

CHARITO NAVAROSA, PETITIONER, VS. COMMISSION ON ELECTIONS, HONORABLE DEAN R. TELAN, AS PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 9, KALIBO, AKLAN AND ROGER M. ESTO, RESPONDE...

G.R. No. 157957. September 18, 2003

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This is a petition for certiorari of the Commission on Elections ("COMELEC") En Banc Resolution dated 15 April 2003 denying petitioner Charito Navarosa's motion for reconsideration of the COMELEC Second Division Resolution[1] dated 28 November 2002. The COMELEC Second Division Resolution ordered the execution pending appeal of the Decision[2] of the Regional Trial Court, Branch 9, Kalibo, Aklan, proclaiming respondent Roger M. Esto winner in the mayoralty race in the 14 May 2001 elections.

The Facts

Petitioner Charito Navarosa ("petitioner Navarosa") and respondent Roger M. Esto ("respondent Esto") were candidates for mayor of Libacao, Aklan in the 14 May 2001 elections. On 17 May 2001, the COMELEC Municipal Board of Canvassers of Libacao proclaimed petitioner Navarosa as the duly elected mayor, with a winning margin of three (3) votes over respondent Esto.[3]

Claiming that irregularities marred the canvassing of ballots in several precincts, respondent Esto filed an election protest docketed as Election Case No. 129 ("election protest") in the Regional Trial Court, Branch 9, Kalibo, Aklan ("trial court"). Petitioner Navarosa, who also claimed that canvassing irregularities prejudiced her, filed a counter-protest in the same case.

On 4 March 2002, after revision of the contested ballots, the trial court rendered judgment in favor of respondent Esto. The trial court found that respondent Esto obtained 4,595 votes over petitioner Navarosa's 4,553 votes. Thus, the trial court declared respondent Esto the elected mayor of Libacao by a margin of 42 votes and annulled the earlier proclamation of petitioner Navarosa. The trial court also ordered petitioner Navarosa to pay respondent Esto actual damages and attorney's fees. The dispositive portion of the decision provides:

WHEREFORE, judgment is hereby rendered:

a)

Declaring the Proclamation of xxx protestee [Navarosa] as the duly elected Mayor of Libacao, Aklan and the Certificate of Canvass of Votes and the Proclamation of the Winning Candidates for Municipal Offices, dated May 17, 2001, as null and void;

b)

Declaring the protestant, Roger M. Esto, as the duly elected Municipal Mayor of Libacao, Aklan in the May 14, 2001 election;

c)

Ordering the protestee [Navarosa] to pay the sum of P14,215.00 as actual and compensatory damages, and the amount of P50,000.00 as and for attorney's fees, plus the cost of suit.[4]

Petitioner Navarosa appealed the trial court's ruling to the COMELEC (EAC Case No. A-9-2002). Respondent Esto, on the other hand, filed with the trial court a motion for execution of the judgment pending petitioner Navarosa's appeal. Petitioner Navarosa opposed respondent Esto's motion. In the alternative, petitioner Navarosa offered to file a supersedeas bond to stay execution pending appeal, should the trial court grant respondent Esto's motion.

In its Order of 22 March 2002 ("Order"), the trial court granted respondent Esto's motion subject to the filing of a P300,000 bond. However, in the same order, the trial court also granted petitioner Navarosa's prayer to stay the execution pending appeal, upon filing a P600,000 supersedeas bond. The Order reads:

The Supreme Court has explicitly recognized and given approval to execution of judgments pending appeal in election cases, filed under existing election laws. In these cases, the immediate execution was made in accordance with Sec. 2, Rule 39 of the Rules of Court (Ramas et al. vs. COMELEC, et al., G.R. No. 130831, 2/10/98). There is, therefore, no question now that execution pending appeal may be granted.

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[T]he grant of execution would give substance and meaning to the people's mandate specially since the court has established protestant's right to the office (Lindo vs. COMELEC cited in the Ramas case); more than 10 months or nearly 1/3 of the 3-year term for Mayor had already lapsed (Gutierrez vs. COMELEC, G.R. 126298, 3-25-97; Tobon Uy vs. COMELEC also cited in the Ramas case). These are two "good reasons" to justify execution of the decision pending appeal.

