

ROQUE FERMO, PETITIONER, VS. COMMISSION ON ELECTIONS AND MANUEL D. LAXINA SR., RESPONDENTS.

G.R. No. 140179. March 13, 2000

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

Before us is a Petition for Certiorari (with prayer for the issuance of a restraining order or a writ of preliminary injunction) assailing the Resolution[1] of the Commission on Elections (COMELEC)[2] in SPR No. 4-99 entitled "MANUEL D. LAXINA, SR. vs. ROQUE FERMO and Hon. AMANTE T. BANDAYREL" which annulled the order of the Metropolitan Trial Court (MTC) of Quezon City, Branch 40 granting petitioner Roque Fermo's (FERMO) motion for execution pending appeal.

The factual antecedents of this case are as follows:

"Manuel Laxina, Sr. and Roque Fermo were both candidates for the position of Punong Barangay, Barangay Batasan Hills, District II, Quezon City, during the May 12, 1997 elections. The canvassed results showed Laxina obtaining 1,957 votes and Fermo getting 1,712 votes. With a plurality of 245 votes, Laxina was proclaimed duly elected to the post. Subsequently, Fermo filed an election protest questioning the results in four (4) clustered precincts of Capitol Bliss and twenty four (24) COA precincts on the ground that the elections therein was attended by massive fraud and serious irregularities.

Summoned to answer, protestee Laxina filed his responsive pleading denying protestant's allegations of anomalies and interposed the defense that the 'conduct of the elections in Barangay Batasan Hills, District II, Quezon City, from the special registration of voters, the campaign as well as the voting and all the way to and until the counting, canvassing and tallying of votes and the proclamation of the winning candidates during the recent barangay elections has been generally honest, orderly and peaceful, with the result of the elections being truly reflective of the will of the electorate in the said barangay.'

Protestee then moved for the dismissal of the case on the ground that the same was filed beyond the ten day period allowed by law. The Court ruled that the case was seasonably filed, dismissed the motion to dismiss and ordered a judicial recount. For the purpose, a revision committee was constituted. After all the proceedings were terminated, the Court a quo rendered its decision holding that Fermo won the contested post. The Court's decision was promulgated on January 8, 1999. On the same date, Laxina filed a Notice of Appeal manifesting his intent to elevate the case to the Commission on Elections.

On January 12, 1999, Roque Fermo filed a Motion for Execution pending Appeal grounded on the following averments:

'That a decision was promulgated by the Honorable Court on January 8, 1999 whereby the protestant Roque Fermo was declared the winner in the May 12, 1997 Barangay Election in Batasan Hills, District II by a plurality of ONE HUNDRED THIRTY FOUR (134) votes over protestee, Manuel Laxina;

That there is good and special reason for the issuance of a Writ of Execution Pending Appeal, i.e., the possibility that the term of the contested seat might have expired already long before the appeal has been

decided;'

On January 19, 1999, Laxina opposed the motion maintaining that the Court had lost jurisdiction over the case because of the perfection of the appeal.

On January 20, 1999, the Court issued an Order granting execution pending appeal, the pertinent part of which reads:

"The Court is clothed with discretionary power to execute judgment pending appeal upon good reasons. The good reasons mentioned in protestant's Motion for Execution Pending Appeal is the possibility that the term of the contested seat of Barangay Captainship in Barangay Batasan Hills, Quezon City might have expired long before the appeal has been decided, considering also that the term of the contested office had past almost midway of the whole term. To do otherwise would not serve the end of justice.'"[3]

Not satisfied with the decision of the MTC, respondent Manuel D. Laxina (LAXINA) appealed to the COMELEC, which reversed the order of the MTC granting herein petitioner's motion for execution pending appeal. In reversing the MTC, the COMELEC found that the possibility that the term of the contested seat might expire by the time the appeal is decided was not a "good reason" to warrant execution pending appeal.

Hence this petition with prayer for the issuance of a temporary restraining order or a writ of preliminary injunction where petitioner assigns the following errors:

"RESPONDENT COMELEC ACTED WITHOUT OR IN EXCESS OF JURISDICTION AND/OR WITH GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OR EXCESS OF JURISDICTION -

A. IN HOLDING THAT THE REASON INVOKED BY PETITIONER IN HIS MOTION FOR EXECUTION PENDING APPEAL, i.e., SHORTNESS OF TERM IS INSUFFICIENT OR DOES NOT QUALIFY AS "GOOD REASONS" TO WARRANT EXECUTION PENDING APPEAL.

