

JAMES MIGUEL, PETITIONER, VS. HONORABLE COMMISSION ON ELECTIONS, EN BANC AND ELADIO M. LAPUZ, RESPONDENTS.

G.R. No. 136966. July 05, 2000

Ponente: BUENA, J.

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BUENA, J.:

Impugned before the Court in this special civil action for Certiorari, Prohibition and Preliminary Injunction with Prayer for Issuance of Temporary Restraining Order[1] is the Resolution of the Commission on Elections (COMELEC) En Banc,[2] dated 17 December 1998, which set aside the twin orders of the Regional Trial Court (RTC) of Cabanatuan City, Third Judicial Region, Branch 23, dated 07 July 1998 and 11 August 1998.

Similarly assailed is the Resolution of the COMELEC En Banc, dated 14 January 1999, denying petitioner's motion for reconsideration.

Herein petitioner James Miguel and private respondent Eladio Lapuz were candidates who ran for the mayoralty post in the Municipality of Rizal, Nueva Ecija during the elections held on 11 May 1998. Three days thereafter, petitioner who garnered a total of 9,951 votes was proclaimed Mayor-elect, over private respondent who obtained 8,911 votes.[3]

On May 25, 1998, private respondent filed a verified Petition of Protest[4] against herein petitioner before the RTC of Cabanatuan City, Branch 23, impugning the results of the elections for the mayoralty position in all 105 precincts of the Municipality of Rizal, Nueva Ecija on grounds of election fraud, anomalies and irregularities, inter alia:

a)

Rampant switching of ballot boxes and stuffing of ballot boxes with fake ballots;

b)

Padding of votes in favor of petitioner;

c)

Misappreciation of ballots to the prejudice of private respondent;

d)

Counting of illegal and/or marked ballots and stray votes in favor of petitioner;

e)

Misreading and mis-tallying of ballots or votes;

f)

Massive vote-buying;

g)

Substitution of votes;

h)

Multiple voting by flying voters and harassment of voters;

i)

Massive disenfranchisement;

j)

Massive threats, coercion and intimidation of voters.

On 04 June 1998, petitioner Miguel filed an "Answer/Comment to Petition with Counterclaim,"[5] interposing the affirmative defense that herein private respondent had "no valid cause of action" inasmuch as the grounds for protest were all couched in general terms" and that the conduct of the election was "clean, honest and peaceful" as certified by the Narrative Report of Acting Election Officer Lourdes C. Barroga.[6]

In an order dated 09 June 1998[7], the court a quo scheduled a conference for the purpose, among others, of discussing and resolving matters relating to the "constitution of Board of Revisors, deposit of the requisite sum for revision of ballots and the commencement of presentation and reception of evidence."

On 23 June 1998,[8] petitioner Miguel moved to reconsider the lower court's order dated 09 June 1998, and prayed for the conduct of a "preliminary hearing on the merits" to prove private respondent's allegations of electoral fraud and irregularities. Petitioner further prayed that in the absence of such preliminary hearing, the opening of the ballot boxes and recounting of ballots should not be undertaken.

On 26 June 1998, private respondent filed a "Comment, Opposition to Motion for Reconsideration of Protestee,"[9] to which petitioner submitted a Rejoinder.

In an order[10] dated 07 July 1998, the court a quo, relying on the Narrative Report of Acting Election Officer Lourdes C. Barroga, granted petitioner's motion for reconsideration, and in effect sanctioned the conduct of a preliminary hearing and set a date therefor, as prayed for by petitioner, thus:

"Let a preliminary hearing be set on July 21, 1998 at 8:30 a.m. at which hearing, the protestant is required to adduce with documentary, competent and definite evidence that would tend to initially show samplings of instances or occasions that would traverse and negate prima facie the above-stated Report for being incomplete and inaccurate or contrary to what had taken place in the municipality."

