

## **ABDULMADID P.B. MARUHOM, PETITIONER, VS. COMMISSION ON ELECTIONS AND HADJI JAMIL DIMAPORO, RESPONDENTS.**

*G.R. No. 139357. May 05, 2000*

Ponente: YNARES-SANTIAGO, J.

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### **YNARES-SANTIAGO, J.:**

Whether or not a motion to dismiss, filed after an answer has been filed, is a prohibited pleading in an election protest pending before the Regional Trial Court is the issue posed in this petition for certiorari with prayer for preliminary injunction challenging the Resolution of the Commission on Elections (COMELEC) dated July 6, 1999[1] dismissing Comelec Case SPR No. 52-98.

The COMELEC's challenged order summarizes the relevant facts of the controversy thus:

- Petitioner and private respondent were both candidates for Mayor in the Municipality of Marogong, Lanao del Sur and voted as such in the last May 11, 1998 national and local election (sic). Petitioner is a re-electionist and a veteran politician;
- The election in Marogong functioned on May 11, 1998, and after the voting the ballot boxes were transmitted to the Kalimodan Hall, Provincial Capitol of Lanao del Sur at Marawi City where the automated counting of votes and canvass of election returns were centralized;
- During the counting of votes, serious irregularities, anomalies and electoral frauds were committed at the instance of petitioner or his followers in that votes actually casted (sic) for the private respondent were not counted and credited in his favor thru (sic) the concerted acts, conspiracy and manipulation of the Board of Election Inspectors, military, Election Officer and the Machine Operator who happens to be a nephew of the petitioner;
- In Precincts Nos. 1A-1A1, 7A1, 8A, 10A-10A1 and 11A about 115 official ballots were refused or rejected by the counting machine which the private respondent's watchers or representatives have requested and insisted to be re-fed to the automated machine for the second and third times pursuant to the provisions of Comelec Resolution No. 3030 but their requests were not heeded by the Election Officer and the Machine Operator, Solaiman Rasad, who is a close kin of the Petitioner, and instead considered the said ballots as finally rejected, while in Precincts Nos. 12A, 23A1 and 6A, around 56 ballots were found therein which were not drawn from the official ballots and were included in the counting of votes over the objection of the private respondent's watchers or representatives;

- Before the termination of the counting of votes and the consolidation of the results, the machine operator and the Election Officer carried away from the Kalimodan Hall the diskette and brought the same to the down town without the knowledge of the private respondent's watchers or representatives;

- As a result of the foregoing irregularities, anomalies and electoral frauds, the petitioner was illegally proclaimed as winner because he appeared to have obtained 2,020 votes while the private respondent garnered 2,000 votes with a slight margin of only 20 votes;

- After the counting of votes, the ballot boxes were kept at the Kalimodan Hall, Provincial Capitol, Marawi City guarded and secured by military and PNP personnel together with the watchers/representatives of the petitioner and the private respondent and other candidates or political parties until they were transported and delivered to the respondent court at Malabang, Lanao del Sur sometime on August 13, 1998 by 1Lt. Napisa AG together with the duly authorized representatives of both parties.

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- On May 22, 1998, private respondent, knowing that he was cheated and the true winner for Mayor, filed before this Honorable Commission a petition to annul the proclamation of petitioner Abdulmadid Maruhom as the duly elected Mayor of Marogong, Lanao del Sur docketed as SPC No. 98-226.[2]

- As precautionary measure to avoid any technicality, private respondent filed on May 25, 1998, an ordinary "Protest ad Cautelam" against the petitioner before the Regional Trial Court, Branch 11, Malabang, Lanao del Sur entitled "Hadji Jamil D. Dimaporo vs. Abdulmadid Maruhom" for election protest (Manual Judicial Recount, Revision and Reappreciation of ballots) docketed as Election Case No. 11-127.[3]

- On June 1, 1998, petitioner Abdulmadid Maruhom filed an answer with counter-protest in Election Case No. 11-127 special and affirmative defenses and counter-protest.[4] In his answer petitioner prayed to hold in abeyance further proceedings since the protest is ad cautelam or subject to the petition filed before this Honorable Commission.

