

BIENVENIDO A. CERBO, JR., ANGELO O. MONTILLA, AND GERONIMO P. ARZAGON, PETITIONERS, VS. THE COMMISSION ON ELECTIONS, SUHARTO T. MANGUDADATU, DATU PAX S. MANGUDADATU AND DONATO A...

G.R. NO. 168411. February 15, 2007

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Petitioners Bienvenido A. Cerbo, Jr., Angelo O. Montilla, and Geronimo P. Arzagon were candidates for representative, governor and vice-governor, respectively of Sultan Kudarat in the May 10, 2004 elections.

Respondents Suharto T. Mangudadatu, Datu Pax S. Mangudadatu and Donato A. Ligo, on the other hand, were petitioners' respective opponents for the same positions.

During the provincial canvassing of the Municipal Certificates of Canvass (COCs) by the Provincial Board of Canvassers (PBOC), petitioners objected to the inclusion of the COC of the Municipality of Palimbang, Sultan Kudarat. The PBOC overruled the objection on May 15, 2004. On even date, petitioners filed with the PBOC a notice of appeal, but they did not pursue the appeal.

The following day or on May 16, 2004, petitioners filed with the PBOC a "Petition for Correction of Manifest Errors and/or to Exclude Certificates of Canvass of the Municipalities of Palimbang and Lutayan, Sultan Kudarat." [1] In said petition, petitioners prayed that the proclamation of the congressional and local positions be held in abeyance until such time that the manifest errors were rectified. The PBOC verbally denied the petition and no appeal was taken therefrom.

The PBOC thus proclaimed, also on May 16, 2004, respondents as winners of the contested positions.

On May 31, 2004, petitioners filed with the Commission on Elections (COMELEC) a "Petition for Correction of Manifest Errors and Annulment of Proclamation" [2] alleging, inter alia, that the proclamation of respondents was surreptitious, haphazard and illegal as the same was made despite the filing with the PBOC of a notice of appeal of its May 15, 2004 ruling and of a petition for correction of manifest errors. They thus prayed that the proclamation of respondents be set aside and that the Municipal Board of Canvassers (MBOC) of Palimbang be directed to reconvene and make the necessary corrections, and to proclaim the winning candidates based thereon. [3]

In their Answer with Motion to Dismiss [4] filed before the COMELEC, respondents contended that they were legally proclaimed by the PBOC after petitioners did not appeal the PBOC May 15, 2004 order overruling their objection to the exclusion of the Palimbang COC; and the PBOC had denied petitioners' petition for correction of manifest errors which ruling, like that of May 15, 2004, petitioners did not appeal to the COMELEC.

The COMELEC First Division, by Order of June 29, 2004, [5] suspended the effects of the proclamation of

respondents after finding that the “documents submitted by petitioners, though convincing, cannot, without an incisive look and investigation, warrant outright annulment of the Statement of Votes or of the questioned Certificates of Canvass.”[6] And it resolved “to conduct an examination of the authenticity and genuineness of the elections returns pertaining to the Municipalities of Lutayan and Palimbang Sultan Kudarat using the COMELEC copy to determine their reliability as valid basis of the proclamation of Private Respondents, and thereafter render its resolution.”[7]

Parties from both sides filed motions for reconsideration[8] of the June 29, 2004 COMELEC First Division Order.

The COMELEC First Division, by Order[9] of July 23, 2004, granted respondent Suharto T. Mangudadatu’s Motion for Reconsideration for lack of jurisdiction over petitioners’ petition, he having already been proclaimed as congressman. It accordingly set aside its order suspending the effects of his proclamation.

By Resolution[10] dated August 16, 2004, the COMELEC First Division dismissed petitioners’ petition for correction of manifest errors, holding as follows:

As shown in the records and as admitted by the petitioners themselves, on May 14, 2004, they filed a written petition to exclude the COC from Palimbang. On May 15, 2004, the respondent PBOC denied the petition and included the same in the provincial canvass.

While the petitioners manifested their intent to appeal, no appeal was actually made and perfected. Because of this failure to appeal, the ruling of the board including the COC of Palimbang in the provincial canvass has become final.

x x x x

On the issue of correction of manifest error in the COC and SOV of Palimbang, the same cannot prosper. First, the errors to be corrected should pertain to tabulations of the entries. The cited errors by the petitioners were not relative to the tabulation but to the disparity between the number of precincts canvassed for the national and local positions; and the difference between the sequence of precincts listed in the local SOV and the national SOV.

Second, in the alleged errors of the entries in the election returns and the SOV by Precincts, the petitioners also questioned the integrity of the election returns, thereby, putting doubt whether there were indeed errors in said documents.