[P]rotestee [Navarosa] however, prays in the alternative, that should execution pending appeal be granted, the same be stayed upon his [sic] filing of supersedeas bond to be fixed by the court under Sec. 3, Rule 39, 1997 Rules of Civil Procedure.

Unlike Sec. 2, Rule 39 where the grant of execution pending appeal is conditioned upon the presence of the "good and valid reason" for its grant, Sec. 3, Rule 39 does not provide for any condition precedent before the discretionary execution of Rule 2 may be stayed. All that it requires is that a sufficient supersedeas bond must be approved by the court conditioned upon the performance of the judgment allowed to be executed in case it shall be finally sustained in whole or in part. Under this section, therefore, the filing of a supersedeas bond sufficient in amount is enough to stay the execution granted under Sec. 2.

Moreover, the margin of 42 votes in the instant case is not so big, overwhelming or insurmountable as to be practically beyond or improbable of being overturned by the higher courts. xxx

WHEREFORE, in view of the foregoing[,] the court finds that the protestant, Roger M. Esto is entitled to the execution of the decision dated March 4, 2002, pending appeal, upon the filing of a bond which covers the salary and emoluments of the office of the Municipal Mayor of Libacao, Aklan and or the payment of all damages in the amount of P300,000.00, Philippine Currency, in cash, surety bond or real property with assessed value in said amount to be filed on or before April 3, 2002, furnishing copy thereof to the protestee or

his duly authorized representative.

The protestee, Charito Navarosa, considering that the margin is not so insurmountable as to be beyond reversal by the higher court[,] is hereby allowed to stay the execution of the decision of March 4, 2002 pending appeal, by filing a supersedeas bond in double the amount posted by the protestant, on or before April 3, 2002, furnishing copy thereof the protestant or his duly authorized representative.[5]

Both petitioner Navarosa and respondent Esto sought reconsideration of the Order but the trial court denied their motions on 5 April 2002.

Respondent Esto filed a petition for certiorari with the COMELEC against the Order. In her memorandum to the petition, petitioner Navarosa raised for the first time the issue of the trial court's failure to acquire jurisdiction over the election protest because of respondent Esto's failure to pay the COMELEC filing fee.

The Ruling of the COMELEC

In its Resolution dated 28 November 2002 ("Resolution"), the COMELEC Second Division affirmed the trial court's Order granting execution pending appeal and nullified the stay of the execution. The Second Division also found that respondent Esto duly paid the COMELEC filing fee. The Resolution reads:

Going now to the main issue at hand, did respondent judge gravely abuse his discretion and/or exceed his jurisdiction when he stayed the immediate execution of his decision on a finding of "good reasons" he made in his questioned Order of March 22, 2002 by allowing in the same Order the filing of a supersedeas bond double the amount posted by petitioner?

The answer is yes.

It is [for] the Commission on Elections, in the exercise of its appellate jurisdiction to issue the extraordinary writs of certiorari, prohibition, mandamus and injunction over all contests involving elective municipal officials decided by the trial courts of general jurisdiction elevated on appeal, and not the trial court, that may order the stay or restrain the immediate execution of the decision pending appeal granted by the trial court of general jurisdiction in an election contest. Except when the trial court reversed itself in a motion for reconsideration of its order granting immediate execution, it cannot later on stay or restrain the execution thereof in the guise of allowing the losing party to file a supersedeas bond. The issue before the trial court where a motion for execution pending appeal is filed is to determine whether or not there are "good reasons" to justify the immediate execution pending appeal. The issue is not whether x x x there are good reasons to stay the immediate execution of the decision pending appeal.

The trial court, by granting the immediate execution of the March 4, 2002 decision, recognized that the "good reasons" cited in the questioned Order constitute superior circumstances demanding urgency that will outweigh the injuries or damages to the adverse party if the decision is reversed. By declaring that petitioner Esto is the duly elected Mayor of Libacao, Aklan, the trial court gave substance and meaning to the people's mandate as expressed in the ballot, especially since it has established petitioner Esto's right to the office. The trial court cannot indirectly reverse its substantial finding of "good reasons" by a rule of procedure which does not strictly apply in election protest cases when it allowed the filing of a supersedeas bond under Section 3, Rule 39 of the 1997 Rules of Civil Procedure. To allow the application of the said procedural relief would defeat the right of the winning candidate in an election protest to hold the public office by virtue of the people's mandate expressed through the ballot and to perform the functions of the said public office.