- On July 2, 1998, before SPC No. 98-228 could be set for hearing by this Honorable Commission, the private respondent as petitioner therein, filed a motion to withdraw his petition in said SPC No. 98-228 albeit said case was among those cases the proceedings of which were ordered to be continued beyond June 30, 1998, under Comelec Resolution No. 3049 promulgated on June 29, 1998.[5] xxx

- On July 17, 1998, an order was issued by this Honorable Commission, (First Division) granting the private

respondent's motion to withdraw petition in SPC No. 98-228 and considered the same withdrawn.[6] xxx.

- Upon receipt of a copy of said order, dated July 17, 1998, private respondent filed an urgent motion before the respondent court on July 27, 1998, praying for the issuance of an order directing the proper officials/officers concerned to bring and produce before said court the ballot boxes subjects of the protest and counter-protest and to set the case for hearing as mandated by law.[7] xxx

- After the delivery of the ballot boxes involved in the protest and counter-protest, the public respondent issued an order, dated August 17, 1998, setting Election Case No. 11-127 for hearing (a) for the creation of the Committee on Revision and appointment of the Chairman and Members thereof; (b) making of the cash deposit and payment of the revisor's compensation; (c) partial determination of the case, etc. on September 1, 1998, at 8:30 o'clock in the morning.[8]

- When the case was called for hearing on September 2, 1998, a Revision Committee was created and its membership were duly appointed in open court which committee was directed by the respondent court to finish the revision of ballots, if possible, within 20 days from the commencement of the revision[9] xxx

- After the Revision Committee was directed by the respondent to commence the revision of ballots, the petitioner Abdulmadid Maruhom thru counsel orally moved for the dismissal of the protest on the grounds that (1) The ballot boxes containing the ballots in the protested and counter-protested precincts have been violated; (2) Automated counting of ballots does not contemplate a manual recount of the ballots; and (3) Protestant is guilty of forum shopping warranting summary dismissal of the petitioner of the protest.

- The private respondent thru (sic) undersigned counsel, vigorously opposed the said oral motion to dismiss and orally argued that the motion is clearly dilatory having been made only after the Revision Committee has been ordered to commence the revision of ballots on September 1, 1998 and maintained that (1) The motion to dismiss is not allowed in an election protest; (2) The sanctity and integrity of the ballot boxes subject matter of the protest and counter-protest have been preserved and never violated; (3) The automated counting of ballots does not preclude the filing of the election protest for the judicial recount and revision of ballots; and (4) The private respondent is not guilty of forum shopping because his petition of protest is clearly and explicitly a Protest Ad Cautelam in view of the pendency of his petition before this Honorable Commission which was withdrawn by the private respondent before it could be set for hearing or acted upon by this Honorable Commission.

- After the oral arguments of both parties, the petitioner's counsel asked that he be given ample time to file a written Omnibus Motion to Dismiss and the respondent court thru then Acting Presiding Judge Rasad Balindong, issued an order dated September 2, 1998, giving ten (10) days to Atty. Tingcap T. Mortaba to file an Omnibus Motion in substantiation of all the oral motions he made, furnishing a copy thereof to the undersigned counsel for the private respondent who was likewise given an equal period of time to comment.[10]

- On September 11, 1998, petitioner filed his motion to dismiss[11] and on September 21, 1998, the private respondent filed a vigorous opposition to motion to dismiss.[12]

- During the hearing on the motion to dismiss and the opposition thereto on September 21, 1998, the petitioner's counsel requested for ample time to file a rejoinder to the vigorous opposition to motion to dismiss submitted by the private respondent which was granted by the court and on September 28, 1998, petitioner filed his rejoinder[13] and on October 5, 1998 private respondent filed his comment[14] thereto and thereafter all incidents were submitted for resolution of the court.