Third, the petition for correction of manifest error was already denied by the respondent board. The proper procedure under Section 7, Rule 27 of the Comelec Rules of Procedure should be to appeal said ruling. However, the petitioners failed to do so. The ruling, therefore, has already attained finality.

x x x x

As to the non-inclusion of the Lutayan COC in the petition [filed before the COMELEC], petitioners argued that it was mere oversight on the part of the petitioners. They asserted, moreover, that in the exercise of the broad and plenary powers of the Commission, the latter can take cognizance of the same.

We are not convinced. Granting that the [non-]inclusion of the Lutayan COC was just a mere oversight, still the Commission cannot pass upon the authenticity and genuineness of the same in the instant case. Per the aforementioned procedures, such ground should be raised before the appropriate board of canvassers. The Commission has only an appellate jurisdiction over the same.

Even if this case be considered as one for correction of manifest error of the COC/SOV of Lutayan the same must also fail. The petitioners failed to specify the errors that are supposed to be manifest and are to be corrected. What they alleged in their memorandum are grounds proper for election protest or exclusion of the COC and SOV, such as statistical improbability, abnormal turn out of voters, and other defects and

abnormalities.

Furthermore, with respect to the herein case filed against respondent Datu Pax Mangudadatu, the same is deemed to have been abandoned by the filing of an election protest with the Commission by petitioner Montilla. The protest was docketed as EPC No. 2004-12. It has been held by the Supreme Court that the filing of an election protest or a petition for quo warranto precludes the subsequent filing of a pre-proclamation controversy or amounts to the abandonment of one already filed.

One of the exceptions to the above doctrine is when the protest was filed ad cautelam. A scrutiny of the protest filed by Montilla, however, shows that EPC NO. 2004-12 was not filed ad cautelam.

x x x [11] (Emphasis and underscoring supplied)

Petitioners moved to reconsider the August 16, 2004 Resolution of the COMELEC First Division, arguing that, among other things, it was erroneous to dispose the petition on purely procedural grounds and not to treat it as an original petition for correction of manifest errors which deserves deeper scrutiny and decisive treatment. Petitioners also argued that it was erroneous to consider petitioner Montilla's filing of an election protest as an abandonment of his petition for correction of manifest errors.

By Resolution of May 21, 2005,[12] the COMELEC En Banc denied petitioners' Motion for Reconsideration, it finding that the issues raised therein appear to have been resolved and amply discussed by the First Division.

Hence, this petition for certiorari which faults the COMELEC to have

A.

. . . COMMITTED GRAVE ABUSE OF DISCRETION, AMOUNTING TO LACK OF JURISDICTION, IN CLOSING ITS EYES TO THE EVIDENCE ON RECORD AND IN FAULTING PETITIONERS FOR THEIR ALLEGED PROCEDURAL LAPSES.

B.

. . . EVADED THE PERFORMANCE OF A POSITIVE DUTY SPECIFICALLY ENJOINED BY LAW AND THE CONSTITUTION WHEN IT DISMISSED THE PETITION FOR CORRECTION OF MANIFEST ERRORS, THEREBY GRAVELY ABUSING ITS DISCRETION, AMOUNTING TO LACK OF JURISDICTION.

C.

. . . GRAVELY ABUSED ITS DISCRETION IN TOLERATING THE IRREGULAR PRACTICE OF ALLOWING, WITHOUT JUSTIFIABLE REASON, THE NON-PARTICIPATION OF A COMELEC COMMISSIONER IN THE ISSUANCE OF ITS RESOLUTION.

D.

. . . GRAVELY ABUSED ITS DISCRETION IN FINDING THAT PETITIONERS CERBO AND MONTILLA ARE DEEMED TO HAVE ABANDONED THEIR PETITION FOR CORRECTION OF MANIFEST ERRORS.[13]

The petition fails.

With respect to petitioner Cerbo who ran for the position of congressman, the COMELEC indeed had no jurisdiction over his petition, his opponent respondent Suharto T. Mangudadatu having been proclaimed as such. It is well settled that once a candidate is proclaimed as representative, the opponent's recourse is to file an election protest with the House of Representatives Electoral Tribunal which has the sole and exclusive jurisdiction

over all contests relative to the election, returns and qualifications of members of the House of Representatives, and this holds true even if there is an allegation of nullity of proclamation.[14]

With respect to petitioner Montilla, indeed, he abandoned his petition for correction of manifest errors when he filed an election protest against respondent Datu Pax S. Mangudadatu. *Dumayas, Jr. v. Commission on Elections*[15] so teaches:

As a general rule, the filing of an election protest or a petition for quo warranto precludes the subsequent filing of a pre-proclamation controversy or amounts to the abandonment of one earlier filed, thus depriving the COMELEC of the authority to inquire into and pass upon the title of the protestee or the validity of his proclamation. The reason for this rule is that once the competent tribunal has acquired jurisdiction of an election protest or petition for quo warranto, all questions relative thereto will have to be decided in the case itself and not in another proceeding, so as to prevent confusion and conflict of authority.[16] (Underscoring supplied)

