

NELSON P. PATULOT, PETITIONER, VS. JOSE L. UMALI, THE BOARD OF ELECTION TELLERS OF SAN SEBASTIAN, LIPA CITY AND THE ELECTION OFFICER OF LIPA CITY, RESPONDENTS.

G.R. NO. 158139. August 12, 2005

Ponente: AZCUNA, J.

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AZCUNA, J.:

Petitioner Nelson P. Patulot and respondent Jose L. Umali were contending candidates for Barangay Chairman in the barangay elections of July 15, 2002.

Patulot's certificate of candidacy was ordered cancelled, for non-residence, by the Commission on Elections (Comelec).

Patulot filed a petition for mandamus in the Regional Trial Court (RTC) of Lipa City, Branch 85. The RTC decided in his favor and ordered the board of canvassers to reconvene and include the votes cast in his favor.

Umali filed a petition for certiorari in the Court of Appeals (CA). The CA set aside the RTC's decision. It held that Patulot should have filed a motion for reconsideration in the Comelec, not go to the RTC, and that the Board of Canvassers cannot be faulted for not counting his votes since Comelec cancelled his certificate of candidacy.

Petitioner (Patulot) thereupon appealed to this Court under Rule 45 of the Rules of Court.

Petitioner claims Umali went to the CA on Rule 65 of the Rules of Court and that he should have appealed from the RTC decision. Also, petitioner asserts that the Comelec cancelled his certificate without notice to him, *motu proprio* - so his remedy is not to file a motion for reconsideration with the Comelec, and the RTC had jurisdiction over his mandamus petition.

Petitioner's contention that he was not notified of COMELEC Resolution No. 5038, which cancelled his certificate of candidacy and disqualified him, is not correct. At 5:30 o'clock in the afternoon and at 7:30 o'clock in the evening of July 15, 2002, the day of the election, petitioner was notified of COMELEC Resolution No. 5038. Yet, he did not act to seek a reconsideration of the Resolution of the COMELEC, rendering said COMELEC Resolution No. 5038 final and executory.

During the ex-parte hearing of the petition for mandamus before the Regional Trial Court of Lipa City, petitioner testified:

"Q

After you [] unofficially won the election according to the watchers you designated, was there anything unusual that happened?

A

They did not declare any winner because there was a fax coming from COMELEC that I was disqualified in the election.

ATTY. MARQUEZ:

Q

As a consequence of the refusal or by reason of the refusal of the Board of election tellers and canvassers to proclaim the winner specifically you as the duly elected barangay Captain of San Sebastian, Lipa City, what did you do as a candidate?

A

We waited for whatever decision the Board of election canvassers will do.

Q

Have you come across or have you seen that resolution emanating from the COMELEC which among others specifically disqualifies you from the position of barangay captain?

A

I did not see, sir.

Q

As far as you are concerned, do you know when the Board of Election officers of your place supposedly received a copy of that COMELEC resolution?

A

While [sic] it happened two times, the first one was at 5:30 o'clock in the afternoon when the poll watchers told me that they have received disqualification note from the COMELEC, handwritten.

Q

And are you referring to a supposed letter of the election officer Juan Aguilar addressed to the Board?

A

Handwritten letter, sir.

Q

After the election have you seen the resolution No. 5038 of the comelec en banc disqualifying you from the position?

A

I did not see any resolution from the COMELEC because I was already at home.

Q

You said that there were two notices, one was handwritten and the other was not, what is that other notice addressed to the Board of Election Tellers?

A

A Fax noticed [sic] from COMELEC which arrived at 7:30 o'clock in the evening to 8:00 o'clock."^[1]

This Court, therefore, finds no reversible error on the part of the CA. It rightly acted on the petition filed before it under Rule 65 since there was a grave abuse of discretion tantamount to lack or excess of jurisdiction on the part of the RTC.

WHEREFORE, the petition is DENIED. No costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Quisumbing, Ynares-Santiago, and Carpio, JJ., concur.

[1] Rollo, pp. 59-60; Emphasis supplied.

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