- On November 10, 1998, the respondent court thru Honorable Presiding Judge Moslemen T. Macarambon, issued the assailed order denying the petitioner's motion to dismiss for lack of merit and ordering the Revision Committee to report to the court on November 19, 1998, at 8:30 o'clock in the morning for their oath taking and to receive the instruction of the court in the revision of the ballots and other allied matters.[15]

- On November 18, 1998, the petitioner filed a motion for reconsideration of the order dated November 10, 1998,[16] and on November 23, 1998, private respondent filed a vigorous opposition [to motion] for reconsideration.[17]

- Finding no compelling reason to disturb its order dated November 10, 1998, the respondent court issued the assailed order dated December 1, 1998 which denied the motion for reconsideration for lack of merit. In the same order, the respondent court reiterated its previous order to the members of the Revision Committee to take their oaths before Atty. Raqueza T. Umbaro or Atty. Khalil Laguindab and thereafter to convene and start the revision of ballots on December 14, 15, 16, 17 and 18, 1998, morning and afternoon.[18]

- As a diabolical scheme to cause further delay of the proceedings of the case more specifically the revision of ballots, the petitioner filed on December 10, 1998, the instant petition for certiorari and prohibition with prayer for preliminary injunction and on December 11, 1998, petitioner filed an urgent motion before the respondent court praying that further proceedings in Election Case No. 11-127 be deferred until after protestee's petition for certiorari and prohibition before this Honorable Commission shall have been finally resolved, copy of which was served upon the undersigned counsel only on December 12, 1998, at 10:50 A.M.[19] xxx

- 18. That before the undersigned counsel could file his opposition to said urgent motion on December 14, 1998 and in the absence of a restraining order or writ of preliminary injunction issued by (the COMELEC), the respondent judge already issued an order granting the same motion and ordering the Revision Committee to hold in abeyance the scheduled revision of ballots on December 14, 15, 16, 17 and 18, 1998, etc. until further order from the court xxx.[20]

Petitioner alleges that in dismissing the petition the COMELEC acted in excess of, or with grave abuse of discretion, amounting to lack of jurisdiction in —

1.] holding that a motion to dismiss an election protest case filed in the Regional Trial Court is a prohibited

pleading;

2.] holding that the motion to dismiss filed after the answer is not allowed;

3.] failing to resolve the issues raised in SPR No. 52-98 which are sufficient legal bases to dismiss Election Case No. 11-127.

In sum, petitioner insists that in refusing to pass upon the three (3) principal issues raised in COMELEC Case SPR No. 52-98, to wit:

- Whether or not public respondent acted in excess of, or with grave abuse of discretion, amounting to lack of jurisdiction in holding that a motion to dismiss an election protest case in the Regional Trial Court is a prohibited pleading;

- Whether or not public respondent acted in excess of, or with grave abuse of discretion, amounting to lack of jurisdiction, in holding that a motion to dismiss filed after the answer to an election protest case in the Regional Trial court is not allowed; and

- Whether or not public respondent gravely abused its discretion amounting to lack of jurisdiction, in failing to resolve the relevant material and substantial issues raised in SPR No. 52-98.

the COMELEC "abdicated its duty under its own rules of procedure and under the Constitution and the election laws." Such abdication of duty, according to petitioner, amounts to grave abuse of discretion amounting to lack of jurisdiction.