Private respondent filed an "Urgent Motion for Reconsideration"[11] which the lower court denied in an order dated 11 August 1998.[12]

On 24 August 1998, private respondent Lapuz questioned before the COMELEC the twin orders of the court a quo,[13] in a Petition for Certiorari, Prohibition and Mandamus with writ of preliminary injunction or temporary restraining order docketed as SPR No. 36-98,[14] to which herein petitioner Miguel filed Comment.[15]

On 17 December 1998, the COMELEC En Banc issued a Resolution the decretal portion of which reads:

"WHEREFORE, finding grave abuse of discretion on the part of herein respondent Judge, the two (2) orders dated July 7, 1998 and August 11, 1998 are hereby SET ASIDE.

"Respondent judge is hereby DIRECTED to immediately order the transfer of all the ballot boxes comprising the entire 105 precincts of Rizal, Nueva Ecija, from the Office of the Municipal Treasurer of Rizal, Nueva Ecija or wherever they may have been deposited, to the trial court for safekeeping and revision of ballots.

SO ORDERED." [16]

On 28 December 1998, petitioner Miguel filed a motion for reconsideration [17] which the COMELEC denied via a Resolution [18] dated 14 January 1999.

Through the expediency of Rule 65, herein petitioner imputes grave abuse of discretion on the part of public respondent COMELEC in issuing the questioned En Banc Resolutions, and "in not giving credence to the arguments of herein petitioners that respondent (protestant) must first present in a preliminary hearing the particulars of alleged fraud and irregularities." (emphasis ours)

Petitioner argues that the general allegations of fraud and irregularities are not sufficient to order the opening of ballot boxes and counting of ballots. [19]

The petition deserves no merit.

The rule in this jurisdiction is clear and jurisprudence is even clearer. In a string of categorical pronouncements, we have consistently ruled that when there is an allegation in an election protest that would require the perusal, examination or counting of ballots as evidence, it is the ministerial duty of the trial court to order the opening of the ballot boxes and the examination and counting of ballots deposited therein. [20] (emphasis ours)

In *Astorga vs. Fernandez*, [21] this Court inked the rationale behind the principle through the pen of Chief Justice Roberto Concepcion:

"xxx Obviously, the simplest, the most expeditious and the best means to determine the truth or falsity of this allegation is to open the ballot box and examine its contents. To require parol or other evidence on said alleged irregularity before opening said box, would have merely given the protestee ample opportunity to delay the settlement of the controversy, through lengthy cross-examination of the witnesses for the protestant and the presentation of testimonial evidence for the protestee to the contrary. As held in *Cecilio vs. Belmonte*, [22] this 'would be to sanction an easy way to defeat a protest.'" (emphasis ours)

At this point, the provisions of Section 255 of the Omnibus Election Code (Batas Pambansa Blg. 881) is in order:

"Section 255. Judicial counting of votes in election protest.-Where allegations in a protest or counter-protest so warrant, or whenever in the opinion of the court the interests of justice so require, it shall immediately order the book of voters, ballot boxes and their keys, ballots and other documents used in the election be brought before it and that the ballots be examined and the votes recounted."

Further, Section 6, Rule 20 of the COMELEC Rules of Procedure reads:

"When the allegations in a protest or counter-protest so warrant, or whenever in the opinion of the Commission or Division, the interest of justice so demands, it shall immediately order the ballot boxes containing ballots and their keys, list of voters with voting records, book of voters, and other documents used in the election to be brought before the Commission, and shall order the revision of the ballots."

While the abovementioned rule pertains to election protests falling within the exclusive original jurisdiction of the Commission, the same procedure is prescribed for election contests which are within the exclusive original jurisdiction of courts of general jurisdiction [23] as well as election contests within the exclusive original jurisdiction of courts of limited jurisdiction. [24]

In the case before us, the serious allegations embodied in the election protest mandates and necessitates the

opening of the subject ballot boxes to the end of resolving the issue of fraud and irregularities in the election. Precisely, the purpose of ordering the opening of the ballot boxes is to ascertain, with the least amount of protracted delay, the veracity of the allegations of fraud and anomalies in the conduct of the electoral exercise. Thus, a preliminary hearing set for the same purpose is a mere superfluity that negates the essence of affording premium to the prompt resolution of election cases and incidents relating thereto.

