SALIPONGAN DAGLOC, PETITIONER, VS. THE COMMISSION ON ELECTIONS, HON. EMMANUEL BADOY, AND SALAMBAI AMBOLODTO, RESPONDENTS.

G.R. No. 138969. December 17, 1999

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for certiorari seeking to set aside the resolution,[1] dated June 29, 1999, of the Commission on Elections en banc upholding the denial by the Regional Trial Court, Branch 14, Cotabato City of petitioner's motion to dismiss the election protest filed by private respondent and directing the continuance of the proceedings.

The antecedent facts are:

Private respondent Salambai Ambolodto and Sukarno Samad were mayoralty candidates in the local elections held on May 11, 1998 in Kabuntalan, Maguindanao. Samad was declared winner. He and herein petitioner Salipongan Dagloc, who was elected vice-mayor, were proclaimed on May 14, 1998.

On May 23, 1998, private respondent filed a petition in the COMELEC entitled petition to declare a failure of election and/ or annul the election results in the municipality of kabuntalan, first district of maguindanao,[2] docketed as SPA No. 98-356. In addition, on June 19, 1998, she filed an election protest ex abundanti cautela,[3] docketed as Election Protest No. 38-98, in the RTC, Branch 14, Cotabato City.

On July 6, 1998, private respondent moved to withdraw SPA No. 98-356 in the COMELEC in order to prosecute Election Protest No. 38-98 in the RTC.[4] The COMELEC granted her motion in its order dated February 4, 1999.[5]

Meanwhile, Samad filed his answer in Election Protest No. 38-98 in which he sought the dismissal of the protest on the ground that it was filed more than 10 days from the date of proclamation on May 14, 1998. He reiterated his motion to dismiss[6]in a subsequent pleading, and, in addition, asked that it be resolved before private respondent's motion for technical examination of C.E. Forms 1 and 2. In an order, dated August 18, 1998, the trial court denied the motion to dismiss.

Samad then filed a petition for certiorari (SPR No. 37-98) in the COMELEC, assailing the order of the RTC denying his motion to dismiss. While the case was pending, Samad died, and herein petitioner, who had succeeded him as mayor of Kabuntalan, was substituted in his place in the pending cases before the COMELEC (SPR No. 37-98) and the RTC (Election Protest No. 38-98).

On June 29, 1999, the COMELEC en banc dismissed SPR No. 37-98 for lack of merit. It held that while SPA No. 98-356 filed by Samad was denominated as petition to declare a failure of election and/or to annul the election results in the municipality of kabuntalan, first district of maguindanao, the case was actually a petition for annulment of proclamation which, under §248 of the Omnibus Election Code, suspended the running of the period

for filing an election protest. Consequently, the filing of Election Protest No. 38-98 in the RTC on June 19, 1998 was timely as SPA No. 98-356, filed one day before the lapse of the period for filing an election protest, prevented the expiration of said period.

Hence, this petition. On August 10, 1999, we issued a temporary restraining order enjoining the COMELEC from implementing its questioned resolution in SPR No. 37-98 and the RTC from taking further action in Election Protest No. 38-98.

Petitioner contends that the COMELEC committed grave abuse of discretion in holding that the filing of private respondent's petition for a declaration of a failure of election and for the annulment of election results suspended the running of the reglementary period for filing an election protest. He maintains that what is contemplated in §248 of the Election Code is the filing of a pre-proclamation controversy praying for annulment or suspension of proclamation. In addition, petitioner questions the authority of COMELEC Commissioner Abdul Gani M. Marohombsar who signed the COMELEC resolution in question on June 29, 1999, when his term had already expired on June 4, 1999.

