, or in the certificate of canvass."

Section 5 (2), Rule 27 of the 1993 COMELEC Rules of Procedure likewise provides:

> Sec. 5. Pre-proclamation Controversies Which May Be Filed Directly with the Commission. - (a) The following pre-proclamation controversies may be filed directly with the Commission:
>
> xxx"2) When the issue involves the correction of manifest errors in the tabulation or tallying of the results during the canvassing as where xxx (3) there had been a mistake in the copying of the figures into the statement of votes or into the certificate of canvass" xxx

The Supplemental Petition prayed for the correction of the erroneous copying of figures into the summary statement of votes from the statement of votes thus it is a petition for correction of manifest errors.

Some of the definitions given for the word "manifest" are that it is evident to the eye and understanding; visible to the eye; that which is open, palpable, uncontrovertible; needing no evidence to make it more clear; not obscure or hidden.[15] (citations omitted)

> "A manifest clerical error is -
>
> "'... one that is visible to the eye or obvious to the understanding, and is apparent from the papers to the eye of the appraiser and collector, and does not include an error which may, by evidence dehors the record be shown to have been committed.'"[16] (citations omitted)

Section 5 (b) of the same Rules also enunciates that:

> "If the petition is for correction, it must be filed not later than five (5) days following the date of proclamation" xxx

Note should be made that the Supplemental Petition was filed on June 8, 1998 or exactly 21 days from the date of proclamation on May 18, 1998. It was therefore filed beyond the reglementary period to do so.

The Supplemental Petition which was meant to be suppletory to the original petition involving a pre-proclamation controversy, is a prohibited pleading. Rule 13 of the 1993 COMELEC Rules of Procedure states:

> "Section 1. What Pleadings are not Allowed:

> xxx
> "(g) supplemental pleadings in special actions and in special cases.

A pre-proclamation controversy is a special case in accordance with Section 5 (h), Rule 1, 1993 COMELEC Rules of Procedure, thus:

> "Sec. 5. Meaning of Words. - Whenever used in these Rules, the following words or terms shall mean:
>
> xxx
>
> "(h) Special Cases - shall refer to Pre-proclamation cases"

Finally, Section 3, Rule 9 of the same Rules provides thus:

> "Sec. 3. Matters Subject of Supplemental Pleadings. -- Upon motion of a party the Commission or a Division, as the case may be, may, upon notice and upon such terms as are just, permit him to serve a supplemental pleading setting forth transactions, occurrences or events which have happened since the date of the pleading sought to be supplemented." xxx

The subject of the supplemental pleading filed by petitioner was not in accordance with the prescribed rule.

As the name connotes, a supplemental petition merely supplies deficiencies in aid of the original petition. It cannot be used to introduce a new matter or a new cause of action or defense which is precisely what the petitioner had done in the instant case.

> "A supplemental pleading is not like an amended pleading &mdash a substitute for the original one. It does not supersede the original, but assumes that the original pleading is to stand, and the issues joined under the original pleading remain as issues to be tried in the action."[17]

The issue raised in the Supplemental Petition is a new one, not even advanced in the original Petition. It sought the correction of Summary Statement of Votes No. 094338 which credited petitioner with only 1009 votes when Statement of Votes No. 094284 upon which the former was based listed 1099 votes for him.

The original petition only asked for the correction of the double canvassing of five election returns and the exclusion of an election return of an inexistent precinct. It did not raise the issue of the incorrect total of the summary statement of votes and its correction.

We quote some portions of the questioned resolution of the COMELEC, thus:

> "However, this Commission cannot countenance an injustice that will be done to petitioner if his allegation of error if proven would result into a loser becoming a winner. The Commission in order to fulfill its mandate in faithfully determining the will of the electorate may brush aside its rules if it stands in the way of finding the truth. The Supreme Court recognized the Commission's paramount role when it pronounced that, `While election controversies should be speedily settled, so as not to frustrate the expression of the people's will, this laudable objective does not free the Commission from compliance with established principles of fairness and justice and the adjudication of cases not on technicality but on their substantive merits' (Rodriguez versus Comelec, 119 SCRA 465). If the rules are obstacles in the way of doing justice, then it can be said that it is a mere technicality that should not stand in the way of determining as to who between the contending parties have the mandate of the electorate."[18]
>
> xxx
> "xxx (T)he Commission in order to do justice and truly determine the rightful winner in the elections may suspend its rules provided the right of the parties are equally protected and act thereon pro hac vice." xxx[19]

From the above, we could glean why there was a need to suspend the 1993 COMELEC Rules of Procedure.

