

VITO BESO, PETITIONER, VS. RITA ABALLE AND HON. ROBERTO A. NAVIDAD, ACTING PRESIDING JUDGE, BRANCH 31, REGIONAL TRIAL COURT OF CALBAYOG CITY, RESPONDENTS.

G.R. No. 134932. February 18, 2000

Ponente: DAVIDE JR., C.J.

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DAVIDE JR., C.J.:

On 15 December 1999 we resolved to give due course to this petition for certiorari and to decide it on the basis of the pleadings filed by the parties.

The antecedents are not disputed.

Petitioner Vito Beso (hereafter BESO) and private respondent Rita Aballe (hereafter ABALLE) were candidates for the position of Barangay Captain of Barangay Carayman, Calbayog City, in the barangay elections of 12 May 1997.

In the canvass of the returns of the four precincts of Barangay Carayman, BESO was credited with four hundred ninety-five (495) votes, while ABALLE obtained four hundred ninety-six (496) votes. The latter was thus proclaimed the winning candidate.

BESO seasonably filed a protest with the Municipal Trial Court of Calbayog City (hereafter MTCC). The case was docketed as Election Protest No. 130.

After due proceedings, the MTCC, per Judge Filemon A. Tandico, Jr., promulgated on 20 January 1998 a decision (rollo, 28), dated 13 January 1998, in favor of BESO. The decretal portion thereof reads as follows:

ACCORDINGLY, the proclamation made by the Board of Canvassers concerned should be, as it is hereby, reversed and another entered declaring Protestant VITO A. BESO, the duly elected Punong Barangay of Brgy. Carayman, Calbayog City, in the elections of 12 May 1997, with the right to assume office as soon as judgment becomes final. No pronouncement as to costs.

After this decision becomes final, let a copy thereof be furnished the Commission on Elections, the Department of Interior and Local Government and the Commission on Audit.

SO ORDERED (id., 39).

On 20 January 1998 ABALLE filed a Notice of Appeal (id., 40) manifesting therein that she is appealing from the decision "to the Regional Trial Court, Calbayog City." It likewise appears that on 22 January 1998, ABALLE filed a Notice of Appeal (id., 41), indicating therein that she was appealing from the decision "to the COMMISSION ON ELECTIONS, MANILA." On the same date ABALLE purchased postal money orders in the amounts of P500 and P20 in payment of the appeal fees and filed them with the MTCC, which the latter transmitted to the Commission on Elections. However, in the letter of 4 September 1998 (id., 146), Records Officer IV Miguel T. Varquez, Jr. of the Electoral Contests Adjudication Department of the Commission on

Elections returned these money orders for having become stale and directed ABALLE to replace them within three days.

On 26 January 1998, BESO filed with the MTCC a motion for execution pending appeal dated 23 January 1998 (id., 45).

ABALLE sought to inhibit judge Filemon A. Tandinco, Jr. of MTCC (id., 48); however, the motion was denied in the order of 2 March 1998 (id., 67).

On 5 March 1998, the MTCC, handed down a Resolution (id., 69) granting the motion for execution pending appeal and decreeing as follows:

WHEREFORE and by the foregoing applicable Laws, Rules and Jurisprudence hereby upholds and approve the Motion for Execution pending appeal. Further, finding good reasons hereof directs and orders immediate execution of the Decision of this Court promulgated on January 20, 1998, and as prayed for install Vito Beso as the duly elected Chairman of Barangay Carayman, Calbayog City, to take his oath of Oath of Office assume as such Chairman after he shall have filed a bond in the amount of ONE HUNDRED THOUSAND (P100,000.00) in such sufficient sureties subject to approval by this Court.

Furnish copy of this Resolution: The City Mayor, Calbayog City, The Secretary, Department of Interior and Local Government, Metro Manila, The Commission on Elections, Manila and Calbayog City, Atty. Eduardo Tibo and Atty. Artemio Apostol.

ABALLE filed a motion to reconsider (id., 77) the Resolution, which the MTCC denied in its Resolution of 21 April 1998 (id., 87).