It must be borne in mind that the purpose of governing statutes on the conduct of elections —

x x x [i]s to protect the integrity of elections to suppress all evils that may violate its purity and defeat the will of the voters. The purity of the elections is one of the most fundamental requisites of popular government. The Commission on Elections, by constitutional mandate must do everything in its power to secure a fair and honest canvass of the votes cast in the elections. In the performance of its duties, the Commission must be given a considerable latitude in adopting means and methods that will insure the accomplishment of the great objective for which it was created — to promote free, orderly and honest elections. The choice of means taken by the Commission on Elections, unless they are clearly illegal or constitute grave abuse of discretion, should not be interfered with.[21]

Section 2 (1) of Article IX of the Constitution gives the COMELEC the broad power to "enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum and recall." There can hardly be any doubt that the text and intent of this constitutional provision is to give COMELEC all the necessary and incidental powers for it to achieve the holding of free, orderly, honest, peaceful and credible elections.

In accordance with this intent, the Court has been liberal in defining the parameters of the COMELEC's powers in conducting elections. *Sumulong v. COMELEC*[22] aptly points out that —

"Politics is a practical matter, and political questions must be dealt with realistically — not from the standpoint of pure theory. The Commission on Elections, because of its fact-finding facilities, its contacts with political strategists, and its knowledge derived from actual experience in dealing with political controversies, is in a peculiarly advantageous position to decide complex political questions

xxx. There are no ready made formulas for solving public problems. Time and experience are necessary to evolve patterns that will serve the ends of good government. In the matter of the administration of laws relative to the conduct of election xxx we must not by any excessive zeal take away from the Commission on Elections that initiative which by constitutional and legal mandates properly belongs to it.

Succinctly stated, laws and statutes governing election contests especially the appreciation of ballots must be liberally construed to the end that the will of the electorate in the choice of public officials may not be defeated by technical infirmities.[23] An election protest is imbued with public interest so much so that the need to dispel uncertainties which becloud the real choice of the people is imperative,[24] much more so in this case considering that a mere twenty (20) votes separates the winner from the loser of the contested election results.

The primordial issue to be resolved herein is whether or not the COMELEC gravely abused its discretion in dismissing SPR No. 52-98.

In support of his cause, petitioner insists that there is "nothing irregular or anomalous in the filing of the motion to dismiss" after the filing of the answer because in effect he is merely insisting on a preliminary hearing of his special and affirmative defenses. Thus, he claims that the summary dismissal of his motion to dismiss is tainted with grave abuse of discretion amounting to lack or excess of jurisdiction.

We disagree.

The filing of the motion to dismiss, in fact, appears to be part of a perfidious plot to prevent the early termination of the proceedings in Election Case No. 4847 as evidenced by a confluence of events clearly showing a pattern of delay employed by petitioner to avert the revision ballots. These events, pointed out by private respondent[25] and borne by the record, show that —

- It was only on September 1, 1999 after the creation of the Revision Committee and the appointment of its Chairman and Members and after the said committee was ordered by the trial court to commence the revision and to render its report within 20 days that the petitioner orally moved for the dismissal of the case on the flimsy grounds that (1) the ballot boxes subject of the protest and counter — protest have been violated; (2) the automated counting of ballots does not contemplate a manual recount of ballots; and (3) protestant is guilty of forum-shopping warranting summary dismissal of the protest;

- After the oral arguments on the oral motion to dismiss the petitioner requested for ample time within which to file an Omnibus Motion to Dismiss and over the vigorous opposition of the private respondent the same was granted by the court and the petitioner was given a period of ten (10) days to file the same and the private respondent was likewise given a period of ten (10) days to file his comment;

- On September 11, 1998, the motion to dismiss[26] and during the hearing on the said motion and the opposition[27] thereto on September 21, 1998, the petitioner again asked for ample time to file a rejoinder to the vigorous opposition to motion to dismiss which was again granted by the court and it was only on September 28, 1998 that said rejoinder was filed;

- After a denial of the motion to dismiss on November 10, 1998,[28] the petitioner filed a motion for reconsideration on November 18, 1998;[29]

