

ROLANDO E. COLUMBRES, PETITIONER, VS. COMMISSION ON ELECTIONS AND HILARIO DE GUZMAN, JR., RESPONDENTS.

G.R. No. 142038. September 18, 2000

Ponente: BUENA, J.

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BUENA, J.:

This petition for certiorari seeks the nullification of the COMELEC En Banc Resolution dated January 25, 2000 which affirmed the Resolution of the Second Division setting aside the decision of the Regional Trial Court of Dagupan City, Branch 40 in Election Case No. D- 31-98 annulling the election and proclamation of private respondent Hilario de Guzman, Jr. as Mayor of San Jacinto, Pangasinan in the May 11, 1998 elections.

Petitioner Rolando Columbres and private respondent Hilario de Guzman, Jr. were candidates for the position of Mayor of San Jacinto, Pangasinan during the May 11, 1998 elections. After canvassing, the Municipal Board of Canvassers proclaimed private respondent with 4,248 votes as against petitioner's 4,104 votes. Subsequently, petitioner filed an election protest with the Regional Trial Court docketed as Election Case No. D-31-98. Petitioner contested 42 precincts and prayed for the revision of ballots in the said precincts.

On December 7, 1998, the trial court rendered its decision, declaring petitioner as the duly elected mayor of San Jacinto, Pangasinan with 4,037 votes against 3,302 votes of private respondent.

Private respondent appealed the decision to the respondent COMELEC. The case was docketed as COMELEC EAC No. A-20-98 and raffled to the COMELEC Second Division.

On October 5, 1999, the Second Division promulgated its Resolution reversing and setting aside the decision rendered by the Regional Trial Court and, instead, affirmed the election and proclamation of private respondent. Private respondent was declared to have won by sixty-nine (69) votes.

Petitioner filed a motion for reconsideration with respect to the ruling of the COMELEC Second Division, validating 120 marked ballots in favor of private respondent, despite absence of evidence, to prove that the marks have been placed on the ballots by third persons other than the voters themselves. Petitioner likewise moved for a reconsideration of the decision with respect to the 111 ballots found by the trial court to have been written by two persons, but not so ruled upon by the Second Division, again in favor of private respondent. Lastly, petitioner claimed that the Second Division erred in totally disregarding his other objections and therefore urged the COMELEC EN BANC to review the findings of the Second Division.

On January 25, 2000, the respondent COMELEC En Banc issued its Resolution denying petitioner's motion for reconsideration and affirming the ruling of the Second Division.

In resolving petitioner's Motion for Reconsideration, the respondent COMELEC En Banc, in the herein assailed Resolution, said:

"xxx Protestant-appellee alleges that there were 124 ballots which were written by two (2) persons, and as such they should all be annulled. Instead, the Commission (Second Division) annulled only 13 ballots while

validating 111 ballots in favor of protestee-appellant Hilario de Guzman, Jr. Movant contends that the 13 ballots commonly invalidated by both the COMELEC (Second Division) and the trial court as having been written by two persons were no different from the 111 ballots validated by the Commission (Second Division) but invalidated by the trial court.

"x x x x x x x x

"xxx The finding by the Commission (Second Division) that the 111 questioned ballots were written by the same person is a finding of fact that may not be the subject of a motion for reconsideration. Movant protestant-appellee is not challenging the sufficiency of the evidence in this instance but the appreciation thereof by the Commission (Second Division)."[1]

"xxx Movant protestant-appellee (also) contends that there were 120 ballots erroneously validated by the Commission (Second Division) which were admittedly marked. He argues that whenever ballots contain markings very obvious and visible on their faces, the presumption is that the said markings on the ballots were placed thereat by the voter themselves - thus nullifying the said ballots. Stated otherwise, protestant-appellee argues that the purported markings on the questioned ballots are presumed to have been placed there by the voters themselves and, unless proven otherwise, nullifies the ballots.

"We disagree. The movant is relying on an erroneous and misleading presumption. The rule is that no ballot should be discarded as marked unless its character as such is unmistakable. The distinction should always be between marks that were apparently, carelessly, or innocently made, which do not invalidate the ballot, and marks purposely placed thereon by the voter with a view to possible future identification of the ballot, which invalidate it. (Cacho vs. Abad, 62 Phil. 564). The marks which shall be considered sufficient to invalidate the ballot are those which the voter himself deliberately placed on his ballot for the purpose of identifying it thereafter (Valenzuela vs. Carlos, 42 Phil. 428). In other words, a mark placed on the ballot by a person other than the voter himself does not invalidate the ballot as marked. (Tajanlangit vs. Cazenias, 5 SCRA 567)"[2]

Hence, the present petition.

Petitioner raises two issues:

1. Whether or not, the findings of fact of the COMELEC Division, especially so in matters of appreciation of ballots, is absolute and cannot be the subject of a Motion for Reconsideration before the COMELEC En Banc; and
2. Whether or not, in appreciation of ballots, when a ballot is found to be marked, absent any evidence aliunde, there is the presumption that the markings were placed by a third person, and therefore, should not invalidate the ballot.

On the first issue, indeed, the COMELEC erred when it declared that

"xxx it is emphatic that the grounds of motion for reconsideration should consist of insufficiency of evidence to justify the decision, order or ruling; or that the said decision, order or ruling is contrary to law. Nowhere in the provision can finding of fact be the subject of motion for reconsideration. The finding by the Commission (Second Division) that the 111 questioned ballots were written by the same person is a finding of fact that may not be the subject of a motion for reconsideration. Movant protestant-appellee is not challenging the sufficiency of the evidence in this instance but the appreciation thereof by the Commission (Second Division)."[3]

Section 1, Rule 19 of the COMELEC Rules of Procedure reads:

"Section 1. Grounds of Motion for Reconsideration. - A motion for reconsideration may be filed on the grounds that the evidence is insufficient to justify the decision, order or ruling; or that the said decision, order

or ruling is contrary to law."

