

CLAUDIUS G. BARROSO, PETITIONER, VS. HONORABLE FRANCISCO S. AMPIG, JR., IN HIS CAPACITY AS ACTING JUDGE OF THE RTC, BR. 24, 11TH JUDICIAL REGION, KORONADAL, SOUTH COTABATO, AND ...

G.R. No. 138218. March 17, 2000

Ponente: PUNO, J.

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PUNO, J.:

Petitioner files this petition under Rule 65 of the 1997 Rules of Civil Procedure questioning the orders dated November 23, 1998 and February 24, 1999 of the Regional Trial Court, Eleventh Judicial Region, Branch 24, Koronadal, South Cotabato. Respondent trial court denied petitioner's motion to dismiss the petition in an election contest filed by private respondent.

Petitioner Claudius G. Barroso and private respondent Emerico V. Escobillo were candidates for mayor of the municipality of Tampakan, Cotabato in the May 11, 1998 elections. Petitioner won the election. Private respondent protested the result and filed with the Commission on Elections (Comelec) several cases against petitioner. He filed SPC 98-009, a pre-proclamation protest under Section 234 of the Omnibus Election Code alleging massive vote-buying, bribery, terrorism by petitioner and opening of ballot boxes outside the precincts in at least thirteen (13) of the sixty-three (63) precincts in the municipality. Private respondent also filed SPC 98-124, another pre-proclamation case under Section 241 of the Omnibus Election Code. In addition, he filed SPA 98-359 for petitioner's disqualification alleging election offenses committed by the latter. He likewise filed two (2) criminal complaints against petitioner with the Law Department of the Comelec: Election Offense Case No. 161 for illegal possession of firearm and violation of the gun ban, and Election Offense Case No. 177 for massive vote-buying.

On June 9, 1998, the Comelec First Division, issued a Resolution dismissing SPC 98-124. Private respondent moved for reconsideration on June 26, 1998.

On July 14, 1998, the Comelec First Division, issued another Resolution dismissing SPC 98-009 without prejudice to the filing of a proper election protest. The dispositive portion of the Resolution reads:

"WHEREFORE, it being that the complaint alleges grounds which are not proper for a pre-proclamation issue, the petition is hereby DISMISSED without prejudice to the petitioner's action for relief in the proper election protest.

SO ORDERED."[1]

Private respondent moved for reconsideration of this Resolution.

On July 17, 1998, the Municipal Board of Canvassers of Tampakan proclaimed petitioner as the winning mayoralty candidate.

On July 27, 1998, private respondent filed with the Regional Trial Court, Branch 24, Koronadal, South Cotabato a

petition contesting petitioner's election. The election contest was docketed as E. C. Case No. 15-24. Private respondent certified in his petition that SPA 98-359 and Election Offense Cases Nos. 161 and 177 were then pending.

Petitioner raised several affirmative defenses in his answer, particularly, private respondent's failure to disclose to the court the pendency of the two (2) pre-proclamation controversies—SPC 98-009 and SPC 98-124. Petitioner thereafter filed a Motion for Preliminary Hearing on his affirmative defenses and sought the dismissal of the petition for non-compliance with Supreme Court Administrative Circular No. 04-94 and Section 5, Rule 7 of the 1997 Rules on Civil Procedure. The motion was granted and the parties were required to submit their respective memoranda.

On November 23, 1998, the trial court issued an order denying petitioner's motion to dismiss. Thus:

"ACCORDINGLY, for lack of merit the protestee's affirmative and special defense of lack of proper certification against forum shopping is denied.

SO ORDERED."[2]

Private respondent moved for reconsideration which was denied on February 24, 1999. Hence this recourse.

This petition involves the sole issue of whether the election contest case, E. C. Case No. 15-24, should be dismissed in view of private respondent's failure to declare in his certification against forum shopping the existence of two pre-proclamation cases then pending with the Comelec.

The certification against forum shopping is required under Section 5, Rule 7 of the 1997 Rules of Civil Procedure, viz:

"Sec. 5. Certification against forum shopping.—The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions."

In a complaint or other pleading initiating an action in court, the plaintiff or principal party shall certify as to three undertakings: (a) that he has not commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, he should make a complete statement of the present status of said action or claim; and (c) if he should thereafter learn that the same or similar action has been filed or is pending in any court, tribunal or quasi-judicial agency, he shall report that fact within five (5) days therefrom to the court where his complaint or initiatory pleading has been filed. Failure to comply with these requirements shall be cause for dismissal of the case without prejudice, or with prejudice but only upon motion and after

hearing. The submission of a false certification or the non-compliance with any of the undertakings therein may subject the party to indirect contempt of court as well as administrative and criminal actions. If the party's or his counsel's acts constitute willful and deliberate forum shopping, the same shall be a ground for summary dismissal of the case with prejudice, and the imposition of direct contempt and administrative sanctions.

