

GILBERTO CANTORIA, PETITIONER, VS. HON. COMMISSION ON ELECTIONS AND CIRIACO P. LOMBOY, RESPONDENTS.

G.R. No. 162035. November 26, 2004

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This special civil action for certiorari with prayer for a Temporary Restraining Order and/or Preliminary Injunction seeks to annul the Resolution,[1] dated January 29, 2004, of the Commission on Elections (COMELEC) in EAC No. 33-2002, which affirmed the Decision,[2] dated September 5, 2002, of the Municipal Trial Court of Santa Maria, Pangasinan in Election Case No. 314.

The antecedent facts and proceedings are as follows:

In the July 15, 2002 election for Barangay Captain in Poblacion East, Sta. Maria, Pangasinan, petitioner Gilberto Cantoria and private respondent Ciriaco Lomboy were the only competing candidates.

In the statement of votes, petitioner garnered two hundred thirty-three (233) votes, while private respondent got two hundred thirty-one (231) votes. Hence, petitioner was proclaimed as the duly elected Barangay Captain.

On July 19, 2002, private respondent filed an election protest docketed as Election Case No. 314 with the Municipal Trial Court (MTC) of Santa Maria, Pangasinan.

Upon agreement of the parties, the MTC ordered a revision of the ballots by a Revision Committee. The Revision Committee found that the votes actually cast for petitioner was two hundred twenty-eight (228), and for private respondent, two hundred thirty-one (231).

Thus, in its Decision,[3] dated September 5, 2002, the trial judge decreed as follows:

WHEREFORE, the Court hereby renders judgment declaring the protestant CIRIACO LOMBOY as the duly elected Punong Barangay of Poblacion East, Sta. Maria, Pangasinan.

SO ORDERED.[4]

Petitioner appealed the said Decision to public respondent Commission on Elections (COMELEC) asserting that the trial court erred in ruling certain ballots as marked ballots. Private respondent in his Appellee's Brief prayed for the dismissal of the appeal for lack of merit.

In its Second Division Resolution, dated January 29, 2004, COMELEC dismissed the appeal for lack of merit, to wit:

WHEREFORE, premises considered, the instant appeal is DISMISSED for LACK OF MERIT.

Accordingly, the 5 September 2002 Decision of the Municipal Trial Court of Santa Maria, Pangasinan in Election Case No. 314 is hereby AFFIRMED.

SO ORDERED.[5]

Without filing a Motion for Reconsideration, petitioner elevated the case to this Court via a special civil action for certiorari with prayer for a Temporary Restraining Order and/or Preliminary Injunction. Petitioner assigns to the COMELEC, the following errors:

i

PUBLIC RESPONDENT, WITH DUE RESPECT, GRAVELY ABUSED ITS DISCRETION WHEN IT AFFIRMED THE ASSAILED DECISION OF THE MTC DESPITE THE CLEAR AND APPARENT LACK OF FACTUAL AND LEGAL BASIS TO SUPPORT THE SAME.

ii

PUBLIC RESPONDENT, WITH DUE RESPECT, GRAVELY ABUSED ITS DISCRETION WHEN IT AFFIRMED THE DECISION OF THE MTC.[6]

Petitioner contends that: (1) ballots containing the nickname “Boyet Cantoria” or “Boy Boyet” clearly written on them should be respected and credited to him as these nicknames are indicated in his Certificate of Candidacy; (2) ballots with the words “Cristo Eleiser Lomboy” and “Adong Lomboy” written on the space for Punong Barangay were counted in favor of private respondent, allegedly in violation of election rules and regulations; (3) ballots with the word “Acong” written on the space for Punong Barangay was credited in favor of private respondent despite the fact that the same was not his registered name or nickname; and (4) a ballot wherein the space line for Punong Barangay is blank and the full name of private respondent was written in the first space line for Kagawad Sangguniang Barangay was credited in favor of private respondent, which should not be the case as said vote is a stray vote.

For his part, private respondent counters that the assailed Resolution of public respondent is already final and executory for petitioner’s failure to file a Motion for Reconsideration within the reglementary period. Accordingly, private respondent points out, the assailed Resolution of public respondent was recorded in the Book of Entries of Judgments on March 2, 2004.[7] Private respondent argues that a restraining order may no longer be issued against public respondent as the latter has already lost jurisdiction over the case. At any rate, private respondent avers that the present petition concerns errors of appreciation of facts, not grave abuse of discretion tantamount to whimsical exercise of judicial prerogative.

For public respondent, the Office of the Solicitor General (OSG), argues that the appreciation of contested ballots involves a question of fact best left to the determination of the COMELEC as the constitutional creation vested with the power to be the sole judge of election contests involving barangay officials. Consequently, the OSG continues, this Court’s jurisdiction to review COMELEC’s decisions operates only upon a showing of grave abuse of discretion.

We find the petition without merit.

We have said time and again that the special civil action of certiorari is not a substitute for the lost or lapsed remedy of appeal.[8] A petition for certiorari under Rule 65 may be allowed only where there is no appeal, or any other plain, speedy, and adequate remedy in the ordinary course of law.[9]

In the instant case, the proper remedy available to petitioner is a Motion for Reconsideration of the questioned Resolution of public respondent COMELEC.

