

FERNANDO T. BALTAZAR, PETITIONER, VS. COMMISSION ON ELECTIONS, HON. ISAGANI PALAD, PRESIDING JUDGE, BRANCH 53, RTC, GUAGUA, PAMPANGA, AND CATALINA BAGASINA, RESPONDENTS.

G.R. No. 140158. January 29, 2001

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

In this petition for certiorari, petitioner seeks the reversal of the Resolution of the Commission on Elections (COMELEC) En Banc dated September 14, 1999 in SPR No. 46-98 claiming that it "is arbitrary, whimsical, capricious and constitutes an oppressive exercise of legal authority." [1]

The pertinent facts are simple.

Petitioner Fernando Baltazar and private respondent Catalina Bagasina were both candidates for the position of municipal mayor of Sasmuan, Pampanga during the May 11, 1998 local elections. After the canvassing of votes, the Municipal Board of Canvassers declared petitioner as the duly elected mayor of the municipality.

On June 29, 1998, private respondent filed with the Regional Trial Court of Guagua, Pampanga, an election protest which was docketed as Election Case No. G-898. Summons was served on petitioner on July 7, 1998. Thereafter, petitioner filed with the trial court his Answer with Counter-Protest. [2]

Private respondent filed a Motion To Expunge From The Records Of this Case Protestee's Answer And Counter-Protest on the ground that the same was filed out of time or three (3) days beyond the five-day reglementary period. [3]

The trial court granted private respondent's motion and declared that it has no jurisdiction to entertain the belatedly filed Answer with Counter-Protest. [4]

Petitioner's motion for reconsideration was denied by the trial court in an Order dated September 16, 1998. [5]

Dissatisfied, petitioner filed on October 15, 1998 a petition for certiorari with the COMELEC. [6] He alleged that his Answer with Counter-Protest was actually filed on July 13, 1998 as evidenced by a certification; and that the registry receipt was stamped the date July 14, 1998 because it was posted past two o'clock in the afternoon of July 13, 1998. The envelope, however, which contained the answer was postmarked July 15, 1998.

On September 14, 1999 public respondent COMELEC issued the challenged Resolution dismissing the petition reasoning, inter alia, that the date postmarked on the envelope is conclusively presumed to be the date of mailing, and the same cannot be overcome by a mere certification by the Operations Manager that the same was actually received on July 13, 1998, sent on July 14, 1998 but postmarked July 15, 1998.

Unfazed, petitioner elevated his cause to this Court on the grounds that -

- THE PETITIONER WAS DENIED DUE PROCESS OF LAW. THE REGIONAL TRIAL COURT GRANTED THE MOTION STRIKING OUT THE ANSWER WITH COUNTER PROTEST WITHOUT PRIOR NOTICE AND HEARING.
- THE ANSWER WITH COUNTER PROTEST WAS FILED WITHIN THE REGLEMENTARY PERIOD OF FIVE (5) DAYS. IT WAS FILED BY REGISTERED MAIL WITH RETURN CARD ON JULY 13, 1998 UNDER REGISTRY RECEIPT NO. 364. THE COMELEC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT RULED THAT IT WAS FILED ON JULY 14, 1998.
- THE COMELEC AND THE RESPONDENT REGIONAL TRIAL COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT RULED THAT THE ANSWER WITH COUNTER PROTEST WAS MAILED ON JULY 14, 1998 DESPITE THE CERTIFICATION OF THE OPERATIONS MANAGER OF THE PHILPOST MAIL MANAGEMENT CORPORATION WHERE THE ANSWER WITH COUNTER PROTEST WAS POSTED AND REGISTERED.

The foregoing questions raised by petitioner can be reduced to the primordial issue of whether or not the COMELEC gravely abused its discretion when it sustained the trial court's ruling to strike out petitioner's Answer with Counter-Protest on the ground that the same was filed out of time.

Petitioner argues, in sum, that since summons was served on him on July 7, 1998, his Answer with Counter-Protest filed on July 13, 1998 was within the reglementary period of five (5) days as shown by the Certification issued by the Philpost Mail Management Corporation.

On the other hand, private respondent contends that petitioner's allegations are belied by the Registry Receipt covering his Answer with Counter-Protest dated July 14, 1998 but with the date July 15, 1998 appearing on its covering envelope.

A long line of cases establish the basic rule that the courts will not interfere in matters which are addressed to the sound discretion of government agencies entrusted with the regulation of activities coming under their special technical knowledge and training.[7] However, when an administrative agency renders an opinion or issues a statement of policy, it merely interprets a pre-existing law and the administrative interpretation is at best advisory for it is the courts that finally determine what the law means.[8] Thus an action by an administrative agency may be set aside by the judicial department if there is an error of law, abuse of power, lack of jurisdiction or grave abuse of discretion clearly conflicting with the letter and spirit of the law.[9]

In the case at bar, there is no cogent reason to depart from the general rule because the findings of the COMELEC conforms rather than conflicts with the governing statute, implementing rules and controlling case law on the matter.