Private respondent, on the other hand, contends that §248 of the Election Code is not limited to the filing of a pre-proclamation controversy but includes as well a petition for a declaration of the failure of election. She argues that "[f]or so long as there is a prayer for the annulment of a proclamation in a petition filed with the COMELEC and within the COMELEC's jurisdiction, the filing thereof suspends the running of the 10-day period to file an election protest or quo warranto proceedings. . . . Even the filing of a petition for disqualification praying for the annulment of proclamation on the ground of ineligibility would suspend the running of the period to file an electoral protest." She also claims that the petition in SPR No. 37-98 filed by petitioner's predecessor should have been dismissed by the COMELEC since it is actually based on the denial by the RTC of a motion to dismiss an election protest, which motion is a prohibited pleading under Rule 13, §1 of the COMELEC Rules of Procedure.

The primary issue in this case is whether §248 of the Election Code applies only to the filing of a pre-proclamation controversy. On the resolution of this issue hinges the question of whether private respondent's election protest was timely filed.

> Sec. 248 reads:
>
> Effect of filing petition to annul or to suspend the proclamation. &mdash The filing with the Commission [on Elections] of a petition to annul or to suspend the proclamation of any candidate shall suspend the running of the period within which to file an election protest or quo warranto proceedings.

There is no question that the above provision covers the filing of pre-proclamation controversies. This is clear from §242 of the Election Code which reads:

> Commission's exclusive jurisdiction of all pre-proclamation controversies. &mdash The Commission [on Elections] shall have exclusive jurisdiction of all pre-proclamation controversies. It may motu proprio or upon written petition, and after due notice and hearing, order the partial or total suspension of the proclamation of any candidate-elect or annul partially or totally any proclamation, if one has been made, as the evidence shall warrant in accordance with the succeeding sections.

The reason for this is that unless the proclamation of a winning candidate is suspended or, if it has been held, set aside, the policy behind the allowance of pre-proclamation controversies, i.e., to prevent losing candidates from grabbing the proclamation and delaying the resolution of the electoral contest, will be defeated. Thus, in Esquivel v. Commission on Elections,[7] it was held that the 10-day period for filing an election protest under §289 of the former Election Code was suspended by the filing of a petition for annulment of proclamation. This Court said:

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> The suspension of the 10-day statutory period for the filing of an election protest until such time as the Commission on Elections has finally decided the pending pre-proclamation controversy is but logical and just, since if the protestant prevails in the pre-proclamation controversy, there would be no further need for him to file a regular election protest. . . .
>
> This Court has since the case of Benjamin S. Abalos vs. Ernesto S. Domingo [G.R. No. 52665, Resolution of February 29, 1980] deemed suspended the 10-day statutory period for the filing of an election protest during the pendency of a pre-proclamation controversy and in all subsequent cases, the latest of which is its decision of July 25, 1980 [G.R. No. 53532, Noli M. Valenzuela v. Comelec] wherein the losing party in the pre-proclamation controversy was granted "a period of ten [10] days from receipt of this Resolution [of dismissal] to file before the proper court a quo warranto suit or election protest."[8]

The filing of pre-proclamation controversies under §248 of the Omnibus Election Code, however, is not the only ground for the suspension of proclamation. Two other instances are provided in R.A. No. 6646, known as "The Electoral Reforms Law of 1987," viz.: (1) Under §6 of the statute, the COMELEC may, upon motion of the complainant in an action for disqualification, suspend the proclamation of the winning candidate if the evidence of his guilt is strong, and (2) under §7 thereof, the COMELEC may likewise suspend the proclamation of the winning candidate if there is ground for denying or canceling his certificate of candidacy. Thus, §6 of R.A. No. 6646 provides:

> Effect of Disqualification Case. - Any candidate who has been declared by final judgment to be disqualified shall not be voted for, and the votes cast for him shall not be counted. If for any reason a candidate is not declared by final judgment before an election to be disqualified and he is voted for and receives the winning number of votes in such election, the Court or Commission shall continue with the trial and hearing of the action, inquiry or protest and, upon motion of the complainant or any intervenor, may during the pendency thereof order the suspension of the proclamation of such candidate whenever the evidence of his guilt is strong.

Sec. 7, on the other hand, states:

> Petition to Deny Due Course to or Cancel a Certificate of Candidacy. - The procedure hereinabove provided shall apply to petitions to deny due course to or cancel a certificate of candidacy as provided in Section 78 of Batas Pambansa Blg. 881.

