

ELENITA I. BALAJONDA, PETITIONER, VS. COMMISSION ON ELECTIONS (FIRST DIVISION) AND MARICEL S. FRANCISCO, RESPONDENTS.

G.R. NO. 166032. February 28, 2005

Ponente: TINGA, J.

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TINGA, J.:

Whether or not the Commission on Elections has power to order the immediate execution of its judgment or final order involving a disputed barangay chairmanship is at the heart of the present Petition for Certiorari[1] under Rule 65 of the 1997 Rules of Civil Procedure.

On 16 July 2002, petitioner Elenita I. Balajonda (Balajonda) was proclaimed as the duly elected Barangay Chairman (Punong Barangay), having won the office in the barangay elections held the previous day.[2] Her margin of victory over private respondent Maricel Francisco (Francisco) was four-hundred twenty (420) votes.[3] Francisco duly filed a petition for election protest, within ten (10) days from the date of proclamation, lodged with the Metropolitan Trial Court (MeTC) of Quezon City, Branch 35.[4]

In answer to the protest, Balajonda alleged that Francisco's petition stated no cause of action and that the allegations of electoral fraud and irregularities were "baseless, conjectural, flimsy, frivolous, preposterous and mere figments of the latter's wild imagination." She also laid stress on the fact that although the grounds relied upon by Francisco were violations of election laws, not a single person had been prosecuted for violation of the same.[5]

After the issues were joined, the MeTC ordered the revision of ballots in sixty-nine (69) ballot boxes, and eventually, the ballots in thirty-nine (39) precincts were revised.[6] After trial, MeTC dismissed the protest with its finding that Balajonda still led Francisco by four hundred eighteen (418) votes.[7] The dispositive part of its Decision reads as follows:

WHEREFORE, the Protest filed by Maricel Susano Francisco is hereby DENIED. The proclamation of Elenita I. Balajonda as the duly proclaimed Barangay Captain of Barangay Sta. Monica, Quezon City during the 15 July 2002 Barangay Election is hereby upheld.[8]

Francisco appealed the MeTC Decision to the Commission on Elections (COMELEC). In a Resolution[9] promulgated on 2 February 2004, the COMELEC First Division reversed the MeTC, finding that Francisco won over Balajonda by one hundred eleven (111) votes. The COMELEC First Division thus annulled the proclamation of Balajonda, and declared in her stead Francisco as the duly elected Barangay Chairman. The dispositive portion of the Resolution reads:

WHEREFORE, in view of the foregoing, the Commission (FIRST DIVISION) GRANTS the Appeal. The decision of the Metropolitan Trial Court of Quezon City, Branch 35 is hereby SET ASIDE. The proclamation of ELENITA BALAJONDA as Punong Barangay of said Barangay is ANNULLED. Protestant MARICEL FRANCISCO is hereby declared the duly elected Punong Barangay of Barangay Sta. Monica, Novaliches City.

ACCORDINGLY, the Commission (FIRST DIVISION) hereby ORDERS:

1. Protestee ELENITA “Baby” BALAJONDA to VACATE the post of Punong Barangay of Sta. Monica, Novaliches City in favor of MARICEL SUSANO FRANCISCO and to CEASE and DESIST from performing the functions attached to said office.

No pronouncement as to costs.

SO ORDERED.[10]

Balajonda seasonably filed a Motion for Reconsideration[11]Resolution.[12] In the meantime, Francisco filed a Motion for Execution[13] dated 5 February 2004, praying for a writ of execution in accordance with Section 2(a) of Rule 39 of the Revised Rules of Court [Sec. 2(a), Rule 39], which allows discretionary execution of judgment upon good reasons to be stated in the order.[14]

Balajonda duly opposed[15] the Motion for Execution, arguing in the main that under Sec. 2(a), Rule 39, only the judgment or final order of a trial court may be the subject of discretionary execution pending appeal. However, in its Order[16] dated 26 November 2004, the COMELEC First Division after due hearing granted the motion and directed the issuance of a Writ of Execution,[17] ordering Balajonda to cease and desist from discharging her functions as Barangay Chairman and relinquish said office to Francisco. The Order states in part:

WHEREFORE, the Motion is hereby GRANTED. In order to implement the Resolution of the Commission (First Division) in the above entitled case, the Clerk of Commission (Director IV, ECAD) is hereby DIRECTED to issue a WRIT OF EXECUTION ordering ELENITA I. BALAJONDA to CEASE and DESIST from discharging the powers and duties of Barangay Captain of Sta. Monica, Novaliches, Quezon City and to relinquish the same to and in favor of MARICEL S. FRANCISCO who was declared duly elected to the post in the Resolution pending final disposition of the Motion for Reconsideration filed by Protestee in the above-entitled case. Protestant however is ordered to post a bond in the amount of FIFTY THOUSAND PESOS (P50,000.00) which shall answer for whatever damage protestee will sustain by reason of this execution if the final resolution of the protest would decide that the protestant is not entitled thereto. This Order is immediately executory.

SO ORDERED. [18]

This Order is the subject of the present petition.

In support of her thesis that the COMELEC First Division committed grave abuse of discretion in granting execution pending appeal, Balajonda in essence submits the following grounds, thus: (1) that the COMELEC may order the immediate execution only of the decision of the trial court but not its own decision; (2) that the order of execution which the COMELEC First Division issued is not founded on good reasons as it is a mere pro forma reproduction of the reasons enumerated in *Ramas v. COMELEC*;^[19] and (3) the COMELEC exhibited manifest partiality and bias in favor of Francisco when it transgressed its own rule.^[20] Balajonda invoked only the first ground in her opposition to the Motion For Execution, but definitely not the second and third. In any event, all the grounds are bereft of merit.

Early last year, the Court, through Mr. Justice Antonio T. Carpio in *Batul v. Bayron*,^[21] affirmed a similar order of the COMELEC First Division directing the immediate execution of its own judgment. Despite the silence of the COMELEC Rules of Procedure as to the procedure of the issuance of a writ of execution pending appeal, there is no reason to dispute the COMELEC’s authority to do so, considering that the supplementary application of the Rules of Court is expressly authorized by Section 1, Rule 41 of the COMELEC Rules of Procedure which provides that absent any applicable provisions therein the pertinent provisions of the Rules of Court shall be applicable by analogy or in a supplementary character and effect.

Batul also clearly shows that the judgments which may be executed pending appeal need not be only those rendered by the trial court, but by the COMELEC as well. It stated, thus:

It is true that present election laws are silent on the remedy of execution pending appeal in election contests. However, neither Ramas nor Santos declared that such remedy is exclusive to election contests involving elective barangay and municipal officials as argued by Batul. Section 2 allowing execution pending appeal in the discretion of the court applies in a suppletory manner to election cases, including those involving city and provincial officials.[22]

Batul is different from this case in that in Batul the decision subject of the order of immediate execution was rendered by the poll body in the exercise of its original jurisdiction[23] while the decision in this case was promulgated in the exercise of its appellate jurisdiction. Still, there is no reason to dispose of this petition in a manner different from Batul. The public policy underlying the suppletory application of Sec. 2(a), Rule 39 is to obviate a hollow victory for the duly elected candidate as determined by either the courts or the COMELEC.[24] Towards that end, we have consistently employed liberal construction of procedural rules in election cases to the end that the will of the people in the choice of public officers may not be defeated by mere technical objections.[25] Balajonda's argument is anchored on a simplistic, literalist reading of Sec. 2(a), Rule 39 that barely makes sense, especially in the light of the COMELEC's specialized and expansive role in relation to election cases.

Anent the second ground, we find that the COMELEC First Division committed no grave abuse of discretion in ruling that:

In the instant case, the protestant cited the good reasons enunciated in *Ramas v. Comelec* (286 SCRA 189), to wit: (1) the public interest involved or the will of the electorate; (2) the shortness of the remaining period, and (3) the length of time that the election contest has been pending.