Commissioner Dy-Liaco, in her Dissenting Opinion, correctly opined, and we quote:

"I dissent in part from the majority conclusion that finding of facts on the one hundred eleven (111) questioned ballots cannot be the subject of a motion for reconsideration considering that the movant protestant/appellee 'is not challenging the sufficiency of evidence in this instance but the appreciation thereof by the Commission (Second Division).' Protestant/Appellee in his discussion of his motion for reconsideration (p. 205 of the records of the case/ p. 24 of the MR pleading) imploring the Commission En Banc to review, re-examine and re-inspect the 111 ballots where the Trial Court and the Division disagreed and make its own final findings and determination, in effect disputes the ruling of the Second Division implying that the appreciation is contrary to law. Rule 19, Sec. 1 of the COMELEC Rules of Procedure enumerates the grounds that may be raised in motions for reconsideration and one of which is that the decision, order or ruling is contrary to law. Insufficiency of evidence to justify the decision, order, or ruling is not the only ground for the filing of motions for reconsideration. xxx

"When protestant/appellee argued that the appreciation of the Division is erroneous, there is the implication that such finding or ruling is contrary to law and thus, may be a proper subject of a motion for reconsideration."

To determine the winning candidate, the application of election law and jurisprudence in appreciating the contested ballots, is essential. Any question on the appreciation of the ballots would directly affect the sufficiency of the evidence supporting the declared winner. As the Solicitor General submits in his comment on the petition, any question on the sufficiency of the evidence supporting the assailed decision, order or ruling of a COMELEC Division is also a proper subject of a motion for reconsideration before the COMELEC en banc.

Moreover, the opposing conclusions of the trial court and the COMELEC Second Division should have prompted the COMELEC en banc to undertake an independent appreciation of the contested ballots to see for itself which of the conflicting rulings is valid and should be upheld.

Be that as it may, it is our considered opinion, and we rule, that the COMELEC en banc gravely abused its discretion in declaring that the COMELEC Division's findings on the contested ballots are findings of facts "that may not be the subject of a motion for reconsideration".

On the second issue, petitioner argues that the findings, both by the trial court as well as the COMELEC's Second Division, are similar - that said 120 ballots (Exhs "R," "R-1" and series) indeed, had markings but the trial court and the COMELEC Second Division differed in their conclusion. The trial court nullified the ballots (supposedly in favor of herein private respondent) for being admittedly marked. On the other hand, the Second Division declared the ballots valid because the marks were allegedly placed by third person/s, purposely to invalidate the ballots. Petitioner alleges that respondent COMELEC en banc gravely abused its discretion in presuming that the markings found on the ballots have been made by third persons, absent concrete evidence showing that they were placed by the voters themselves.

Petitioner is correct that there is no such presumption in law. Instead, the legal presumption is that the sanctity of the ballot has been protected and preserved. Where the ballot, however, shows distinct and marked dissimilarities in the writing of the names of some candidates from the rest, the ballot is void for having been written by two hands.[4] A ballot appearing to have been written by two persons is presumed to have been cast "as is" during the voting, and this presumption can only be overcome by showing that the ballot was tampered with after it was deposited in the ballot box.[5]

If the COMELEC Second Division found markings in the contested 111 ballots that were placed by persons other

than the voters themselves, then it should not have validated them. To rule the way it did, would require a showing that the integrity of ballots has not been violated. Otherwise, the presumption that they were placed "as is" in the ballot box stands.

In his Comment, the Solicitor General raised the following significant questions: "In the absence of showing that the ballot boxes were violated and that somebody else had access to the ballots, how was the COMELEC able to conclude that indeed said marks were placed by persons other than the voters?" Indeed, the poll body is mum on how third persons were able to access the questioned ballots. Furthermore, the COMELEC Second Division neither made a categorical finding as to whether the different markings on the ballots were deliberately placed so as to sufficiently identify them or not. Yet, the COMELEC en banc simplistically concluded that there was "nothing left for xxx [it] but to affirm the VALIDITY of the questioned 120 ballots in favor of protestee-appellant Hilario de Guzman, Jr."

In view of the foregoing circumstances, it appears that the COMELEC en banc was remiss in its duties to properly resolve the Motion for Reconsideration before it. It should have given a close scrutiny of the questioned ballots and determined for itself their validity, i.e., whether they were marked ballots or not. There is truly a need to actually examine the questioned ballots in order to ascertain the real nature of the alleged markings thereon. One has to see the writings to be able to determine whether they were written by different persons, and whether they were intended to identify the ballot.

WHEREFORE, the case is hereby remanded to the COMELEC en banc for it to physically re-examine the contested ballots and ascertain their validity. It is further directed to resolve this case within thirty (30) days from receipt of this decision in view of the proximity of the next elections.

This decision is immediately executory.

SO ORDERED.

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

[1] COMELEC Resolution dated January 25, 2000, pp. 4-5, Rollo, pp. 45-46.

[2] COMELEC Resolution dated January 25, 2000, pp. 3-4, Rollo, pp. 44-45.

[3] COMELEC Resolution dated January 25, 2000, pp. 4-5; Rollo, pp. 45-46.

[4] Rule 23, Sec 211, OEC; Protacio vs. De Leon, 9 SCRA 472 [1963], Tajanlangit vs. Cazeñas, 5 SCRA 567, [1962].

[5] Ruben E. Agpalo, Comments on the Omnibus Election Code, 1992 ed., p. 243, citing Gutierrez vs. Reyes, February 28, 1959.

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