B. IN ANNULING THE JANUARY 20, 1999 ORDER OF MTC GRANTING THE MOTION FOR EXECUTION PENDING APPEAL ON THE GROUND THAT THE MTC COMMITTED GRAVE ABUSE OF DISCRETION.

C. IN ORDERING PETITIONER TO CEASE AND DESIST FROM FURTHER PERFORMING THE FUNCTIONS OF PUNONG BARANGAY AND TO RELINQUISH THE SAME TO PRIVATE RESPONDENT PENDING FINAL RESOLUTION OF THE LATTER'S APPEAL, IN EFFECT, GRANTING EXECUTION PENDING APPEAL IN FAVOR OF PRIVATE RESPONDENT WITHOUT ANY MOTION THEREFOR."[4]

In support of his petition, FERMO maintains that the COMELEC acted with grave abuse of discretion in ruling that the possibility that the term of the contested seat might expire long before the appeal is decided is not a good reason to warrant execution pending appeal. FERMO's theory is that such reason taken together with the finding of the MTC that the election was tainted with fraud and irregularities is sufficient reason to grant execution pending appeal. He further argues that even assuming the COMELEC did not err in annulling the order of execution, the COMELEC should not have ordered him to relinquish the position as this is tantamount to granting execution pending appeal in favor of LAXINA who did not file any such motion for that purpose nor cite any "good reasons" therefor. Moreover, the order of COMELEC in effect prejudged the pending appeal of FERMO considering that it ordered LAXINA to discharge the functions of Punong Barangay pending the resolution of the appeal.

On the other hand, private respondent LAXINA agrees with the COMELEC's conclusion that the "shortness of term" is not "good reason" to justify execution pending appeal. He argues that petitioner's allegations are mere

conjectures unsupported by any factual or legal basis.

Public respondent COMELEC contends that since the term of Barangay officials was extended to five (5) years or until 2002, the reliance of the petitioner on the "shortness of term" to justify execution pending appeal is not justified. Moreover, the decision of the MTC "contains questionable rulings which casts doubt on its validity." It was not clearly established that petitioner in fact won.[5]

The issue to be resolved in this petition is whether the COMELEC acted with grave abuse of discretion amounting to lack of or excess of jurisdiction in annulling the order of the MTC granting herein petitioner's motion for execution pending appeal on the ground that there were no "good reasons" for the issuance therefor.

We rule in the negative.

Execution of judgments pending appeal in election cases is governed by Section 2, Rule 39[6] of the Rules of Court which reads:

"Sec. 2. Discretionary execution. –

(a) Execution of a judgment or final order pending appeal. - On motion of the prevailing party with notice to the adverse party filed in the trial court while it has jurisdiction over the case and is in possession of either the original record or the record on appeal, as the case may be, at the time of the filing of such motion, said court may, in its discretion, order execution of a judgment or final order even before the expiration of the period to appeal.

After the trial court has lost jurisdiction, the motion for execution pending appeal may be filed in the appellate court.

Discretionary execution may only issue upon good reasons to be stated in a special order after due hearing."

A valid exercise of the discretion to allow execution pending appeal requires that it should be based "upon good reasons to be stated in a special order." The following constitute "good reasons" and a combination of two or more of them will suffice to grant execution pending appeal: (1.) public interest involved or will of the electorate; (2.) the shortness of the remaining portion of the term of the contested office; and (3.) the length of time that the election contest has been pending (emphasis supplied).[7] In *Lauban vs. COMELEC*[8], this Court ruled that "shortness of the remaining term of office and posting a bond are not good reasons for execution of a judgment pending appeal xxx".[9]

In the present case, the petitioner relies solely on one ground to support his petition i.e. "shortness of term". We find that the COMELEC committed no reversible error in ruling that:

"'Shortness of term', alone and by itself cannot justify premature execution. It must be manifest in the decision sought to be executed that the defeat of the protestee and the victory of the protestant has been clearly established."[10]

Moreover, Republic Act No. 8524,[11] which took effect in 1998, has extended the term of office of barangay officials to five (5) years, and this negates, or removes the factual basis for the finding of the MTC that the term of the contested office "had past almost midway of the whole term." COMELEC Chairman Harriet Demetriou correctly points out in her SEPARATE CONCURRING OPINION[12] that:

"Obviously, the court a quo erroneously assumed that the term of the barangay captains is only for three (3) years. Hence, the conclusion that the term of the contested office is almost in its midway. This, too, has no leg to stand on.