On 24 April 1998, ABALLE filed with the Regional Trial Court of Calbayog City (hereafter RTC) a special civil action for certiorari and prohibition, with an urgent prayer for the issuance of a temporary restraining order or writ of preliminary injunction (id., 91) against MTCC Judge Tandinco, Jr. to set aside and annul the latter's order of 2 March 1998 denying the motion for inhibition; resolution of 5 March 1998 granting the motion for execution pending appeal; and the resolution of 21 April 1998 denying the motion to reconsider the resolution of 5 March 1998. BESO was impleaded as co-respondent. The case was assigned to Branch 31 of the RTC, presided over by public respondent Judge Roberto A. Navidad, and was docketed as Special Civil Action No. 98-040.

On 28 April 1998, Judge Navidad issued a Temporary Restraining Order (id., 104) restraining respondent Judge Tandinco, Jr. and all persons acting in his behalf "from enforcing the Writ of Execution Pending Appeal." The temporary restraining order was "effective within 72 hours only from its issuance."

On 28 April 1998, BESO filed a comment (id., 100) to ABALLE's petition for certiorari and prohibition alleging therein that pursuant to Section 1 of Rule 28 of the COMELEC Rules of Procedure and our decision in *Relampagos v. Cumba, et al.* (243 SCRA 690 [1995]), the Commission on Elections, and not the Regional Trial Court has jurisdiction over the petition. ABALLE filed a reply to the comment (id., 105).

Then, on 29 April 1998, Judge Navidad issued an Order (id., 108) directing the parties to submit their respective memoranda, after which the matter would be deemed submitted for resolution. He also issued a temporary restraining order.

BESO filed his Memorandum on 4 May 1998 (id., 109).

On 4 May 1998, Judge Navidad issued an Order extending the Temporary Restraining Order "for twenty (20) days."

On 2 June 1998 ABALLE filed her Memorandum.

On 8 June 1998, the RTC, per Judge Navidad rendered a decision (id., 123) in favor of ABALLE, disposing thus:

WHEREFORE, premises considered, the Petition is GIVEN DUE COURSE. The writ of execution pending appeal issued by the court a quo in Election Protest No. 130 is hereby SET ASIDE and VACATED while the Temporary Restraining Order issued by this Court is consequently made PERMANENT.

In support thereof, the RTC held that the MTCC already lost its jurisdiction when it issued the challenged resolutions. Under Section 3 of Rule 22 of the COMELEC Rules of Procedure, appeals to the COMELEC in election protest cases should be made within five (5) days from the promulgation of the decision. In this case, the decision of the MTCC was promulgated on 20 January 1998; ABALLE had until 25 January 1998 within which to appeal from the decision. She perfected her appeal on 22 January 1998. The motion for execution pending appeal was filed only on 26 January 1998. Consequently, the court had already lost jurisdiction to issue the writ of execution pending appeal.

BESO's motion for reconsideration (id., 127) was denied by the RTC in its Order of 14 July 1998 (id., 129).

On 28 August 1998, we received BESO's petition in this case, which he sent via registered mail on 7 August 1998. He asserts in his petition that respondent Judge Navidad acted without jurisdiction in issuing the (1) orders of: (a) 28 April 1998, granting a temporary restraining order, effective within 72 hours from its issuance, (b) 29 April 1998 granting a temporary restraining order, (c) 4 May 1998 extending the temporary restraining order for 20 days; (2) decision of 8 June 1998; and (3) order of 14 July 1998 denying the motion to reconsider the decision. BESO then prays that these orders and decision be declared null and void.

In the meantime, on 4 September 1998 the Electoral Contest Adjudication Department of the Commission on Elections (COMELEC) received the records of Election Protest No. 130 from the MTCC as a consequence of the appeal interposed by ABALLE. The COMELEC docketed the appealed case as EAC No. 95-98.

In the resolution of 7 September 1999, we required ABALLE and Judge Navidad to comment on the petition.

On 9 October 1998 we received ABALLE's comment. She narrates therein the foregoing factual antecedents up to the denial of the motion to reconsider the resolution granting the motion for execution pending appeal and added that the "entire records of Election Protest No. 130 entitled Vito Beso v. Rita Aballe including the ballot box and the exhibits presented during the trial was held in the custody of the Clerk of Court of the Municipal Trial Court in Cities, Calbayog City since January 1998 and up to August 26, 1998," which therefore, made it impractical, if not impossible, for her to file the petition for certiorari with the COMELEC.