Stated differently, the lower court clearly committed grave abuse of discretion in ordering the conduct of a preliminary hearing to achieve the abovementioned purpose; the court a quo acted outside its province and overshot the limits of its jurisdiction. Evidently, the twin orders of the lower court, dated 07 July 1998 and 11 August 1998, were issued in clear violation of the Rules and existing case law on the matter.

Moreover, petitioner's heavy reliance on the Narrative Report of Acting Election Officer Lourdes Barroga is misplaced. The law does not require prima facie showing other than the allegations in the protest of fraud or irregularities in order to authorize the opening of the ballot boxes. Applying this principle, the stand taken by the lower court was extremely technical and highly impractical, apart from tending to defeat one of the major objectives of the law.[25]

For in this specie of controversies involving the determination of the true will of the electorate, time indeed is of paramount importance-second to none perhaps, except for the genuine will of the majority. To be sure, an election controversy which by its very nature touches upon the ascertainment of the people's choice, as gleaned from the medium of the ballot, should be resolved with utmost dispatch, precedence and regard to due process.

To achieve this end, courts and tribunals should then endeavor to adopt only such means consistent with this general objective and be constantly reminded to refrain from such a needless exercise "which has spawned the protracted delay that the law and the principle underlying it precisely intend to forestall." [26]

WHEREFORE, the instant petition is DISMISSED for lack of merit. Accordingly, the assailed Resolutions of the COMELEC En Banc, dated 17 December 1998 and 14 January 1999, are hereby AFFIRMED there being no grave abuse of discretion in the issuance thereof.

The trial court is directed to expedite the resolution of the electoral protest.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Pardo, Gonzaga-Reyes, Ynares-Santiago, and De Leon, Jr., JJ., concur.

[1] Rollo, pp. 1-34.

[2] Ibid., pp. 35-41; Annex "A", Petition.

[3] Certification, dated 25 May 1998, issued by Acting Election Officer Lourdes C. Barroga, Rollo, p. 56; Petition of protest, dated 21 May 1998; Rollo pp. 50-55.

[4] Rollo, pp. 50-55.

[5] Ibid., pp. 57-60; Annex "F".

[6] Ibid., pp. 62-63.

[7] Ibid., p. 68.

[8] Ibid., pp. 69-72.

[9] Ibid., pp. 73-76.

[10] Ibid., pp. 43-44 Annex "B".

[11] Ibid., pp. 81-86.

[12] Ibid., p. 45.

[13] Dated 07 July 1998 and 11 August 1998.

[14] Rollo, pp. 87-93.

[15] Ibid., pp. 94-106.

[16] Ibid., pp. 35-41.

[17] Ibid., pp. 121-129; Annex "Q".

[18] Ibid., p. 47.

[19] Ibid., p. 27.

[20] *Crispino vs. Panganiban*, 219 SCRA 621 (1993) per Justice Hilario G. Davide, Jr. (now Chief Justice) citing *Pareja vs. Narvasa*, 81 Phil. 22, 26-27 (1948)

[21] 19 SCRA 331, 335 (1967)

[22] 48 Phil. 243 (1925)

[23] Section 12, Rule 35, COMELEC Rules of Procedure.

[24] Section 14, Rule 37, COMELEC rules of procedure; *Crispino vs. Panganiban*, 219 SCRA 621 (1993)

[25] *Hontiveros vs. Altavas*, 24 Phil. 632 (1913)

[26] *Mogueis, Jr. vs. Court of Appeals*, 136 SCRA 285, 289 (1985).

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