

JAVIER E. ZACATE, PETITIONER, VS. COMMISSION ON ELECTIONS AND THELMA C. BALDADO, RESPONDENTS.

G.R. No. 144678. March 01, 2001

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

Before us is a petition for certiorari filed pursuant to Section 3, Rule 64 of the 1997 Rules of Court in relation to Section 13 (a) of COMELEC Rule 18.

The antecedents are:

Petitioner Javier E. Zacate (petitioner) and private respondent Thelma C. Baldado (private respondent) were candidates for the position of Mayor in the Municipality of Sulat, Eastern Samar, in the May, 1998 elections.

The Municipal Board of Canvassers proclaimed private respondent as the duly elected mayor having garnered two thousand nine hundred fifty-eight (2,958) votes as against the two thousand seven hundred nineteen (2,719) votes of petitioner, private respondent winning by two hundred thirty-nine (239) votes.

Dissatisfied with the outcome, petitioner filed an election protest before the Regional Trial Court of Borongan, Samar docketed as Election Protest No. 01-98.

On August 13, 1999, the trial court promulgated its Decision[1] dated August 3, 1999 declaring petitioner as the duly elected Mayor with 2,638 votes over the 2637 votes of private respondent, or with one vote as his winning margin.[2]

On the same date that the decision was promulgated, August 13, 1999, private respondent filed a notice of appeal. The following day, August 14, 1999, petitioner filed a Motion for Immediate Execution of Judgment Pending Appeal which private respondent opposed on the ground that she had already perfected her appeal.

On August 24, 1999, private respondent filed an Urgent Motion for Clarificatory Judgment contending that a clarificatory judgment should be made before ruling on any previous motion affecting the appealed decision since she and petitioner allegedly obtained equal number of votes of 2,637.

On August 27, 1999, petitioner filed a Supplemental Memorandum claiming that in the final computation of the votes in Precincts 4A and 15A1, the valid votes in his favor were omitted such that he should have won by 21 votes and not merely by one (1) vote.

On the same date, August 27, 1999, the trial court rendered its Supplemental Decision[3] that modified its original Decision dated August 3, 1999 by correcting the winning margin of petitioner to two (2) votes instead of one (1) vote.[4] The Supplemental Decision also denied the motion for execution of judgment pending appeal filed by petitioner on the ground of lack of jurisdiction because private respondent had already perfected her appeal.[5] The same Supplemental Decision further ordered the transmission of the complete records of the protest case to the Comelec.

On September 7, 1999 or six (6) days after petitioner received a copy of the Supplemental Decision, he filed a Motion for Partial Reconsideration (of the Supplemental Decision)[6] to reverse the denial of his motion for execution pending appeal. Petitioner contested the denial of his motion for execution pending appeal on two grounds. First, that the trial court did not lose jurisdiction over the case simply because private respondent had already perfected her appeal on August 13, 1999[7] and second, that good and valid grounds exist for the immediate execution of the judgment.[8]

After hearing, the trial court issued a Resolution[9] dated October 11, 1999 reversing its Supplemental Decision dated August 27, 1999. The Resolution ruled that the trial court still had jurisdiction over the motion for execution pending appeal[10], that there are good and valid reasons for granting execution pending appeal[11] and that the motion is not a prohibited pleading. In support of its ruling, the trial court cited the case of *Asmala vs. COMELEC*. [12]

On October 25, 1999, the trial court issued a Writ of Execution to enforce the judgment in Election Protest No. 01-98.

On October 26, 1999, private respondent filed a motion to cancel and rescind the order granting execution pending appeal but this was denied by the trial court on November 9, 1999.

On November 11, 1999, private respondent filed with the Comelec a petition for certiorari to annul the order granting execution pending appeal.

On March 21, 2000, the Comelec Second Division issued its now assailed Resolution[13] that granted the petition of private respondent and set aside the Resolution of the trial court dated October 11, 1999 and Writ of Execution dated October 25, 1999. In granting the petition, the Comelec ruled that the trial court had no more jurisdiction over the election case when it granted the motion for execution pending appeal of petitioner through its questioned Resolution dated October 11, 1999.[14] The Comelec pointed out that the trial court was no longer in possession of the original records of the case when petitioner filed his Motion for Partial Reconsideration since said court in its Supplemental Decision dated August 27, 1999 had already ordered the transmission of the records of the case to the Comelec.[15] The Comelec also noted that the trial court should not have entertained petitioner's Motion for Partial Reconsideration of the Supplemental Decision[16], the same being prohibited by the COMELEC Rules of Procedure (Rule 35, Section 19).[17]

On September 12, 2000, the Comelec En Banc[18] promulgated its Resolution denying the Motion for Reconsideration of petitioner of said March 21, 2000 Resolution of the Second Division.