After evaluating the case, we rule that the reasons cited are indeed obtaining. Public interest is best served if the herein Protestant who actually received the highest number of votes should be immediately be installed. It is likewise true that the remaining period or the unexpired term is too short that to further prolong the tenure of the protestee is a virtual denial of the right of the protestant, the duly elected barangay captain, to assume office.

Considering that there are good reasons for the issuance of an Order of Execution, to wit: dictates of public policy and the shortness of the remaining period, we have to grant the Motion.[26]

All that Balajonda musters in the main to debunk the poll body's ruling is that it is just a pro forma reproduction of the reasons enunciated in pertinent jurisprudence for the grant of execution pending appeal.[27] The argument suffers from a discernible fallacy. The reasons relied upon by the COMELEC First Division are either self-evident or borne out by the law.

With respect to the first reason, it cannot be disputed with success that public interest demands that the winner on the basis of a full and incisive recount and new appreciation of votes should be installed in office without delay. Indeed, "[I]t is neither fair nor just to keep in office for an uncertain period one whose right is under suspicion."[28]

Balajonda's corollary argument that the public interest involved or the will of the electorate is fully determined only after the election contest becomes final[29] would, if sustained, negate altogether the purpose of allowing executions pending appeal in the first place. Indeed, the argument begs the question. In this regard, Balajonda's filing of a Motion for Reconsideration of the decision likewise did not divest the COMELEC First Division of jurisdiction to rule on the Motion For Execution. Once more, Batul[30] instructs us that the filing of a motion for

reconsideration of the COMELEC First Division's resolution with the COMELEC en banc does not suspend the execution thereof.

As regards the second reason, it is provided in Republic Act No. 9164[31] that barangay officials elected in the barangay elections of July 2002 shall serve up to November 2005. Thus when the poll body's First Division promulgated the challenged Order on 26 November 2004, directing immediate execution of its Decision pending final disposition of Balajonda's motion for reconsideration by the COMELEC en banc, the expiry of the term of the disputed position was a scant twelve (12) months away.

At this point, the Court cannot take judicial notice of what Balajonda calls "the consensus to extend the terms of barangay captains" purportedly soon to be enacted into law by Congress.[32] The Court lacks the powers of prognostication to ascertain whether there is such a "consensus" and, more so, whether it would actually ripen to reality in the future.

In a bid to ascribe partiality and bias in favor of Francisco to the COMELEC itself, Balajonda alleges that the poll body failed to observe its own Rules of Procedure[33] directing the Clerk of Court, within twenty-four (24) hours following the filing of a motion for reconsideration, to notify the Presiding Commissioner and therefore to set the motion for hearing, and the Presiding Commissioner in turn thereafter to certify the case to the Commission en banc.[34] However, the record does not bear out Balajonda's charge. The case was not forwarded to the COMELEC en banc right away precisely because of the pendency of Francisco's motion for immediate execution and Balajonda's motions. According to the COMELEC Records, Balajonda filed with the First Division on 03 March 2004 a Manifestation with Motion for Leave to Xerox Contested Ballots,[35] and on 03 March 2004 a Manifestation with Motion for Partial Reconsideration.[36]

It is noteworthy that the COMELEC First Division did not make use of the third reason invoked by Francisco which refers to the length of time that the election contest has been pending.[37] Consequently, it is pointless to address Balajonda's accusation that the delay in the disposition of the election protest is attributable to Francisco.[38]

WHEREFORE, the Petition is hereby DISMISSED for failure of petitioner Elenita I. Balajonda to show that respondent COMELEC acted with grave abuse of discretion in promulgating the challenged Order dated 24 November 2004. Costs against petitioner.

SO ORDERED.

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

[1] With Prayer for Issuance of Preliminary Injunction and/or Temporary Restraining Order; Rollo, pp. 3-80, with annexes.

[2] Rollo, p. 6.