The foregoing provision was taken with modification from Administrative Circular No. 04-94 issued by the Supreme Court on February 8, 1994.[3] This Circular complements Revised Circular No. 28-91 designed "to prevent the multiple filing of petitions or complaints involving the same issues in other tribunals or agencies as a form of forum shopping." [4]

In the case at bar, the certification against forum shopping of private respondent declared the pendency of SPA 98-359 and Election Offense Cases Nos. 161 and 177. No reference was made to SPC 98-009 and SPC 98-124, the two pre-proclamation controversies also pending before the Comelec. Petitioner alleges that private respondent engaged in forum shopping by deliberately concealing from the trial court the existence of these two cases.[5] Private respondent, on the other hand, claims that there was no need to mention the two cases because they were deemed abandoned and rendered moot and academic upon the filing of the election contest.[6]

SPC 98-124 was terminated pursuant to the provisions of Section 16 of Republic Act (R. A.) No. 7166 and Comelec Omnibus Resolution No. 3049 on pending cases dated June 29, 1998. All pre-proclamation cases pending before the Comelec in the May 11, 1998 elections were deemed terminated at noon of June 30, 1998, the beginning of the term of office involved; and the rulings of the board of canvassers concerned were deemed affirmed, without prejudice to the filing of a regular election protest by the aggrieved party. SPC 98-124 before the Comelec was an appeal from the ruling of the board of canvassers,[7] hence, was deemed terminated by noon of June 30, 1998. When private respondent filed the election contest on July 27, 1998, SPC 98-124 had already been terminated.

SPC 98-009 which was originally filed with the Comelec nevertheless continued pursuant to the same R. A. 7166 and Comelec Omnibus Resolution 3049. On July 14, 1998, a Resolution was issued by the Comelec, First Division, dismissing SPC 98-009. Private respondent forthwith moved for reconsideration. It was during the pendency of this motion that private respondent filed E. C. Case No. 15-24. And yet he failed to mention the filing of both SPC 98-124 and SPC 98-009 and the pendency of SPC 98-009 in the certification against forum shopping. This failure, however, does not mandate the outright dismissal of E. C. Case No. 15-24.

E. C. Case No. 15-24 is not governed by the Rules of Civil Procedure. The Rules of Civil Procedure generally do not apply to election cases. They apply only by analogy or in a suppletory character and whenever practicable and convenient.[8] Election contests are subject to the Comelec Rules of Procedure. Rule 35 thereof governs election contests involving elective municipal officials before the Regional Trial Courts.[9] Rule 35 does not require that the petition contesting the election of any municipal official be accompanied by a certification or any statement against forum shopping.

Applying the Rules of Civil Procedure suppletorily, the failure to comply with the non-forum shopping requirements of Section 5 of Rule 7 does not automatically warrant the dismissal of the case with prejudice as petitioner insists. The Rule states that the dismissal is without prejudice. The dismissal may be with prejudice but only upon motion and after hearing. Here, a motion was made by petitioner and a hearing conducted by the trial court. The court found that there was a certificate against forum shopping attached to the petition but the certificate did not completely state all the cases filed and pending at the time of filing of the petition. There was no allegation that private respondent submitted a false certification as to constitute contempt of court. Neither was there evidence that private respondent and his counsels committed acts amounting to a willful and deliberate

forum shopping as to warrant the summary dismissal of the case and the imposition of direct contempt on them. Accordingly, the trial court found it just and proper not to dismiss the case.

Private respondent has explained that despite the pendency of his motion for reconsideration in SPC 98-009, the pre-proclamation case, he was compelled to file the election contest as a result of petitioner's proclamation by the Municipal Board of Canvassers. Under the Comelec Rules of Procedure, a petition contesting the election of any municipal official must be filed within ten (10) days following the date of proclamation of the results of the election.[10] This period is mandatory and jurisdictional.[11] When no action was taken by the Comelec in SPC 98-009, private respondent filed the election contest on July 27, 1998, the tenth day after petitioner's proclamation on July 17, 1998. It was only on January 19, 1999, six (6) months later, that the Comelec en banc rendered a Resolution denying private respondent's motion for reconsideration and affirming the July 4, 1998 Resolution of the Comelec, First Division.[12]

Private respondent alleges that when he filed the election contest, he automatically abandoned SPC 98-009. His acts, however, show otherwise. At the time the trial court rendered its questioned order of November 23, 1998, it had no knowledge that private respondent had already abandoned SPC 98-009. The trial court itself urged in said order that private respondent "would do well to make a definite choice of his remedy." [13] In addition, there is petitioner's allegation that after the filing of the election contest, the Comelec, First Division, issued an order giving due course to private respondent's motion for reconsideration and at the same time certifying SPC 98-009 to the Comelec en banc. Private respondent received a copy of this order on August 5, 1998. He failed to report this Order to the trial court within five (5) days from its receipt, in violation of one of the undertakings in the certificate against forum shopping.[14] This allegation has not been rebutted by private respondent.