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It is interesting to note that instead of expounding on the propriety of the supersedeas bond to stay the execution of a judgment in an election protest case, private respondent raised for the first time in his [sic] memorandum the issue of lack of jurisdiction of the trial court over the instant election protest for the alleged

failure of petitioner Esto to pay the filing fee of P300.00 required under Section 9, Rule 35 of the COMELEC Rules of Procedure. However, the records of Election Case No. 129 of the RTC of Kalibo, Aklan, Branch 9 showed otherwise. The Official Receipts issued by the RTC of Kalibo, Aklan shows [sic] that petitioners paid a total of P515.00 filing fees in Election Case No. 129 by specifically stating therein "[F]iling Fee in Election Case No. 129". At the time of filing the election protest, petitioner specified that the payment made was to cover the COMELEC filing fee for the election protest. Upon assessment, petitioner paid not only the amount of P300.00 required under Section 9, Rule 35 of the COMELEC Rules of Procedure, but a total sum of P515.00 as filing fees. While it is true that the issue of jurisdiction may be raised anytime, even on appeal, the same is of no moment now.[6]

Petitioner Navarosa sought reconsideration of this ruling but the COMELEC En Banc denied her motion on 15 April 2003.

Hence, this petition.

On 10 June 2003, the Court required the parties to maintain the status quo pending resolution of this petition.

The Issues

Petitioner Navarosa raises the following issues:

- WHETHER PUBLIC RESPONDENT COMELEC EN BANC ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT AFFIRMED THE 28 NOVEMBER 2002 RESOLUTION OF THE COMELEC SECOND DIVISION FOR FAILURE TO RULE ON THE BASIC ISSUE OF LACK OF JURISDICTION OF THE COURT A QUO OVER RESPONDENT ESTO'S ELECTION PROTEST FOR NON-PAYMENT OF THE MANDATORY COMELEC FILING FEE OF P300.00.
- WHETHER PUBLIC RESPONDENT COMELEC EN BANC ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT AFFIRMED THE 28 NOVEMBER 2002 RESOLUTION OF THE COMELEC SECOND DIVISION DESPITE THE FACT THAT THERE WERE NO "GOOD REASONS" TO EXECUTE THE 4 MARCH 2002 DECISION OF THE TRIAL COURT.
- WHETHER PUBLIC RESPONDENT COMELEC EN BANC ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT AFFIRMED THE 28 NOVEMBER 2002 RESOLUTION OF THE COMELEC SECOND DIVISION WHEN THE LATTER RULED THAT THE TRIAL COURT HAD NO POWER TO ORDER THE STAY OF EXECUTION OF ITS 4 MARCH 2002 DECISION PENDING APPEAL IN AN ELECTION CONTEST, BECAUSE SECTION 3, RULE 39 OF THE REVISED RULES OF COURT DOES NOT APPLY TO ELECTION CASES.[7]

The Ruling of the Court

The petition has no merit.

The Trial Court Acquired Jurisdiction Over Election Case No. 129

Petitioner Navarosa contends that the trial court did not acquire jurisdiction over the election protest because of respondent Esto's failure to pay the COMELEC filing fee under Rule 35, Section 9 of the COMELEC Rules of Procedure ("Section 9"). Procedurally, petitioner Navarosa should not have raised this jurisdictional issue in this petition which involves only the ancillary issue of whether to allow execution of the trial court's decision pending appeal. Nevertheless, as the question of the trial court's jurisdiction also affects its authority to issue ancillary orders such as its Order of 22 March 2002 subject of this petition, we have resolved to pass upon this issue.

Section 9 provides:

Filing Fee. — No protest, counter-protest, or protest-in-intervention shall be given due course without the payment of a filing fee in the amount of three hundred pesos (P300.00) for each interest.

Each interest shall further pay the legal research fee as required by law.