While the filing of a protest *ex abundante ad cautela*[17] is not considered an abandonment of the petition for correction of manifest errors, this Court quotes with approval the following observations of the COMELEC in brushing aside as mere afterthought the claim of Montilla in a manifestation he subsequently filed that his election protest was filed *ex abundante ad cautela* and that he inadvertently omitted to indicate in its caption that it was one such:

In an effort perhaps to cure the defect, Montilla filed a manifestation stating that it was actually [*ex abundante*] *ad cautela* but that he inadvertently omitted to caption the protest as such. This however should not be given weight. A reading of the allegation in the protest reveals that there was no mention therein that it was only filed as a precautionary measure in case his petition for correction of manifest error is resolved adversely. There was even no mention therein that a case for correction of manifest error and annulment between the same parties is pending before the Commission. To top it all, petitioner Montilla even asked for an immediate relief in his protest, i.e. an order to direct the concerned Election Officers and Treasurers to bring all the ballot boxes and other election paraphernalia in the protested municipalities. Verily, the protest was not [*ex abundante*] *ad cautela* and the manifestation was a mere afterthought.[18] (Underscoring supplied)

As for the case of petitioner Arzagon, indeed, he failed to comply with the COMELEC Rules of Procedure, the pertinent provision of which reads:

RULE 27

x x x x

Sec. 5. Pre-proclamation Controversies Which May Be Filed Directly With the Commission. – (a) The following pre-proclamation controversies may be filed directly with the Commission:

x x x x

2) When the issue involves the correction of manifest errors in the tabulation or tallying of results during the canvassing as where (1) a copy of the election returns or certificate of canvass was tabulated more than once, (2) two or more copies of the election returns of one precinct, two or more copies of the election returns of one precinct, or two or more copies of certificate of canvass were tabulated separately, (3) there had been a mistake in the copying of figures into the statement of votes or into the certificate of canvass, or (4) so-called returns from non-existent precincts were included in the canvass, and such errors could not have been discovered during the canvassing despite the exercise of due diligence and proclamation of the winning candidates had already been made.

x x x x (Underscoring supplied)

A petition for correction of manifest errors filed directly with the COMELEC should thus pertain to errors that could not have been discovered during the canvassing, despite the exercise of due diligence. Petitioner Arzagon, however, together with the other petitioners, initially filed a petition for correction of manifest errors with the PBOC, evidently showing that the errors sought to be corrected were discovered during the canvassing.

On his failure to appeal the PBOC's dismissal of his petition for correction of manifest errors, petitioner Arzagon claims that the PBOC did not indicate the reasons therefor, hence, he was prevented from appealing the same.

Even if, however, this Court may, in the interest of justice, treat the petition for correction of manifest errors filed with the COMELEC as an appeal from the PBOC's verbal ruling denying petitioners' similar petition filed with the latter, its dismissal by the COMELEC is in order.

Specifically with respect to the Palimbang COC, since its exclusion had earlier been denied by the PBOC, and the denial was not appealed, it had become final. The subsequent filing of a petition for correction of manifest errors in the Palimbang COC with the PBOC appeared to be just an attempt to substitute the lost appeal, which is impermissible.

With respect to petitioners' prayer before this Court for correction of manifest errors in the Lutayan COC, the same cannot be considered as an appeal from the verbal denial by the PBOC of a similar petition they earlier filed. For the petition filed with the COMELEC does not include alleged manifest errors in the Lutayan COC, hence, the COMELEC had no jurisdiction to rule thereon.

WHEREFORE, the petition is DISMISSED.

Costs against petitioners.

SO ORDERED.

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

* On Leave.

[1] Rollo, pp. 94-99.

[2] Id. at 82-93.

[3] Id. at 91

[4] Id. at 164-179.

[5] Id. at 196-198.

[6] Id. at 197-198.

[7] Id. at 198.

[8] Id. at 199-243.

[9] Id. at 246-250.

[10] Id. at 41-60.

[11] Id. at 52-57.

[12] Id. at 63-74.

[13] Id. at 22.

[14] Aggabao v. Commission on Elections, G.R. No. 163756, January 26, 2005, 449 SCRA 400, 404-405.

[15] G.R. No. 141952-53, April 20, 2001, 357 SCRA 358.

[16] Id. at 367.

[17] Mitmug v. Commission on Elections, G.R. Nos. 106270-73, February 10, 1994, 230 SCRA 54, 58; Olfato, et al. v. COMELEC, et al., 191 Phil. 302, 350 (1981).

[18] Rollo, p. 57.

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