Be that as it may, in dismissing SPC 98-009, the Comelec, First Division, itself noted that the issues raised therein were not proper for a pre-proclamation case, but should be made in an election protest. E. C. Case No. 15-24 is precisely the election protest.

The strict application of the non-forum shopping rule in the case at bar would not work to the best interest of the parties and the electorate. An election contest, unlike an ordinary civil action, is clothed with a public interest. The purpose of an election protest is to ascertain whether the candidate proclaimed by the board of canvassers is the lawful choice of the people. What is sought is the correction of the canvass of votes, which was the basis of proclamation of the winning candidate.[15] An election contest therefore involves not only the adjudication of private and pecuniary interests of rival candidates but paramount to their claims is the deep public concern involved and the need of dispelling the uncertainty over the real choice of the electorate. And the court has the corresponding duty to ascertain by all means within its command who is the real candidate elected by the people.[16]

Moreover, the Comelec Rules of Procedure are subject to a liberal construction. This liberality is for the purpose of promoting the effective and efficient implementation of the objectives of ensuring the holding of free, orderly, honest, peaceful and credible elections and for achieving just, expeditious and inexpensive determination and disposition of every action and proceeding brought before the Comelec.[17] Thus we have declared:

"It has been frequently decided, and it may be stated as a general rule recognized by all courts, that statutes providing for election contests are to be liberally construed to the end that the will of the people in the choice of public officers may not be defeated by mere technical objections. An election contest, unlike an ordinary action, is imbued with public interest since it involves not only the adjudication of the private interests of rival candidates but also the paramount need of dispelling the uncertainty which beclouds the real choice of the electorate with respect to who shall discharge the prerogatives of the office within their gift. Moreover, it is neither fair nor just to keep in office for an uncertain period one whose right to it is under suspicion. It is

imperative that his claim be immediately cleared not only for the benefit of the winner but for the sake of public interest, which can only be achieved by brushing aside technicalities of procedure which protract and delay the trial of an ordinary action." [18]

Similarly, the Rules of Civil Procedure on forum shopping should be applied with liberality. In the instant case, the revision of ballots has already started in ten (10) precincts. The right of the people of Tampakán to freely express their choice of representative through a free and honest election should not be smothered by a strict adherence to technical rules of procedure.

IN VIEW WHEREOF, the petition is dismissed.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Kapunan, and Ynares-Santiago, JJ., concur.
Pardo, J., on leave.

[1] Annex "1" to Comment, Rollo, p. 55.

[2] Annex "A" to Petition, Rollo, p. 32.

[3] J. Feria, 1997 Rules of Civil Procedure, p. 29 [1997]; J. Regalado, Remedial Law Compendium, vol. I, pp. 147-148 [1997].

[4] Par. 1, Administrative Circular No. 04-94.

[5] Petition, pp. 12-14; Rollo, pp. 16-18.

[6] Comment, pp. 7-9; Rollo, pp. 44-46.

[7] Reply to Comment, p. 4; Rollo, p. 77.

[8] Section 4, Rule 1 of the Rules of Civil Procedure provides:

"Sec. 4. In what cases not applicable.—These Rules shall not apply to election cases, land registration, cadastral, naturalization and insolvency proceedings, and other cases not herein provided for, except by analogy or in a suppletory character and whenever practicable and convenient."

[9] Section 2, Rule 1; Section 1, Rule 35, Comelec Rules of Procedure.

[10] Section 3, Rule 35.

[11] Roquero v. Commission on Elections, 289 SCRA 150, 156 [1998].

[12] Annex "4" to Comment, Rollo, pp. 70-71.

[13] Order dated November 23, 1998, Annex "A" to Petition, p. 2; Rollo, p. 31.

[14] Petition, p. 13; Rollo, p. 17.

[15] De Castro v. Ginete, 27 SCRA 623, 629-630 [1969]; also cited in Agpalo, Comments on the Omnibus Election Code, p. 361 [1992].

[16] Bince, Jr. v. Commission on Elections, 242 SCRA 273, 287 [1995]; Duremdes v. Commission on Elections, 178 SCRA 746, 759 [1989]; Juliano v. Court of Appeals, 20 SCRA 808, 818-819 [1967].

[17] Section 3, Rule 1, Comelec Rules of Procedure.

[18] *Pahilan v. Tabalba*, 230 SCRA 205, 212-213 [1994]; see also *Punzalan v. Commission on Elections*, 289 SCRA 702, 720 [1998]; *Bince, Jr. v. Commission on Elections*, *supra*, pp. 286-287.

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