Respondent Judge Navidad sent his comment, under heading COMPLIANCE (id., 168), on 29 October 1998. He alleges therein that the special civil action filed with his court by ABALLE was an original or independent action to remedy errors of jurisdiction committed by the MTCC, and not a continuation or part of the trial of the parties' election case.

The petition is meritorious.

Since ABALLE has appealed to the COMELEC from the decision in Election Protest Case No. 30 of the MTCC, by filing a Notice of Appeal on 22 January 1998, and submitting at the same time the postal money orders for the appeal fees, it follows that the COMELEC has primary jurisdiction on the petition for certiorari to annul the execution pending appeal granted by the MTCC. This is an issue which we resolved in *Relampagos v. Cumba, et al.* (243 SCRA 690 [1995]).

We ruled in *Relampagos* that the last paragraph of Section 50 of B.P. Blg. 697 remains in full force and effect in such cases where, under paragraph (2), Section 1 (should be Section 2) Article IX-C of the Constitution, the

COMELEC has exclusive appellate jurisdiction over the election contest in question. In such cases the COMELEC has the authority to issue the extraordinary writs of certiorari, prohibition and mandamus in aid of its appellate jurisdiction. The last paragraph of Section 50 reads:

The Commission is hereby vested with exclusive authority to hear and decide petitions for certiorari, prohibition and mandamus involving election cases.

Under the second paragraph of Section 2 of Article IX-C of the Constitution, the Commission on Elections has exclusive appellate jurisdiction over, inter alia, contests involving elective barangay officials decided by trial courts of limited jurisdiction.

The contested position in this case is that of a barangay captain. The Municipal Trial Court of Calbayog City, a court of limited jurisdiction, had the exclusive original jurisdiction over the election protest, and the COMELEC has the exclusive appellate jurisdiction over such protest.

It follows then that the RTC of Calbayog City is without jurisdiction on the petition for certiorari and prohibition which ABALLE filed to annul the execution pending appeal the MTCC had issued in the election protest case. ABALLE should have gone to the COMELEC and her allegation that it was impossible for her to have invoked the power of the COMELEC to issue the writ because the records of the Election Protest No. 130 were forwarded to the COMELEC only in August 1998 merits no sympathy as certified copies of the challenged resolutions or orders could easily be obtained and attached to the petition.

Clearly respondent Judge Navidad acted without jurisdiction, and with grave abuse of discretion amounting to lack of jurisdiction when he entertained the petition in Special Civil Action No. 98-040, issued a Temporary Restraining Order thereon and, ultimately, giving due course to the petition and deciding it on its merits by setting aside and vacating the assailed resolutions and orders of the MTCC of Calbayog City in Election Protest No. 130 and making permanent the temporary restraining order earlier issued.

Further, respondent Judge Navidad gravely abused his discretion when he extended by twenty days the 72-hour restraining order he initially issued. The second paragraph of Section 5 of Rule 5 of the 1997 Rules of Civil Procedure clearly provides that "in no case shall the total period of effectivity of the temporary restraining order exceed twenty (20) days, including the original seventy-two hours provided herein."

WHEREFORE, the instant petition is GRANTED and the challenged orders of respondent Judge Roberto A. Navidad in Special Action No. 98-040 (or 040) of Branch 31 of the Regional Trial Court of Calbayog City of 28 April 1998 granting a temporary restraining order within seventy-two hours; 29 April 1998 granting a temporary restraining order without specification of the period; 4 May 1998 extending the temporary restraining order for twenty (20) days; and the decision of 8 June 1998, as well as the order of 14 July 1998 denying the motion to reconsider the decision are hereby set aside and nullified for having been issued without jurisdiction or with grave abuse of discretion amounting to lack of jurisdiction.

Respondent Judge Roberto A. Navidad is further ordered to DISMISS Special Action No. 98-040 (or 040) within seventy-two hours (72) hours upon receipt of a copy of this decision.

Costs against private respondent.

SO ORDERED.

Puno, Kapunan, Pardo, and Ynares-Santiago, JJ., concur.

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