Respondent Esto must pay this filing fee before the trial court can exercise its jurisdiction over the election protest.[8] The COMELEC filing fee, to distinguish from the other mandatory fees under Rule 141 of the Rules of Court, as amended, is credited to the Court's General Fund.[9]

Petitioner Navarosa claims that although the receipts issued by the trial court show that respondent Esto paid P515 as "filing" and other fees, only P100 was credited to the General Fund. The rest of what respondent Esto paid accrued to the Judiciary Development Fund (P400), the Legal Research Fund (P10) and the Victim's Compensation Fund (P5).[10] Consequently, respondent Esto paid only P100 of the P300 COMELEC filing fee, for which reason the trial court did not acquire jurisdiction over the election protest. Petitioner Navarosa also claimed that the Second Division did not rule on this issue.

Contrary to petitioner Navarosa's claim, the COMELEC Second Division did rule on the issue of respondent Esto's non-payment of the full amount of the COMELEC filing fee. The Second Division held that the P515 fees respondent Esto paid already covered the P300 COMELEC filing fee.

However, based on the trial court's Election Fees Form for Election Case No. 129,[11] of the total amount of P515 respondent Esto paid, only P100 was indeed credited to the General Fund. Consequently, respondent Esto only paid P100 of the required P300 COMELEC filing fee.

In an earlier ruling,[12] the Court held that an election protest is not dismissible if the protestant, relying on the trial court's assessment, pays only a portion[13] of the COMELEC filing fee. However, in *Miranda v. Castillo*,[14] the Court, reiterating *Loyola v. Commission on Elections*,[15] held that it would no longer tolerate "any mistake in the payment of the full amount of filing fees for election cases filed after the promulgation of the *Loyola* decision on March 25, 1997." Nevertheless, our rulings in *Miranda* and *Loyola* are inapplicable to the present case.

At no time did petitioner Navarosa ever raise the issue of respondent Esto's incomplete payment of the COMELEC filing fee during the full-blown trial of the election protest. Petitioner Navarosa actively participated in the proceedings below by filing her Answer, presenting her evidence, and later, seeking a stay of execution by filing a supersedeas bond. Not only this, she even invoked the trial court's jurisdiction by filing a counter-protest against respondent Esto in which she must have prayed for affirmative reliefs.[16]

Petitioner Navarosa raised the issue of incomplete payment of the COMELEC filing fee only in her memorandum to respondent Esto's petition before the COMELEC Second Division. Petitioner Navarosa's conduct estops her from claiming, at such late stage, that the trial court did not after all acquire jurisdiction over the election protest. Although a party cannot waive jurisdictional issues and may raise them at any stage of the proceedings, estoppel may bar a party from raising such issues.[17] In *Pantranco North Express v. Court of Appeals*,[18] this Court applied the doctrine of estoppel against a party who also belatedly raised the issue of insufficient payment of filing fees to question the court's exercise of jurisdiction over the case. We held:

The petitioner raised the issue regarding jurisdiction for the first time in its Brief filed with public respondent [Court of Appeals] x x x After vigorously participating in all stages of the case before the trial court and even invoking the trial court's authority in order to ask for affirmative relief, the petitioner is effectively barred by estoppel from challenging the trial court's jurisdiction.

Indeed, in *Miranda and Loyola*, as in every other case[19] where we sustained the dismissal of the election protest for lack or incomplete payment of the COMELEC filing fee, the protestee timely raised the non-payment in a motion to dismiss. Before any revision of the contested ballots, the protestee filed a petition for certiorari questioning the trial court's jurisdiction before the COMELEC and eventually before this Court. In contrast, in the instant case, petitioner Navarosa did not raise the incomplete payment of the COMELEC filing fee in a motion to dismiss. Consequently, the trial court proceeded with the revision of the contested ballots and subsequently rendered judgment on the election protest. Petitioner Navarosa raised for the first time the incomplete payment of the COMELEC filing fee in her memorandum before the COMELEC Second Division.