Rule 35, Section 7, sub-paragraphs (a), (b) and (e) of the COMELEC Rules of Procedure state that:

SECTION 7. Answer, Reply, Counter-Protest and Intervention. - (a) Within five (5) days after receipt of the notice of the filing of the petition and a copy of the petition, the respondent shall file his answer thereto specifying the nature of his defense and serve a copy upon the protestant. The answer shall deal only with the election in the precincts which are covered by the allegations of the protest.

(b) Should the protestee desire to impugn the votes received by the protestant in other precincts, he shall file a counter-protest within the same period fixed for the filing of the answer, serving a copy thereof upon the protestant by registered mail or by personal delivery. In such a case, the counter-protest shall be verified.

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(e) If no answer shall be filed to the protest, counter-protest or protest in intervention within the time limits respectively fixed, a general denial shall be deemed to have been entered.

A close scrutiny of the record shows that the envelope which contained petitioner's Answer with Counter-Protest was filed postmarked July 15, 1998. It is, therefore, clear that the pleading was filed three (3) days beyond the five-day reglementary period within which to file the same, considering that summons was served on him on July 7, 1998.

Petitioner places much reliance on the certification issued by the Operations Manager of the Philpost Mail Management Corporation, that a mail matter addressed to the Branch Clerk of Court of the Regional Trial Court, Branch 50, Guagua, Pampanga, was posted on July 13, 1998, but the registry receipt was dated July 14 because the posting was made after the cut-off time of 2:00 p.m. This, however, can not subvert the legal and conclusive presumption that the date postmarked on the envelope, i.e., July 15, 1998, was the date of mailing. Petitioner did not present the Operations Manager who issued the certification to testify on the document and overcome the presumption, despite being given the opportunity to do so.

It would be a legal absurdity for the Court to allow a mere certification, whose author has not been presented to testify on its veracity, to overthrow the evidentiary value of an uncontroverted documentary exhibit such as the Registry Receipt and the postmark actually stamped on the envelope itself to prove the actual date of mailing of the pleading. Indeed, if the Court has ruled that affidavits adduced to support charges of fraud and irregularities in election returns and the canvass thereof do not deserve credence,[10] how much more an unsworn certification whose author was not presented to attest to its truthfulness?

Consequently, since petitioner's Answer with Counter-Protest was filed out of time, the trial court correctly declared that it had no jurisdiction over the same.

The rule prescribing the ten-day period is mandatory and jurisdictional and the filing of an election protest beyond the period deprives the court of jurisdiction over the protest.[11] Violation of this rule should not be taken lightly nor should it be brushed aside as a mere procedural lapse that can be overlooked. The rule is not a mere technicality but an essential requirement, the non-compliance of which would oust the court of jurisdiction over the case.

In *Lim vs. COMELEC*,[12] citing *Kho vs. COMELEC*[13], this court reiterated the long standing rule that a counterprotest must be filed within the period provided by law, otherwise, the court acquires no jurisdiction to entertain it.[14]

Neither can petitioner insist that he was denied due process because he sought a reconsideration of the trial court's assailed order.[15]

It is settled that due process is satisfied when the parties are afforded fair and reasonable opportunity to explain their side of the controversy or an opportunity to move for a reconsideration of the action or ruling complained of.[16] (Italics ours)

Furthermore, the filing of the instant petition appears to be part of a perfidious plot to unduly prolong the proceedings to suit petitioner, who is the sitting incumbent. The following confluence of events, clearly showing a pattern of delay, were found by the COMELEC:

Besides, We take notice of the delaying tactics employed by petitioner during the proceedings in the court a quo, as claimed by private respondent when petitioner would not claim court orders, processes or pleadings served on him even when notified in order to buy time to delay the proceedings in the electoral contest:

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6.

At this juncture it is respectfully mentioned that the copy sent via Registered Mail with Return Card to the counsel of the herein petitioner, of the above pleading, entitled AUTHORITIES IN SUPPORT OF PROTESTANT'S MOTION TO EXPUNGE FROM THE RECORDS OF THIS CASE PROTESTEE'S ANSWER WITH COUNTER PROTEST, dated August 5, 1998 was not claimed by counsel for the Petitioner from the Post Office even after the second Notice given him on August 12, 1998 and a third Notice given him on August 14, 1998. These second and third notices with their corresponding dates are clearly stamped on the face of the envelope. As a result of such refusal to claim the said pleading by counsel of herein petitioner, said pleading was returned to sender with the clear annotation on the envelope "RETURN TO SENDER UNCLAIMED". Copy of the envelope containing the said pleading sent to counsel for the herein petitioner wherein are clearly stamped the above-mentioned annotations is hereto attached and made an integral part as Annex "4".