[3] Id. at 26. As canvassed by the Barangay Board of Canvassers, Balajonda received 2,759 votes, while Francisco received 2,339 votes.

[4] Id. at 6 and 26. The Electoral Protest was originally raffled to MeTC Branch 33. However, upon motion of Francisco for voluntary inhibition, the presiding judge of MeTC Branch 33 inhibited himself and the case was re-raffled to MeTC Branch 35.

[5] Id. at 27.

[6] Ibid. Respondent withdrew her protest as to the thirty-six remaining precincts.

[7] In a Decision dated 29 August 2003, penned by Judge M.T.E. De Guzman. Rollo, pp. 26-31; Annex B of the Petition.

[8] Id. at 29.

[9] Id. at 33-39; Penned by Presiding Commissioner Rufino SB. Javier, concurred in by Commissioners Luzviminda G. Tancangco and Resurreccion Z. Borra.

[10] Id. at 38-39.

[11] Dated 6 February 2003; Rollo, pp. 40-49; Annex “D” of the Petition.

[12] Petitioner also filed a Supplemental Motion for Reconsideration dated 13 February 2003, Rollo, pp. 50-58; Annex “E” of the Petition.

[13] Rollo, pp. 61-64; Annex “F” of the Petition.

[14] *Batul v. Bayron*, G.R. Nos. 157687 & 158959, 26 February 2004.

[15] Opposition and/or Objection to the Motion for Execution, dated 16 February 2004; Rollo, pp. 65-67; Annex “G” of the Petition.

[16] Signed by Commissioners R. SB. Javier, R. Borra and V. Garcillano; Rollo, pp. 17-22, Annex “A” of the Petition.

[17] Dated 1 December 2004; Rollo, pp. 23-25.

[18] Rollo, pp. 21-22.

[19] 349 Phil. 857, 868 (1998).

[20] Rollo, p. 9.

[21] *Batul v. Bayron*, supra note 14.

[22] Ibid.

[23] The contested post in Batul was the vice-mayoralty position of the city of Puerto Princesa, Palawan, the election protest for which is within the exclusive original jurisdiction of the Commission on Elections.

[24] *Batul v. Bayron*, supra note 14.

[25] *Idulza v. COMELEC*, G.R. No. 160130, 14 April 2004; citing *Punzalan v. COMELEC*, 289 SCRA 702, 716 (1998); *Bince, Jr. v. COMELEC*, 242 SCRA 273 (1995); *Benito v. COMELEC*, 235 SCRA 436 (1994); *Pahilan v. Tabalba*, 230 SCRA 205 (1994); *Aruelo, Jr. v. Court of Appeals*, 227 SCRA 311 (1993); *Tatlonghari v. COMELEC*, 199 SCRA 849 (1991); *Unda v. COMELEC*, 190 SCRA 827 (1990); *De Leon v. Guadiz, Jr.*, 104 SCRA 591 (1981).

[26] Rollo, pp. 20-21.

[27] Id. at 9.

[28] *Unda v. COMELEC*, G.R. No. 94090, 18 October 1990, 190 SCRA 820, 831.

[29] Rollo, p. 12.

[30] Supra note 14.

[31] Entitled “AN ACT PROVIDING FOR SYNCHRONIZED BARANGAY AND SANGGUNIANG KABATAAN ELECTIONS, AMENDING REPUBLIC ACT NO. 7160, AS AMENDED, OTHERWISE KNOWN AS “THE LOCAL GOVERNMENT CODE OF 1991”, AND FOR OTHER PURPOSES;” Approved on 19 March 2002, 98 O.G. No. 23, 2986-2987.

[32] Rollo, pp. 12-13.

[33] Secs. 5 and 6, Rule 19, COMELEC Rules of Procedure.

[34] Rollo, p. 13.

[35] COMELEC Records, pp. 200-203.

[36] Id. at 206-209.

[37] Vide Rollo, p. 21.

[38] Rollo, p. 13.

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