Section 2, Rule 19 of the 1993 COMELEC Rules of Procedure fixes the period for the filing of a Motion for Reconsideration, thus:

SEC. 2. Period for Filing Motions for Reconsideration. – A motion to reconsider a decision, resolution, order, or ruling of a Division shall be filed within five (5) days from the promulgation thereof. Such motion, if not pro-forma, suspends the execution or implementation of the decision, resolution, order or ruling.

In this connection, Section 13 (c), Rule 18 of the said Rules provides that:

SEC. 13. Finality of Decisions or Resolutions. - ...

...

(c) Unless a motion for reconsideration is seasonably filed, a decision or resolution of a Division shall become final and executory after the lapse of five (5) days in Special actions and Special cases and after fifteen (15) days in all other actions or proceedings, following its promulgation.

Clearly, the questioned Resolution of public respondent has become final and executory due to petitioner's own failure to seasonably file a Motion for Reconsideration of the same. Considering that petitioner, by his own neglect or error in his choice of remedies, failed to file the appropriate remedy within the period prescribed by the aforecited COMELEC Rules of Procedure, he cannot now come to us on a special civil action for certiorari.

Notwithstanding the availability of ordinary appeal or other remedies, however, resort to the special civil action of certiorari may still be allowed, but only upon a showing of grave abuse of discretion amounting to lack or excess of jurisdiction.[10]

By grave abuse of discretion is meant such capricious and whimsical exercise of judgment equivalent to lack of jurisdiction. Mere abuse of discretion is not enough. It must be grave, as when it is exercised arbitrarily or despotically by reason of passion or personal hostility. Such abuse must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[11]

In this case, petitioner imputes to the MTC errors of judgment tantamount to grave abuse of discretion. First, petitioner alleges that ballots with the words "Boyet Cantoria" and "Boy Boyet" should be credited to him. We note that the MTC, in fact, counted the said ballots in favor of petitioner since "Boyet" is his registered nickname.[12]

Second, petitioner claims that ballots with the words "Cristo Eleiser Lomboy" and "Adong Lomboy" were erroneously counted in favor of private respondent. However, records show that the MTC actually disallowed the ballots with the words "Cristo Eleiser Lomboy" since "Cristo Eleiser" is not the first name or registered nickname of private respondent.[13] The ballot with the words "Adong Lomboy" instead of "Acong Lomboy," were rightly counted by the MTC in favor of private respondent. Under the idem sonans rule, a name or surname incorrectly written which, when read, has a sound similar to the name or surname of a candidate when correctly written shall be counted in favor of such candidate.[14] Since the name "Adong" sounds similar to private respondent's registered nickname, "Acong," the MTC correctly counted the said ballot in favor of private respondent.

Third, petitioner alleges that the MTC incorrectly counted in favor of private respondent ballots with the word "Acong." However, as we have previously noted, "Acong" is the registered nickname of private respondent. Thus, the MTC only properly credited the said ballots to private respondent.

Lastly, in yet another attempt to mislead the Court, petitioner alleges that a ballot, where the space line for Punong Barangay was blank and the full name of private respondent was written in the first space line for Kagawad Sangguniang Barangay, was credited to private respondent. However, the MTC, as a matter of fact, did not even

count the said ballot as a vote for private respondent for the simple reason that the latter did not present himself as a candidate for Kagawad, but for Barangay Captain.[15]

Obviously, petitioner failed to show in this case that public respondent committed grave abuse of discretion warranting the issuance of a writ of certiorari. On the contrary, we find that public respondent did not abuse its discretion in affirming the MTC ruling. The Decision of the MTC is in accordance with law and thus ought to be upheld.

WHEREFORE, the petition is DISMISSED for lack of merit.

SO ORDERED.

Davide, Jr., C.J., Puno, Panganiban, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Carpio-Morales, Callejo, Sr., Azcuna, Tinga, Chico-Nazario, and Garcia, JJ., concur.
Corona, J., on leave.

[1] Rollo, pp. 9-12.

[2] Id. at 13-18.

[3] Ibid.

[4] Id. at 18.

[5] Id. at 11.

[6] Id. at 5-6.

[7] Id. at 29.

[8] *Monterey Foods Corp. v. Eserjose*, G.R. No. 153126, 11 September 2003, 410 SCRA 627, 634.

[9] REVISED RULES OF COURT, Rule 65, Section 1.

[10] Ibid.

[11] *Eastern Assurance & Surety Corporation (EASCO) v. Land Transportation Franchising and Regulatory Board (LTFRB)*, G.R. No. 149717, 7 October 2003, 413 SCRA 75, 88.

[12] Rollo, p. 14.

[13] Id. at 16.

[14] Section 49 (g), Commission on Elections Resolution No. 4846, otherwise known as Rules and Regulations on the Conduct of the July 15, 2002 Synchronized Barangay and Sangguniang Kabataan Elections, promulgated 13 June 2002.

[15] Rollo, p. 17.

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