These actions are in the nature of pre-proclamation controversies and, therefore, like pre-proclamation contests, their filing is a ground for the suspension of proclamation and, consequently, of the period for filing either an election protest or a petition for quo warranto.

However, petitioner is correct that SPA No. 98-356 is not a pre-proclamation controversy. Much less is it a petition for disqualification or for the denial or cancelation of a certificate of candidacy. Indeed, private respondent does not claim that her petition raises pre-proclamation issues. She frankly admits that SPA No. 98-356 is a petition filed under §6 of the Omnibus Election Code for a declaration of failure of election.[9] In fact, her petition clearly states its nature, as it is denominated PETITION TO DECLARE A FAILURE OF ELECTION AND/OR TO ANNUL THE ELECTION RESULTS IN THE MUNICIPALITY OF KABUNTALAN, FIRST DISTRICT OF MAGUINDANAO, and alleges the following:[10]

> 4.1 No valid and legitimate elections were actually held or conducted in the above-mentioned municipality;
>
> 4.2 No valid and/or legitimate elections were actually held in the said municipality as OFFICIAL BALLOTS were, in fact, PREPARED BY ONLY a few individuals. This fact will be shown by the signatures and thumbmarks affixed in the Voting Registration Records of each of the precincts in the municipality which do

not belong to the registered voters;

4.3 The official ballots having been prepared by persons other than the registered voters, the votes reflected in the election returns coming from the various precincts of the same municipality are not truly reflective of the actual and true votes cast in the said precincts;

4.4 Widespread violence and intimidation were employed to force watchers of the Petitioners to leave the polling places and thus, giving a chance for the representatives of the respondent to perpetrate the above allegations.

Attached hereto and marked as Annexes are the sworn affidavits of witnesses of Petitioners as well as certified true copies of the Voters Registration Records and the Voter's Voting Records attesting to the facts of the allegations above-stated;

Please refer to the Annexes hereto attached.

The Voter's Registration Records duly certified by the Election Assistant of Kabuntalan, Maguindanao, on May 19, 1998, shows that the Voting Record at the back thereof is TOTALLY BLANK, meaning entries therein were not filled up. The Voter's Voting Record, which is likewise, hereto attached, does not match with the Voter's Registration Record. Even with our naked eye, one can already conclude that there was actually NO voting that took place in the Municipality of Kabuntalan.

5. By reason of the above terrorism, fraud and violence committed by the respondent, her supporters and sympathizers, there was failure of election in Kabuntalan, Maguindanao. Any proclamation of the respondent is void ab initio there being a failure of election;

6. There is a need for a technical examination of the Voter's Registration Records and the List of Voters with Voting records for the purpose of determining the massive substitute voting in the precincts in Kabuntalan, Maguindanao

In Matalam v. COMELEC,[11] it was held that an action for a declaration of the failure of election is not in the nature of a pre-proclamation controversy. The distinction between the two actions was discussed by the Court in Loong v. COMELEC[12] in this wise:

> While, however, the COMELEC is restricted, in pre-proclamation cases, to an examination of the election returns on their face and is without jurisdiction to go beyond or behind them and investigate election irregularities, the COMELEC is duty bound to investigate allegations of fraud, terrorism, violence and other analogous causes in actions for annulment of election results or for declaration of failure of elections, as the Omnibus Election Code denominates the same. Thus, the COMELEC, in the case of actions for annulment of election results or declaration of failure of elections, may conduct technical examination of election documents and compare and analyze voters' signatures and fingerprints in order to determine whether or not the elections had indeed been free, honest and clean. Needless to say, a pre-proclamation controversy is not the same as an action for annulment of election results or declaration of failure of elections.

Private respondent, on the other hand, contends that as long as there is a prayer for the annulment of a proclamation, the filing of such petition effectively suspends the running of the period for filing an election protest. This contention has no merit. Not all actions seeking the annulment of proclamation suspend the running of the period for filing an election protest or a petition for quo warranto. For it is not the relief prayed for which distinguishes actions under §248 from an election protest or quo warranto proceedings, but the grounds on which they are based.