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12.

On September 7, 1998, counsel for the herein private respondent filed with the Court a quo his REJOINDER TO PROTESTEE'S REPLY DATED AUGUST 24, 1998, under date of September 7, 1998. Counsel for the herein petitioner was served a copy of said REJOINDER likewise via Registered Mail with Return Card, also on September 7, 1998. The Court received the REJOINDER on September 11, 1998 or only four (4) days later. The REJOINDER served on the counsel for the herein petitioner was RETURNED TO SENDER UNCLAIMED. It is noticeable on the face of the envelope which was returned to sender, the counsel of herein private respondent, that even after the third Notice under the date of September 18, 1998 or eleven (11) days from the date of service of the said pleading to him, the counsel for the herein petitioner did not bother to claim from the Post Office the said mail matter. It likewise appears from the Post Office rubber stamp that the Manila Post Office received for the first time said REJOINDER on September 10, 1998 or only three (3) days from its sending at Olongapo City Post Office by counsel of herein private respondent. Copy of the REJOINDER and the envelope which was RETURNED TO SENDER UNCLAIMED are hereto attached and made integral parts hereof as Annexes "10" and "11" respectively.[17]

The record likewise shows that aside from this petition docketed as SPR No. 46-98 of the COMELEC, the other issues raised by petitioner herein are, in fact, the very subject matter of another petition for certiorari docketed as SPR No. 47-99[18] still pending with the COMELEC.

From the date Election Case No. G-898 was commenced in June 1998 up to the date of the filing of the instant petition, questioning the ruling of the trial court on a mere incident, over one-half (½) of the three-year term of the disputed office has already elapsed. Given the pendency not only of Election Case No. G-898 before the trial court but also SPR No. 47-99 before the COMELEC, the expiry of the full three-year term of the contested office without both cases being resolved with finality is a distinct possibility.

These acts of petitioner which are deserving of rebuke from the Court can not be countenanced much more so considering that in election cases, time is of the essence in the resolution thereof. A careful perusal of the provisions of our election statutes as well as their implementing rules reflect a deep concern that the resort to the processes for the adjudication of election disputes should not be abused in this manner. 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[19] (emphasis and italics supplied)

By their very nature and given the public interest involved in the determination of the results of an election, the controversies arising from the canvass must be resolved speedily, otherwise the will of the electorate would be frustrated. And the delay brought about by the tactics resorted to by petitioner is precisely the very evil sought to be prevented by election statutes and controlling case law on the matter.

WHEREFORE, the petition is DISMISSED for lack of merit.

SO ORDERED.

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

[1] Rollo, p. 4.

[2] Record, p. 16.

[3] Rollo, p. 34-35.

[4] Ibid., pp. 38-39.

[5] Ibid., pp. 14-15.

[6] Id., pp. 1-11.

[7] *First Lepanto Ceramics, Inc. v. CA*, 253 SCRA 552 [1996], citing *Ysmael, Jr. & Co. v. Deputy Executive Secretary*, 190 SCRA 673 [1990].

[8] *Peralta v. Civil Service Commission*, 212 SCRA 425 [1992], citing *Victorias Milling Co., Inc. v. SSS*, 114 Phil. 555 [1962].

[9] Ibid., citing *Sagun v. PHHC*, 162 SCRA 411 [1988].

[10] *Casimiro v. COMELEC*, 171 SCRA 468 [1989], citing *Pimentel v. COMELEC*, 140 SCRA 126 [1985].

[11] *Gallardo v. Rimando*, 187 SCRA 463 [1990].

[12] 282 SCRA 53 [1997].

[13] 279 SCRA 463 [1997].

[14] *Melendres, Jr. v. COMELEC*, 319 SCRA 262 [1999]; see also *Maliwanag v. Herrera*, 25 SCRA 175 [1968].

[15] Record, pp. 28-31.

[16] *Factoran, Jr. v. CA*, 320 SCRA 530 [1999], citing *Paat v. CA*, 266 SCRA 167 [1997]; *Navarro v. Damaso*, 246 SCRA 260 [1995]; *Stayfast Philippine Corp. v. NLRC*, 218 SCRA 596 [1993]; *Vda. de Chua v. CA*, 287 SCRA 33 [1998].

[17] Rollo, pp. 30-31.

[18] Rollo, pp. 114-133.

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

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