It shall be worth stressing that Republic Act No. 8524 which took effect sometime in 1998 extended the term

of office of barangay officials to five (5) years. Thus, it provides:

‘Section 1. Section 43 of Republic Act No. 1760, otherwise known as the Local Government Code of 1991, is hereby amended to read as follows:

‘SEC. 43. Term of Office. –xxx xxxx

‘c the term of barangay officials and members of the sangguniang kabataan shall be for five (5) years, which shall begin after the regular election of barangay officials on the second Monday of May 1997 xxx xxx.

Sec. 2. The provisions of this Act shall apply to the incumbent barangay officials xxx xxxx.’

Perfunctorily, the term of the contested office will expire in the year 2002 or more or less, three years from now. "[13]

Petitioner’s argument that COMELEC’s nullification of the MTC order does not imply that LAXINA is entitled to discharge the functions of Punong Brangay and that FERMO should cease and desist from performing said functions is flawed. The order of the COMELEC annulling the grant of execution pending appeal would be inutile if it did not have the effect of authorizing LAXINA to discharge the functions of Punong Barangay during the pendency of the appeal. When the COMELEC nullified the writ of execution pending appeal in favor of FERMO, the decision of the MTC proclaiming FERMO as the winner of the election was stayed[14] and the "status quo" or the last actual peaceful uncontested situation preceding the controversy[15] was restored. Thus, the COMELEC correctly ordered FERMO to cease and desist from performing the functions of Punong Barangay considering that LAXINA was the proclaimed winner of the election prior to FERMO’s filing of the election protest. The order for FERMO to relinquish his post to LAXINA pending final resolution of the appeal is a logical and necessary consequence of the denial of execution pending appeal.

Finally, there is nothing in the COMELEC Resolution which shows that the COMELEC made "conclusionary findings" which would in effect "pre-judge" the MTC decision itself. The Resolution categorically stated that the COMELEC shall not attempt to resolve who between LAXINA and FERMO has the right to occupy the contested seat for that question will appropriately be settled in the pending appeal. Although the Resolution cited certain "lapses patent on the decision itself" which "cast a cloud of uncertainty over the victory of Fermo", the observation was made to stress that no other justification other than the "shortness of term" would justify premature execution.

WHEREFORE, the instant petition is hereby DISMISSED for failure of the petitioner to show that respondent Commission on Elections acted with grave abuse of discretion in rendering the challenged Resolution dated September 16, 1999 in SPR No. 4-99.

Costs against petitioners.

SO ORDERED.

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

Pardo, J., abroad on official business.

[1] Rollo, pp. 32-44.

[2] EN BANC composed of the ponente, Comm. Manolo B. Gorospe; and the members Chairman Harriet O. Demetriou; Comm. Julio F. Desamito; Comm. Teresita Dy-Liaco Flores; Comm. Japal M. Guiani; Comm.

Luzviminda G. Tancangco; and Comm. Abdul Gani Marohombsar Al Hadji concurring.

[3] COMELEC Resolution, pp. 1-3; Rollo, pp. 32-34.

[4] Petition, pp. 10-11; Rollo, pp. 12-13.

[5] Comment of Public Respondent, at pp. 3-4.

[6] As amended by the 1997 Rules on Civil Procedure.

[7] Ramas vs. Comelec, 286 SCRA 189 at p. 205 [1998].

[8] G.R. No. 128473, Resolution dated August 26, 1997.

[9] Ibid., at p. 3.

[10] COMELEC Resolution, p. 5; Rollo, p. 36.

[11] "AN ACT CHANGING THE TERM OF OFFICE OF BARANGAY OFFICIALS AND MEMBERS OF THE SANGGUNIANG KABATAAN FROM THREE (3) YEARS TO FIVE (5) YEARS, AMENDING FOR THE PURPOSE SECTION 43 OF REPUBLIC ACT NUMBERED SEVEN THOUSAND ONE HUNDRED SIXTY, OTHERWISE KNOWN AS THE LOCAL GOVERNMENT CODE OF 1991, AND FOR OTHER PURPOSES"

[12] Rollo, pp. 40-44.

[13] Rollo, pp. 42-43.

[14] Under Rule 39, § 4 of the Rules of Court, only judgments in actions for injunction, receivership, accounting and support are immediately executory and are not stayed by an appeal taken therefrom unless otherwise ordered by the trial court.

[15] Verzosa vs. CA, 299 SCRA 100 at p. 109 [1998].

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