- When the motion for reconsideration was denied on December 1, 1998,[30] petitioner filed on December 18, 1998 before the Commission on Elections a petition for certiorari and prohibition with prayer for preliminary injunction and asked the trial court to defer the proceedings of Election Case No. 11-27 until after his petition shall have been finally resolved which was granted by the trial court. Hence, the scheduled revision of the ballots on December 14, 15, 16 and 17, 1998 was cancelled and the proceedings of the case held in abeyance;[31]

- As the Comelec En Banc did not give due course to petitioner's prayer for writ of preliminary injunction, the trial court, upon motion of the private respondent, issued an order for the revision of ballots on February 8, 1999.[32] On said day, neither the petitioner's counsel nor his designated revisors appeared, instead the petitioner, assisted by his numerous armed men, numbering around 30 stated (sic) in strategic places, prevented the court personnel to enter the court premises. Were it not for the maximum tolerance exercised by the PNP personnel and the intervention of the local datu/leaders, there would have been bloodshed;

- On February 9, 1999, the petitioner's counsel filed a withdrawal of appearance with the attached letter-request of the petitioner asking for the deferment of the revision of ballots for at least two (2) weeks to enable him to engage the services of another counsel. Considering that the incident was designed to delay the further the early disposition of the case which would frustrate the ends of justice, the court held in abeyance its ruling on the withdrawal of appearance of and directed petitioner's counsel to handle the case after the appearance of a new counsel;[33]

- To further delay the proceedings of the case, the petitioner filed a petition for transfer of venue of the trial to from RTC, Branch 11, Malabang, Lanao del Sur to Iligan City or in Metro Manila which the private respondent did not oppose so as not to delay the early resolution of this Honorable Supreme Court on the said petition;

- Again, the proceedings of the case was held in abeyance in view of the pendency of the said petition for transfer of venue;

- After the dismissal of the petition in Election Case No. 52-98, the petitioner filed the instant petition for certiorari before this Honorable Supreme Court with a prayer for issuance of temporary restraining order;

- As a diabolical scheme to cause further delay of the proceedings of the case, the petitioner filed an urgent motion before this Honorable Supreme Court praying for the immediate issuance of a TRO directing the Presiding Judge, RTC, Branch III, Iligan City to cease, desist and refrain from conducting any further proceedings of Election Case No. 4847 until the instant case shall have been resolved. This Honorable Supreme Court, without granting the prayer for TRO, directed the RTC, Branch III, Iligan City not to promulgate any decision in the said election case until further order[s] from this most Honorable Court.[34]

It is clear, given the foregoing facts of this case, that the roundabout manner within which petitioner virtually substituted his answer by belatedly filing a motion to dismiss three (3) months later is a frivolous resort to procedure calculated to frustrate the will of the electorate. As pointedly observed by the COMELEC in its

challenged Resolution dated July 6, 1999,[35] petitioner only filed his motion to dismiss "when the results of the trial appear[ed] to be adverse to him"[36] or right after the creation of the Revision Committee had been ordered by the trial court. If petitioner truly intended to move for the preliminary hearing of his special and affirmative defenses as he claims, then he should have simultaneously moved for the preliminary hearing of his special and affirmative defenses at the time he filed his answer. Otherwise, he should have filed his motion to dismiss "within the time for but before filing the answer..." pursuant to Section 1, Rule 16 of the 1997 Rules of Civil Procedure.

Suffice it to state in this regard that such a whimsical change of mind by petitioner can not be countenanced much more so in election cases where time is of the essence in the resolution thereof. Indeed, the Omnibus Election Code states in no uncertain terms that —

SEC. 258. Preferential disposition of contests in courts. The RTC, in their respective cases, shall give preference to election contests over all other cases, except those of habeas corpus, and shall, without delay, hear and within thirty (30) days from the date of their submission for decision, but in every case within six (6) months after filing, decide the same. xxx[37] (emphasis and italics supplied)

Petitioner further argues that his submissions that a.) the integrity of the ballot boxes has been violated; b.) only rejected ballots or ballots manually counted are the proper subjects of an election protest; and c.) private respondent is guilty of forum-shopping, are enough grounds to dismiss the case.