Thus, estoppel has set in precluding petitioner Navarosa from questioning the incomplete payment of the COMELEC filing fee, and in effect assailing the exercise of jurisdiction by the trial court over the election protest. The law vests in the trial court jurisdiction over election protests although the exercise of such jurisdiction requires the payment of docket and filing fees by the party invoking the trial court's jurisdiction.[20] Estoppel now prevents petitioner Navarosa from questioning the trial court's exercise of such jurisdiction, which the law and not any act of the parties has conferred on the trial court. At this stage, the remedy for respondent Esto's incomplete payment is for him to pay the P200 deficiency in the COMELEC filing fee.[21] It is highly unjust to the electorate of Libacao, Aklan, after the trial court has completed revision of the contested ballots, to dismiss the election protest and forever foreclose the determination of the true winner of the election for a mere P200 deficiency in the COMELEC filing fee. We repeat that:

[E]lection contests involve public interest, and technicalities and procedural barriers should not be allowed to stand if they constitute an obstacle to the determination of the true will of the electorate in the choice of their elective officials. And also settled is the rule that laws governing election contests must be liberally construed to the end that the will of the people in the choice of public officials may not be defeated by mere technical objections. In an election case the court has an imperative duty to ascertain by all means within its command who is the real candidate elected by the electorate.[22]

Good Reasons Exist to Grant Execution

Pending Appeal in this Case

To grant execution pending appeal in election protest cases, the following requisites must concur: (1) there must be a motion by the prevailing party with notice to the adverse party; (2) there must be "good reasons" for the execution pending appeal; and (3) the order granting execution pending appeal must state the "good reasons." [23] Petitioner Navarosa concedes respondent Esto's compliance with the first and third requisites. What she contests is the trial court's finding that there are "good reasons" to order discretionary execution of its decision.

In *Ramas v. Commission on Elections*, [24] the Court, after reviewing pertinent jurisprudence, summarized the circumstances qualifying as "good reasons" justifying execution pending appeal, thus:

In a nutshell, the following constitute "good reasons," and a combination of two or more of them will suffice to grant execution pending appeal: (1) the public interest involved or the 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.

The trial court in the present case, relying on cases [25] reviewed in *Ramas*, invoked two "good reasons" to justify its order allowing execution pending appeal. First, the order will "give substance and meaning to the people's mandate." Second, "more than 10 months or nearly 1/3 of the 3-year term" of the office in question had already lapsed. The COMELEC found these "good reasons" sufficient. Being consistent with *Ramas*, we find no grave abuse of discretion in the ruling of the trial court or of the COMELEC.

Petitioner Navarosa's invocation of *Camlian v. Commission on Elections*[26] is unavailing. In *Camlian*, the COMELEC ruled that circumstances such as "public interest in the true outcome of the elections[;] that the protestee illegally manufactured votes[;] and that the appeal was interposed for delay" do not suffice to justify execution pending appeal. On appeal, we sustained the COMELEC, noting that "not every invocation of public interest with x x x reference to the will of the electorate can be appreciated as a good reason especially so if the same appears to be self-serving and has not been clearly established." The Court further pointed out that the protestant failed to substantiate his claim that the appeal is dilatory as it in fact assails the trial court's ruling. These circumstances are absent in the present case, precluding *Camlian's* application.

Section 3 of Rule 39 Not Applicable

To Election Protest Cases

Unlike the Election Code of 1971,[27] which expressly provided for execution pending appeal of trial courts' rulings in election protests, the present election laws are silent on such remedy. Nevertheless, Section 2, Rule 39 ("Section 2") of the Rules of Court (now 1997 Rules of Civil Procedure) applies in suppletory character to election cases, thus allowing execution pending appeal in the discretion of the court. As explained in *Ramas*:

The Omnibus Election Code of the Philippines (B.P. Blg. 881) and the other election laws do not specifically provide for execution pending appeal of judgment in election cases, unlike the Election Code of 1971 whose Section 218 made express reference to the Rules of Court on execution pending appeal; xxx

The failure of the extant election laws to reproduce Section 218 of the Election Code of 1971 does not mean that execution of judgment pending appeal is no longer available in election cases. In election contests involving elective municipal officials, which are cognizable by courts of general jurisdiction; and those involving elective barangay officials, which are cognizable by courts of limited jurisdiction, execution of judgment pending appeal under Section 2 of Rule 39 of the Rules of Court are permissible pursuant to Rule 143 of the Rules of Court, which is now Section 4, Rule 1 of the 1997 Rules of Civil Procedure. This Section 4 provides:

SEC 4. In what cases not applicable.- These Rules shall not apply to election cases, land registration, cadastral, naturalization and insolvency proceedings, and other cases not herein provided for, except by analogy or in a suppletory character and whenever practicable and convenient.