Without its suspension, the Supplemental Petition would have been dismissed.

The allegation that it was Republic Act 7166 that was suspended and not the 1993 COMELEC Rules of Procedure is not correct. Both R.A. 7166 and the COMELEC Rules of Procedure cover the same subject on which the suspension was made, to wit: Sections 17 and 20 of R.A. 7166 (now found under Section 243 of the Omnibus Election Code of the Philippines) and Sections 2 and 9, Rule 27 of the 1993 COMELEC Rules of Procedure.

Petitioner alleges that the suspension of the rules should have been applied equally.

We hold that the COMELEC did so.

In his petition, Trinidad alleges that there is no provision or concept in the Omnibus Election Code or the COMELEC Rules of Procedure that mentions a "counter-petition" in pre-proclamation cases because a petition is an original action, a separate formal petition, or one that can stand alone. He further contends that there are some antecedents or jurisdictional requirements that must be met, such as payment of filing fees, mandatory compliance with the period within which to appeal or file action, the service of summons, setting of the case for hearing, the reception of evidence for both parties, etc.

The Answer/Memorandum (with Counter-Petition for Correction) filed by private respondent is akin to a counterprotest.

A counterprotest is not a prohibited pleading under Rule 13 of the 1993 COMELEC Rules of Procedure. Such pleading is provided for under Ordinary Actions (Section 3, Rule 20, 1993 COMELEC Rules of Procedure) and is equivalent to an answer with a counterclaim under the 1997 Rules of Civil Procedure, which applies suppletorily to the COMELEC Rules of Procedure.[20]

It is the contention of the petitioner that there was no need for the COMELEC to suspend its rules of procedure because even without the Supplemental Petition the COMELEC would have basis to order the correction of errors since the petition itself clearly states the number of votes garnered by petitioner and private respondent based on a summation of the statement of votes by precinct.

The COMELEC, in its resolution of July 29, 1998,[21] raised the following points:

> - The Supplemental Petition is an entirely separate petition as it raised a new issue distinct and different in substance to the original petition.
>
> - It was filed on June 8, 1998 or exactly 21 days from date of proclamation on May 18, 1998 and clearly filed out of time and is a prohibited pleading in the instant case.

Despite these infirmities, the Supplemental Petition was considered and the allegations therein given due consideration. The COMELEC, in fact, credited petitioner with the additional ninety (90) votes claimed in his Supplemental Petition.[22]

Petitioner thus benefited from the suspension of the rules of procedure when his Supplemental Petition was resolved in his favor. He should not be heard to say that the COMELEC did not give him the same treatment accorded the private respondent.

In the instant case, however, we do not find the COMELEC to have exceeded nor abused its jurisdiction. Unless it is shown that there is patent and gross abuse of discretion, we will not interfere with its decisions and rulings.

WHEREFORE, IN VIEW OF THE FOREGOING, the petition is hereby DISMISSED.

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SO ORDERED.

SO ORDERED.

Davide, Jr., C.J., Melo, Puno, Vitug, Kapunan, Quisumbing, Purisima, Gonzaga-Reyes, Ynares-Santiago and De Leon, Jr., JJ., concur.
Bellosillo, and Mendoza, JJ., took no part due to personal relationship to a party.
Panganiban, J., in the result - the issue on incomplete canvass was filed out of time.
Pardo, J., took no part.

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[1] Rollo, p. 64

[2] Orig. Record, p. 1

[3] Ibid., p. 60

[4] Ibid., p. 70

[5] Ibid., p. 71

[6] Ibid., p. 115

[7] Ibid., p. 233

[8] Rollo, pp. 46-47; Ibid., pp. 293-294

[9] Original Record, p. 70

[10] 246 SCRA 384, citing Ticao vs. Nañawa, 116 Phil. 97

[11] Section 5 (b), Rule 27, 1993 COMELEC Rules of Procedure

[12] Section 3, Rule 35, 1993 COMELEC Rules of Procedure

[13] Rollo, p. 460

[14] 229 SCRA 666

[15] 55 CJS p. 662

[16] Saura Import & Export Co., Inc. vs. David, 52 OG 3145, 3151

[17] Delbros Hotel Corporation vs. Intermediate Appellate Court, 159 SCRA 533

[18] Orig. Record, p. 289; Rollo, p. 42

[19] Ibid., p. 290; Ibid., p. 43

[20] Section 1, Rule 41, 1993 COMELEC Rules of Procedure

[21] Rollo, p. 44

[22] Rollo, p. 45

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