We remain unconvinced.

As aptly observed by the COMELEC in the challenged Resolution, these grounds are "evidentiary in nature and can be best ventilated during the trial of the case." [38] It needs be stressed in this regard that the purpose of an election protest is to ascertain whether the candidate proclaimed elected by the board of canvassers is really the lawful choice of the electorate.[39] In an election contest where the correctness of the number of votes is involved, the best and most conclusive evidence are the ballots themselves; where the ballots can not be produced or are not available, the election returns would be the best evidence.[40] In this case, the counted official ballots are available and there is no evidence, other than the bare allegation of petitioner, that the sanctity of the ballot boxes subject matter of the protest have been violated or the official ballots contained therein impaired. The best way, therefore, to test the truthfulness of petitioner's claim is to open the ballot boxes in the protested precincts followed by the examination, revision, recounting and re-appreciation of the official ballots therein contained in accordance with law and pertinent rules on the matter. Needless to state this can only be done through a full-blown trial on the merits, not a peremptory resolution of the motion to dismiss on the basis of the bare and one-sided averments made therein.

Petitioner's reliance on COMELEC Resolution No. 2868[41] to support his restrictive claim that only rejected ballots or ballots manually counted in case of failure of the automated counting machines are the proper subjects of an election protest, is just as unpersuasive.

There is admittedly a lacuna leges in R.A. No. 8436 which prescribes the adoption of an automated election system. However, while conceding as much, this Court ruled in *Tupay Loong v. COMELEC*,[42] that the Commission is nevertheless not precluded from conducting a manual count when the automated counting system fails, reasoning thus:

x x x In enacting R.A. No. 8436, Congress obviously failed to provide a remedy where the error in counting is not machine related for human foresight is not all-seeing. We hold, however, that the vacuum in the law cannot prevent the COMELEC from levitating above the problem. Section 2(1) of Article IX (C) of the Constitution gives the COMELEC the broad power "to enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum and recall." Undoubtedly, the text and intent of this

provision is to give the COMELEC all the necessary and incidental powers for it to achieve the objective of holding free, orderly, honest, peaceful and credible elections. Congruent to this intent, this Court has not been niggardly in defining the parameters of powers of COMELEC in the conduct of our elections ... In the case at bar, the COMELEC order for a manual count was not only reasonable. It was the only way to count the decisive local votes ... The bottom line is that by means of the manual count, the will of the voters of Sulu was honestly determined. We cannot kick away the will of the people by giving a literal interpretation to R.A. 8436. R.A. 8436 did not prohibit manual counting when machine count does not work. Counting is part and parcel of the conduct of an election which is under the control and supervision of the COMELEC x x x

x x x Our elections are not conducted under laboratory conditions. In running for public offices, candidates do not follow the rules of Emily Post. Too often, COMELEC has to make snap judgments to meet unforeseen circumstances that threaten to subvert the will of our voters. In the process, the actions of COMELEC may not be impeccable, indeed, may even be debatable. We cannot, however, engage in a swivel chair criticism of these actions often taken under very difficult circumstances.

Verily, the legal compass from which the COMELEC should take its bearings in acting upon election controversies is the principle that "clean elections control the appropriateness of the remedy." [43]

Be that as it may, the fact is the averments in petitioner's counter-protest and private respondent's protest already justified the determination of the issues through a judicial revision and recounting of the ballots pursuant to Section 255 of the Omnibus Election Code which provides that —

SEC. 255. Judicial counting of votes in election contest.— 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 votes recounted. (Italics supplied)

So too must fall petitioner's procedural objection that private respondent should be faulted for forum-shopping vis-à-vis this Court's pronouncement in *Samad v. COMELEC* [44] which states in no uncertain terms that —

As a general rule, the filing of an election protest or a petition for quo warranto precludes the subsequent filing of a pre-proclamation controversy, or amounts to the abandonment of one earlier filed, thus depriving the COMELEC of the authority to inquire into and pass upon the title of the protestee or the validity of his proclamation. The reason is that once the competent tribunal has acquired jurisdiction of an election protest or a petition for quo warranto, all questions relative thereto will have to be decided in the case itself and not in another proceeding. This procedure will prevent confusion and conflict of authority. Conformably, we have ruled in a number of cases that after a proclamation has been made, a pre-proclamation case before the COMELEC is no longer viable.