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The purpose for allowing pre-proclamation controversies is to put a stop to the pernicious practice of unscrupulous candidates of "grabbing the proclamation and prolonging the protest." Accordingly, grounds which are proper for electoral protests should not be allowed to delay the proclamation of the winners. As this Court pointed out in Dimaporo v. Commission on Elections:[13]

> It may well be true that that public policy may occasionally permit the occurrence of "grab the proclamation and prolong the protest" situations; that public policy, however, balances the possibility of such situations against the shortening of the period during which no winners are proclaimed, a period commonly fraught with tension and danger for the public at large.

In view of the foregoing, we hold that the filing by private respondent of a petition for declaration of failure of election (SPA No. 98-356) did not suspend the running of the reglementary period within which to file an election protest or quo warranto proceedings. The period for private respondent to do so expired on May 24, 1998, 10 days from the proclamation of Sukarno Samad and petitioner as mayor and vice-mayor, respectively. The filing of private respondent's election protest in the RTC on June 19, 1998 was made out of time.

However, petitioner's contention that the assailed resolution is invalid because Commissioner Abdul Gani M. Marohombsar had no authority to sign the same, because his term had expired when the resolution was promulgated, is without merit. It appears that Commissioner Marohombsar's term expired on June 3, 1999 (not June 4, 1999 as alleged by petitioner), while the assailed resolution was promulgated on June 29, 1999. The voting was 6-1. Even disregarding the vote of Commissioner Marohombsar there was still a majority. The resolution in question is, therefore, valid.

On the other hand, private respondent contends that the petition in SPR No. 37-98 filed in the COMELEC by Samad, petitioner's predecessor, should be dismissed and stricken out since it is actually based on a motion to dismiss in Election Protest No. 38-98 in the RTC, which is a prohibited pleading under the COMELEC Rules of Procedure.

The argument is also untenable. Private respondent apparently refers to the prohibition found in Rule 13, §1 of the COMELEC Rules of Procedure,[14] under Part III entitled initiation of actions or proceedings before the commission. As is evident from the said heading, this provision is applicable only to actions or proceedings before the COMELEC. Rule 1, §2 of the COMELEC Rules states:

> These rules, except Part VI, shall apply to all actions and proceedings brought before the Commission. Part VI shall apply to election contests and quo warranto cases cognizable by courts of general or limited jurisdiction.

The prohibition, therefore, does not apply to the proceedings in the RTC where the motion to dismiss was filed.

WHEREFORE, the resolution, dated June 29, 1999, of the Commission on Elections is SET ASIDE and Election Protest No. 38-98 in the Regional Trial Court, Branch 14, Cotabato City is ordered DISMISSED for having been filed out of time.

SO ORDERED.

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

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[1] Petition Annex A; Rollo, pp. 21-31.

[2] Private respondent's Comment, Annex 1; id., pp. 95-100.

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[3] Id., Annex 2; id., pp. 101-104.

[4] Id., Annex 3; id., pp. 105-106.

[5] Id., Annex 4; id., pp. 107-108.

[6] Id., Annex 6; id., pp. 112-113.

[7] 121 SCRA 786 (1983).

[8] Id. at 792.

[9] Private Respondent's Comment, p. 7; Rollo, p. 88.

[10] Id., Annex 1; id., pp. 96-99.

[11] 271 SCRA 733 (1997).

[12] 257 SCRA 1, 23-24 (1996).

[13] 186 SCRA 769, 786-787 (1990).

[14] What pleadings are not allowed. — The following pleadings are not allowed:

a) motion to dismiss;
b) motion for a bill of particulars;
c) motion for extension of time to file memorandum or brief;
d) motion for reconsideration of an en banc ruling, resolution, order or decision;
e) motion for re-opening or re-hearing of a case;
f) reply in special actions and in special cases; and
g) supplemental pleadings in special actions and in special cases.

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