In this petition, petitioner raises this sole issue:

"WHETHER OR NOT RESPONDENT COMELEC ACTED WITH GRAVE ABUSE OF DISCRETION BY ERRONEOUSLY RULING, WITHOUT ANY FACTUAL AND LEGAL BASIS, THAT THE TRIAL COURT HAD 'COMPLETELY LOST ITS JURISDICTION' OVER ZACATE'S 'MOTION FOR IMMEDIATE EXECUTION OF JUDGMENT PENDING APPEAL' WHICH WAS TIMELY FILED DURING THE PERIOD OF APPEAL AND WAS GRANTED SUBSEQUENTLY THEREAFTER." [19]

Petitioner asserts that in issuing the Resolution eventually granting the motion for immediate execution, the trial court was merely correcting the mistake it had previously committed in its Supplemental Decision wherein it denied the same motion. In said Supplemental Decision, the trial court justified the denial of the motion for execution pending appeal on the ground that the court had completely lost jurisdiction over the case upon the perfection of the appeal of private respondent. Petitioner argues that the denial of his motion for immediate execution was erroneous because the trial court retained jurisdiction over the case since petitioner still had the

right to appeal and it was during this period to appeal that he filed the motion for execution pending appeal. Petitioner then rationalizes that consequently, the order of the court to elevate the records of the case to the Comelec, a directive also embodied in the Supplemental Decision, is likewise erroneous.

In reversing the trial court, the Comelec focused on the fact that the trial court was no longer in possession of the records of the case when it issued the Resolution granting discretionary execution. The Comelec pointed out that prior to the issuance of the Resolution, the trial court in its Supplemental Decision had previously directed the elevation of the records of the case to the Comelec. The Comelec also noted that petitioner's motion for partial reconsideration of the Supplemental Decision was filed out of time since petitioner filed it six (6) days after receipt of the Supplemental Decision when the period to appeal under COMELEC Rules is five days. The Comelec Decision further declared that the motion for partial reconsideration of the Supplemental Decision filed by petitioner is prohibited under Section 19, COMELEC Rule 35 which states that the "decision of the trial court shall become final five (5) days after promulgation. No motion for reconsideration shall be entertained."

Petitioner counters that the mere transmittal of the records to the Comelec did not divest the court of jurisdiction since the records pertain to and are needed only in the appeal, but not in the separate motion for immediate execution. Petitioner further contends that granting that the trial court was deprived of the actual possession of the records of the case, the alleged baseless denial of his motion for immediate execution in the Supplemental Decision did not gain finality when he allegedly timely filed his motion for partial reconsideration. Petitioner also objects to the ruling of the Comelec that his motion for partial reconsideration of the Supplemental Decision is prohibited by the COMELEC Rules. The prohibition on the filing of a motion for reconsideration allegedly refers to the final decision of the main election protest, not to the partial or separate motion to execute said decision. According to petitioner, even assuming that the Supplemental Decision had become final, the trial court was not deprived of its jurisdiction to correct clerical errors, mistakes, or omissions as by amendment *nunc pro tunc*. Petitioner claims that with more reason should the trial court partially correct its Supplemental Decision denying his motion for execution pending appeal when it did not clearly and distinctly express the factual and legal basis for its denial.

On December 6, 2000, petitioner filed an Urgent Manifestation/Motion calling the attention of this Court to the Resolution dated November 24, 2000 issued by the Comelec First Division on the appeal filed by private respondent. The Resolution affirmed the decision of the regional trial court that declared petitioner as winner, this time with a winning margin of one hundred eight (108) votes. Petitioner believes that with the resolution of the Comelec affirming his victory, the issue on the motion for execution pending appeal has become moot and academic.

The Office of the Solicitor General (OSG) agrees with petitioner that he timely filed his motion for execution pending appeal and that the trial court committed an error when it denied said motion in its Supplemental Decision. Based on this premise, the OSG opines that the Resolution eventually issued by the trial court granting petitioner's motion for partial reconsideration and issuing a writ of execution pending appeal in favor of petitioner was validly issued, as it merely corrected its previous error. The OSG also cites the recent resolution of the Comelec declaring petitioner as the winner in the mayoralty election in Sulat, Samar.