As to election cases involving regional, provincial, and city officials, which fall within the exclusive original jurisdiction of the COMELEC, Section 3 of Article IX-C of the Constitution vests the COMELEC with the authority to promulgate its rules of procedure in order to expedite disposition of election cases, including pre-proclamation controversies. Additionally, Section 52(c), Article VII of the Omnibus Election Code empowers the COMELEC to promulgate rules and regulations implementing the provisions of the Code or other laws which it is required to enforce and administer. Accordingly, the COMELEC promulgated the COMELEC Rules of Procedure. Section 1 of Rule 41 thereof expressly provides that "[i]n the absence of any applicable provision in [said] Rules, the pertinent provisions of the Rules of Court in the Philippines shall be applicable by analogy or in a suppletory character and effect." [28]

In the earlier case of *Gahol v. Riodique*,[29] the Court explained the legislative intent behind the enactment of Section 218 of the Election Code of 1971. In *Gahol*, the Court gave an additional justification for allowing execution pending appeal of decisions of trial courts, thus:

xxx [T]his innovative provision is the product of the bad experience of the people under the previous election laws. Public policy underlies it. xxx [S]omething had to be done to strike the death blow at the "pernicious grab-the-proclamation-prolong-the-protest" technique often, if not invariably, resorted to by unscrupulous politicians who would render nugatory the people's verdict against them and persist in continuing in an office

they very well know they have no legitimate right to hold. xxx [T]o uphold the theory of Protestee that the very nature of the matter in dispute in election contests, the holding of a public office and the performance of its functions, makes gravely doubtful the propriety of an execution pending appeal, what with the possible placing of the corresponding powers of government in the hands of one who might ultimately turn out not to be really entitled to the position, is to negate the unquestionable and patent intent of the legislature to give as much recognition to the worth of a trial judge's decision as that which is initially ascribed by the law to the proclamation by the board of canvassers. Why should the proclamation by the board of canvassers suffice as basis of the right to assume office, subject to future contingencies attendant to a protest, and not the decision of a court of justice? Indeed, when it is considered that the board of canvassers is composed of persons who are less technically prepared to make an accurate appreciation of the ballots, apart from their being more apt to yield extraneous considerations, that the board must act summarily, practically [racing] against time, while, on the other hand, the judge has the benefit of all the evidence the parties can offer and of admittedly better technical preparation and background, apart from his being allowed ample time for conscientious study and mature deliberation before rendering judgment, one cannot but perceive the wisdom of allowing the immediate execution of decisions in election cases adverse to the protestees, notwithstanding the perfection and pendency of appeals therefrom, as long as there are, in the sound discretion of the court, good reasons therefor. (Emphasis supplied)

Thus, a primordial public interest — to obviate a hollow victory for the duly elected candidate as determined by the trial court — lies behind the present rule giving suppletory application to Section 2. Only a more compelling contrary policy consideration can prevent the suppletory application of Section 2. In insisting that the simple expedient of posting a supersedeas bond can stay execution pending appeal, petitioner Navarosa neither claims nor offers a more compelling contrary policy consideration. Instead, she merely contends that Section 3 of Rule 39 ("Section 3") applies also in a suppletory character because its "Siamese twin"[30] provision, Section 2, is already being so applied. Such simplistic reasoning both ignores and negates the public interest underlying Section 2's application. We cannot countenance such argument.