The rule admits of exceptions, however, as where: (1) the board of canvassers was improperly constituted; (2) quo warranto was not the proper remedy; (3) what was filed was not really a petition for quo warranto or an election protest but a petition to annul a proclamation; (4) the filing of a quo warranto petition or an election protest was expressly made without prejudice to the pre-proclamation controversy or was made ad cautelam; and (5) the proclamation was null and void.

Petitioner's argument that the filing of a motion to dismiss in an election contest filed with a regular court is not a prohibited pleading is well taken. As we pointed out in *Melendres, Jr. v. COMELEC*: [45]

Neither can petitioner seek refuge behind his argument that the motion to dismiss filed by private respondent is a prohibited pleading under Section 1, Rule 13 of the COMELEC Rules of Procedure because the said provision refers to proceedings filed before the COMELEC. The applicable provisions on the matter are found in Part VI of the Rules of Procedure titled "PROVISIONS GOVERNING ELECTION CONTESTS BEFORE TRIAL COURT" and as this Court pointedly stated in *Aruelo v. Court of Appeals* [46]

It must be noted that nowhere in Part VI of the COMELEC Rules of Procedure is it provided that motions to dismiss and bill of particulars are not allowed in election protests or quo warranto cases pending before regular courts.

Constitutionally speaking, the COMELEC cannot adopt a rule prohibiting the filing of a certain pleading in the regular courts. The power to promulgate rules concerning pleadings, practice and procedure in all courts is vested in the Supreme Court.[47]

The foregoing pronouncement, however, will not extricate petitioner from his predicament because the denial of petitioner's motion to dismiss was based on the fact that the other grounds relied therein was considered unmeritorious and not because the said motion is a prohibited pleading in electoral protest cases. While the challenged COMELEC Resolution may not have been entirely correct in dismissing the petition in this regard, the soundness of its discretion to accord unto the trial court the competence to resolve the factual issues raised in the controversy cannot be doubted. Indeed, as reasoned by the COMELEC, the —

x x x Commission assumes the competence of the trial court to handle electoral protest and cannot encroach on its original and exclusive jurisdiction on electoral protest cases involving the contested mayoralty seat. To our mind, the trial court should be allowed to resolve the case on the merits to be able to rule on the factual and legal grounds raised by the petitioner as his defenses in his Answer. Should the petitioner be dissatisfied with the outcome of the case in the lower court, he can still appeal, as his relief, to this Commission within the reglementary period provided by law.

Moreover —

At balance, the question really boils down to a choice of philosophy and perception of how to interpret and apply the laws relating to elections; literal or liberal; the letter or the spirit; the naked provision or the ultimate purpose; legal syllogism or substantial justice; in isolation or in the context of social conditions; harshly against or gently in favor of the voter's obvious choice. In applying elections laws, it would be far better to err in favor of popular sovereignty than to be right in complex but little understood legalisms.[48]

WHEREFORE, in view of all the foregoing, the petition is hereby DISMISSED for lack of merit.

**SO ORDERED.**

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Mendoza, Quisumbing, Pardo, Buena, Gonzaga-Reyes, and De Leon, Jr., JJ., concur.

Panganiban, J., in the result.

Melo, Kapunan, and Purisima, JJ., on leave.

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[1] Rollo, p. 32.

[2] Record, pp. 72-74.