On the other hand, private respondent defends the ruling of the Comelec. Private respondent maintains that the jurisdiction of the trial court over the motion for execution pending appeal ended when it denied said motion in its Supplemental Decision. Private respondent further points out that the trial court should not have acted on the motion for partial reconsideration of the Supplemental Decision filed by petitioner because it was filed out of time. Private respondent also reiterates the ruling of the Comelec that the motion for partial reconsideration of petitioner is prohibited by the COMELEC Rules of Procedure since said rule bars any kind of motion for

reconsideration.

Notwithstanding the Resolution dated November 24, 2000 of the Comelec First Division confirming the victory of petitioner, a decision which is still subject to the pending appeal of private respondent, we resolve to address the matter at hand.

Without doubt, the Supplemental Decision of the trial court denying petitioner's motion for execution pending appeal on the ground of lack of jurisdiction was incorrect because the denial was solely based on the fact that private respondent had already perfected her appeal. Even the Comelec and private respondent concede that the trial court still had jurisdiction to rule on petitioner's motion for execution pending appeal in view of the fact that petitioner's period to appeal had not yet lapsed.

Section 2, Rule 39 of the Rules of Court, the provision governing execution of judgments pending appeal in election cases, provides:

"SEC. 2. Discretionary execution.--

(a) Execution of a judgment or a final order pending appeal.--On motion of the prevailing 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."

Based on the foregoing, the trial court may only grant discretionary execution while it has jurisdiction over the case and is in possession of either of the original record or the record on appeal, as the case may be, at the time of the filing of such motion. When not all of the parties have perfected their appeal and the period to appeal has yet to expire, the trial court still retains its so-called "residual jurisdiction"[20] to order discretionary execution. Discretionary execution is thus barred when the trial court loses jurisdiction and this occurs when all of the parties have filed their respective appeals or when the period to appeal has lapsed for those who did not file their appeals and when the court is no longer in possession of the records of the case.

It must be recalled that petitioner still had the right to appeal and the period to appeal had not yet lapsed when he filed his motion for execution pending appeal. Clearly then, the trial court still had jurisdiction to rule on petitioner's motion for execution pending appeal because the appeal earlier filed by private respondent was without prejudice to petitioner's right to appeal or invoke the residual jurisdiction of the court to issue discretionary execution.

The crucial issue to consider is whether or not the trial court still had jurisdiction to correct its Supplemental Decision erroneously denying petitioner's motion for execution pending appeal by subsequently issuing its Resolution granting the motion for execution pending appeal.

We rule in the negative.

Basic is the rule that the perfection of an appeal within the statutory or reglementary period is not only mandatory but also jurisdictional and failure to do so renders the questioned decision final and executory, and deprives the appellate court or body of jurisdiction to alter the final judgment much less to entertain the appeal.[21] As we shall show hereunder, while petitioner timely filed his motion for execution pending appeal, petitioner belatedly filed the motion for reconsideration of the denial of his motion for execution pending appeal rendering said denial

final and executory.

The Supplemental Decision decided the main election case in favor of petitioner, but it ruled against petitioner's motion for execution pending appeal and ordered the elevation of the records of the case. Petitioner therefore was seeking relief from the denial of his motion for immediate execution. However, instead of timely seeking relief from the denial, petitioner allowed the period to appeal to lapse before moving for its reconsideration, making the Supplemental Decision final, including the denial of the motion for immediate execution embodied therein.

The COMELEC Rules of Procedure[22] provides that the parties have five (5) days to interpose an appeal before the Comelec, otherwise the judgment will become final. Despite the misleading allegations of petitioner that he filed the motion for the partial reconsideration of the Supplemental Decision on time, the facts of this case however show the contrary.

By his own account, petitioner admits that he received the Supplemental Decision on September 1, 1999 and that on September 7, 1999 or six days after, he then filed his motion for partial reconsideration of the denial of his motion for execution pending appeal as embodied in the Supplemental Decision. Petitioner alleges that his motion for partial reconsideration was timely filed because the fifth or last day for him to file his appeal, September 6, 1999, was a Sunday.[23] Upon verification, petitioner's claim is absolutely not true. The last day for petitioner to perfect his appeal, September 6, 1999, was actually a Monday and he filed his motion for reconsideration the next day, Tuesday, a day after the period to appeal had lapsed. Had the last day for filing the appeal been a Sunday, the time to appeal would not have run until the next working day[24], in which case, petitioner's motion for partial reconsideration would have been timely filed on the fifth and last day of the period to appeal.