Furthermore, a supersedeas bond under Section 3 cannot fully protect the interests of the prevailing party in election protest cases. Section 3 provides:

Stay of discretionary execution. — Discretionary execution issued under the preceding section may be stayed upon approval by the proper court of a sufficient bond, filed by the party against whom it is directed, conditioned upon the performance of the judgment or order allowed to be executed in case it shall be finally sustained in whole or in part. The bond thus given may be proceeded against on motion with notice to the surety. (Emphasis supplied)

A supersedeas bond secures the performance of the judgment or order appealed from in case of its affirmation.[31] Section 3 finds application in ordinary civil actions where the interest of the prevailing party is capable of pecuniary estimation, and consequently, of protection, through the filing of a supersedeas bond. Thus, the penultimate sentence of Section 3 states: "[T]he bond thus given may be proceeded against on motion with notice to the surety." Consequently, it finds no application in election protest cases where judgments invariably include orders which are not capable of pecuniary estimation such as the right to hold office and perform its functions. As well observed by the COMELEC Second Division in its Resolution in the instant case:

The supersedeas bond, as used under Section 3, Rule 39 of the 1997 Rules of Civil Procedure, refers to a bond, either in cash or a surety bond, filed by the losing party in an ordinary civil action to secure the performance or to satisfy the judgment appealed from in case it is affirmed on appeal in favor of the prevailing party. A supersedeas bond is filed purposely for the performance of the judgment appealed from in case it is affirmed by the appellate court. On the assumption that the filing of the supersedeas bond applies in an election protest case, the practical considerations of the matter dictate that it cannot secure the performance of or satisfy the

judgment rendered in an election protest which basically involves the right to hold a public office and the performance of its functions in accordance with the mandate of the law, except insofar as the monetary award provided in the special order. By allowing the filing of a supersedeas bond to stay the execution of a judgment in an election protest declaring the protestant, as in the case of petitioner herein, as the winning candidate who is entitled to the right to hold and perform the functions of the contested public office, would render the judgment in an election protest illusory. xxx While the supersedeas bond ensures that the appealed decision if affirmed is satisfied, in an election protest case, such bond, in the event the appealed case is affirmed and the execution pending appeal is proven to be meritorious, cannot adequately answer for the deprivation of a duly elected candidate of his post, and his constituents of their leader of choice, such deprivation being unquantifiable.[32] (Emphasis added)

As applied to the present case, the supersedeas bond petitioner Navarosa filed can only answer for that portion of the trial court's ruling ordering her to pay to respondent Esto actual damages, attorney's fees and the cost of the suit. It cannot secure execution of that portion proclaiming respondent Esto duly elected mayor of Libacao, Aklan by popular will of the electorate and authorizing him to assume the office. This anomalous situation defeats the very purpose for the filing of the supersedeas bond in the first place.

In sum, the Court holds that the COMELEC did not commit grave abuse of discretion in ordering execution pending appeal of the trial court's decision. Grave abuse of discretion implies capricious and whimsical exercise of judgment amounting to lack of jurisdiction, or arbitrary and despotic exercise of power because of passion or personal hostility. The grave abuse of discretion must be so patent and gross as to amount to an evasion or refusal to perform a duty enjoined by law.[33] This does not obtain in the present case.

WHEREFORE, we DISMISS the instant petition. The Resolution dated 28 November 2002 of the COMELEC Second Division, and the Resolution dated 15 April 2003 of the COMELEC En Banc, are AFFIRMED. The status quo order dated 10 June 2003 is LIFTED and the COMELEC is directed to cause the implementation of the Decision of the Regional Trial Court of Kalibo, Aklan, Branch 9, in Election Case No. 129, without prejudice to any judgment the COMELEC may render in EAC Case No. A-9-2002. Moreover, respondent Roger M. Esto shall pay immediately the P200 deficiency in the COMELEC filing fee.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., Azcuna, and Tinga, JJ., concur.

[1] Penned by Commissioner Mehol K. Sadain with Commissioners Ralph C. Lantion and Florentino A. Tuason, Jr., concurring.

[2] Penned by Judge Dean R. Telan.

[3] Petitioner Navarosa received 4,876 votes while respondent Esto obtained 4,873 votes.

[4] Rollo, pp. 84-85.

[5] Rollo, pp. 155-157.

[6] Rollo, pp. 44-48.

[7] Ibid., pp. 16-17.

[8] Gatchalian v. Court of Appeals, 315 Phil. 134 (1995).