[3] Record, pp. 30-38.

[4] Ibid., pp. 39-45.

[5] Id., pp. 214-215.

[6] Id., pp. 216-218.

[7] Id., pp. 219-220.

- [8] Id., p. 221.
- [9] Id., p. 222.
- [10] Id., p. 58.
- [11] Id., pp. 59-69.
- [12] Id., pp. 80-89.
- [13] Id., pp. 90-124.
- [14] Id., pp. 125-143.
- [15] Id., pp. 26-28.
- [16] Id., pp. 144-174.
- [17] Id., pp. 175-184.
- [18] Rollo, p. 138; Annex O, Petition.
- [19] Record, pp. 223-225.
- [20] Ibid., p. 226.
- [12] Cauton v. COMELEC, 19 SCRA 911 [1967].
- [22] 73 Phil. 288 [1941].
- [23] Pangandaman v. COMELEC, G.R. No. 134340, 25 November 1999, p. 1, citing Punzalan v. COMELEC, 289 SCRA 702 [1998], citing Bince, Jr. v. COMELEC, 242 SCRA 273 [1995]; Pahilan v. Tabalba, 230 SCRA 205 [1994]; Aruelo, Jr. v. CA, 227 SCRA 311 [1993]; Tatlonghari v. COMELEC, 199 SCRA 849 [1991]; Unda v. COMELEC, 190 SCRA 827 [1990]; De Leon v. Guadiz, Jr., 104 SCRA 591 [1981].
- [24] Punzalan v. COMELEC, supra.
- [25] Rollo, pp. 241-243.
- [26] Record, pp. 59-69.
- [27] Ibid., pp. 80-89.
- [28] Id., pp. 26-28.
- [29] Id., pp. 144-174.
- [30] Rollo, p. 138; Annex O, Petition.
- [31] Ibid., p. 255; Annex 2, Comment.
- [32] Id., pp. 262-265; Annex 4, Comment.
- [33] Id., pp. 266-267; Annex 5, Comment.
- [34] Id., p. 204..
- [35] Id., pp. 32-40; Annex A, Petition.
- [36] Id., p. 39.

[37] See also Rule 35, Section 18 and Rule 36, Section 11, COMELEC Rules.

[38] Rollo, p. 40; Annex A, Petition, p. 9.

[39] Agpalo R., *The Law On Public Officers*, 1st ed. (1998), p. 58.

[40] *Lerias v. HRET*, 202 SCRA 808 [1991].

[41] Rollo, pp. 45-47; Annex C, Petition, which provides, inter alia, that:

SEC. 2. Filing of Protest. — Any losing candidate, who registers his objections on the rejection of ballots, may file a protest with the Commission within ten (10) days from proclamation of the winning candidates in accordance with the Comelec Rules of Procedure.

Only rejected ballots and ballots manually counted shall be the subject of protest.

SEC. 3. Examination of rejected ballots. — In determining the intent of the voter in the case of rejected ballots, the rejection of which have been objected to and noted in the Minute of Counting, the Commission shall examine and appreciate the rejected ballots concerned applying the provision of Section 7 of Resolution No. 2862 (Rules and Regulations on the Manual Counting and Canvassing of Votes in Case of Failure of the Automated Counting System in the September 9, 1996 Elections in the Autonomous Region in Muslim Mindanao [ARMM], promulgated 14 August 1996).

[42] G.R. No. 133676, 14 April 1999, 305 SCRA 832.

[43] *Pangandaman v. COMELEC*, supra, citing *Pacis v. COMELEC*, 25 SCRA 377 [1968].

**[44] 224 SCRA 631 [1993].**

[45] G.R. No. 129958, 25 November 1999, pp. 15-16.

**[46] 227 SCRA 311 [1993].**

[47] Citing Article VIII, Section 5 (5), Constitution.

[48] *Frivaldo v. COMELEC*, 257 SCRA 727 [1996].

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