By the mere lapse of time, the Supplemental Decision was rendered final and executory with respect to petitioner. Hence, as to petitioner, the decision in its entirety had been rendered final such that he had no more right to move for its reconsideration, even if the relief merely referred to an incidental matter. On the other hand, the trial court had the corresponding duty not to act on petitioner's motion for partial reconsideration of the Supplemental Decision when said decision as to petitioner was already final in character.

The case of *Asmala vs. Comelec*[25] does not apply to the case at bar. In that case, the issue was the timeliness of the filing of the motion for execution pending appeal while in this case, there is no dispute that petitioner's motion for execution pending appeal was timely filed. What sets this case apart from the case of *Asmala vs. Comelec* is the fact that the trial court in this case was completely without jurisdiction when it reconsidered its decision denying petitioner's motion for execution pending appeal. In *Asmala vs. Comelec*, petitioner's period to appeal had not yet lapsed when the trial court granted his motion for execution. In this case, when the trial court finally resolved to grant petitioner's motion for execution pending appeal, private respondent had already perfected her appeal while petitioner's period to appeal had already lapsed and the records of the case were already transmitted to the Comelec. It is clear that the jurisdiction of the trial court over the case had ended, including the residual jurisdiction to settle pending incidents. Thus, the Supplemental Decision denying the motion for execution pending appeal was already beyond rectification.

To defeat the finding that the Supplemental Decision had gained finality, petitioner foists the theory that the Supplemental Decision is allegedly void for contravening Section 14, Article III of the Constitution. This constitutional provision mandates that "no decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based." The Supplemental Decision allegedly failed to express clearly the factual and legal basis for the denial of the motion for execution pending appeal when it simply denied petitioner's motion for execution pending appeal in this manner without any further disquisition:

"Anent the motion for execution pending appeal filed by the protestant, the same is hereby denied for lack of

jurisdiction." [26]

Petitioner then concludes that the alleged void portion of the Supplemental Decision did not completely dispose of the issue of "lack of jurisdiction" and has therefore no binding effect on the parties to the case.

We do not agree with petitioner. Section 14, Article III of the Constitution clearly refers to decisions and not to rulings on a mere motion. As stated earlier, while the Supplemental Decision wrongly denied petitioner's motion for execution pending appeal, the remedy left for petitioner then was to timely seek relief from the erroneous ruling. This petitioner failed to do.

WHEREFORE, the petition is hereby DISMISSED.

Costs against petitioner.

SO ORDERED.

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

[1] Rollo, pp. 33-103.

[2] Ibid., p. 102.

[3] Ibid., pp. 109-118.

[4] Ibid., p. 117.

[5] Ibid., p. 118.

[6] Ibid., pp. 119-127.

[7] Ibid., pp. 119-124.

[8] Ibid., pp. 125-126.

[9] Ibid., pp. 128-141.

[10] Ibid., p. 138.

[11] Ibid., pp. 138-139.

[12] 289 SCRA 746 (1998).

[13] Per Presiding Commissioner Teresita Dy-Liacco Flores, concurred in by Commissioners Luzviminda G. Tancangco and Ralph C. Lantion.

[14] Rollo, p. 154.

[15] Ibid.

[16] Ibid., p. 155.

[17] "The decision of the Court shall be promulgated on a date set by it of which notice must be given the parties. It shall become final five (5) days after promulgation. No motion for reconsideration shall be entertained."

[18] EN BANC composed of the ponente, Comm. Ralph C. Lantion; and the members Chairman Harriet O.

Demetriou; Comm. Julio F. Desamito; Comm. Teresita Dy-Liacó Flores; Comm. Luzviminda G. Tancangco; Comm. Ralph C. Lantion; Comm. Rufino SB. Javier; and Comm. Mehol K. Sadain, concurring.

[19] Rollo, pp. 6-7.

[20] FLORENZ D. REGALADO, REMEDIAL LAW COMPENDIUM, VOL. I, SIXTH REV. ED., p. 509.

[21] Republic vs. Court of Appeals, 313 SCRA 376 (1999), p. 382.

[22] Supra.

[23] Rollo, p. 10.

[24] See Section 1, Rule 22 of the Rules of Court.

[25] Supra.

[26] Rollo, p. 118.

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