[9] *Soller v. Commission on Elections*, G.R. No. 139853, 5 September 2000, 339 SCRA 685; *Miranda v. Castillo*, G.R. No. 126301, 19 June 1997, 274 SCRA 503; *Loyola v. COMELEC*, 337 Phil. 134 (1997); *Gatchalian v. Court of Appeals*, 315 Phil. 134 (1995); *Pahilan v. Tabalba*, G.R. No. 110170, 21 February 1994, 230 SCRA 205.

[10] *Rollo*, pp. 19-20.

[11] *Ibid.*, p. 74.

[12] *Pahilan v. Tabalba*, *supra*, note 9.

[13] In case of non-payment of filing fees, the election protest will be dismissed (see *Gatchalian v. Court of Appeals*, 315 Phil. 134 [1995]).

[14] G.R. No. 126301, 19 June 1997, 274 SCRA 503.

[15] 337 Phil. 134 (1997).

[16] The records do not contain a copy of petitioner Navarosa's Answer.

[17] *La Campana Food Products, Inc. v. Court of Appeals*, G.R. No. 88246, 4 June 1993, 223 SCRA 151; *Martinez v. De la Merced*, G.R. No. 82039, 20 June 1989, 174 SCRA 182; *Tajonera v. Lamaroza*, G.R. Nos. 48907 & 49035, 19 December 1981, 110 SCRA 438; *Summit Guaranty & Insurance Co., Inc. v. Court of Appeals*, L-51539, 14 December 1981, 110 SCRA 241; *People v. Munar*, G.R. No. L-37642, 22 October 1973, 53 SCRA 278.

[18] G.R. No. 105180, 5 July 1993, 224 SCRA 491, reiterated in *National Steel Corporation v. Court of Appeals*, 362 Phil. 150 (1999).

[19] *Soller v. Commission on Elections*, G.R. No. 139853, 5 September 2000, 339 SCRA 685; *Melendres, Jr. v. Commission on Elections*, 377 Phil. 275 (1999); *Gatchalian v. Court of Appeals*, 315 Phil. 134 (1995).

[20] Section 22 of Republic Act No. 7166 vests Regional Trial Courts ("RTCs") with exclusive original jurisdiction over election protests involving municipal officials. The payment of the COMELEC filing fee merely allows the RTCs to exercise such jurisdiction. (For a distinction between subject matter jurisdiction and exercise of jurisdiction, see *Lim v. Pacquing*, G.R. No. 115044, 1 September 1994, 236 SCRA 211).

[21] For a grant of similar remedy, see *National Steel Corporation v. Court of Appeals*, 362 Phil. 150 (1999).

[22] *Juliano v. Court of Appeals*, 127 Phil. 207 (1967).

[23] *Alvarez v. Commission on Elections*, G.R. No. 142527, 1 March 2001, 353 SCRA 434.

[24] G.R. No. 130831, 10 February 1998, 286 SCRA 188, reiterated in *Santos v. Commission on Elections*, G.R. No. 155618, 26 March 2003.

[25] *Gutierrez v. Commission on Elections*, 337 Phil. 143 (1997), and *Tobon Uy v. Commission on Elections*, G.R. No. 88158, 4 March 1992, 206 SCRA 779.

[26] 338 Phil. 474 (1997).

[27] Section 218 provides: "Assumption of office notwithstanding an election contest. — Every candidate for provincial, city, municipal or municipal district office duly proclaimed elected by the corresponding board of canvassers shall assume office, notwithstanding the pendency in the courts of any contest against his election, without prejudice to the final decision thereon and applicable provisions of the Rules of Court regarding execution of judgment pending appeal."

[28] Ramas v. Commission on Elections, *supra*, note 24. For prior but identical rulings, see Lindo v. Commission on Elections, G.R. No. 127311, 19 June 1997, 274 SCRA 511; Garcia v. Commission on Elections, G.R. No. 88158, 4 March 1992, 206 SCRA 779.

[29] G.R. No. L-404115, 27 June 1975, 64 SCRA 494.

[30] Rollo, pp. 27-30.

[31] De Leon v. De los Santos, 78 Phil. 461 (1947).

[32] Rollo, pp. 46-48.

[33] Alafriz vs. Nable, 72 Phil. 278 (1941).

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