VIRGINIO VILLAMOR, PETITIONER, VS. COMMISSION ON ELECTIONS AND AMYTIS DE DIOS-BATAO, RESPONDENTS.

G.R. NO. 169865. July 21, 2006

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This petition for certiorari under Rule 65 of the Rules of Court seeks to annul the April 11, 2005 Resolution[1] of the Second Division of the Commission on Elections (COMELEC) in EAC No. A-11-2004 as well as the Order of the COMELEC En Banc dated August 5, 2005. The assailed resolution affirmed the Order[2] dated July 23, 2004 of the Regional Trial Court of Danao City, Branch 25 in Case No. EP-2004-02 which reconsidered its Order[3] dated June 24, 2004 dismissing the election protest filed by respondent Amytis De Dios-Batao.

The antecedent facts are as follows:

On May 13, 2004, petitioner Virginio Villamor was proclaimed as mayor of Carmen, Cebu, by the Municipal Board of Canvassers (MBC) in the elections held on May 10, 2004 over his opponent, respondent Amytis De Dios-Batao. On May 17, 2004, respondent filed a petition to annul the proclamation of petitioner alleging as grounds the illegal composition of the MBC and its proceedings. The case was docketed as SPC No. 04-083 and raffled to the COMELEC Second Division.[4]

Subsequently, or on May 24, 2004, respondent filed an election protest with the Regional Trial Court of Danao City which was docketed as Case No. EP-2004-02 and raffled to Branch 25 thereof. Petitioner filed his Answer to the Petition with Counter Protest on June 7, 2004.[5] However, in its Order[6] dated June 24, 2004, the trial court dismissed the election protest for lack of jurisdiction because it was filed one-day late.

Under Section 3, Rule 35 of the COMELEC Rules of Procedure, an election protest should be filed within 10 days from the date of proclamation of the results of the election. Since petitioner was proclaimed on May 13, 2004, respondent had until May 23, 2004 to file an election protest. However, respondent filed the same only on May 24, 2004, thus, it was dismissed by the trial court in an Order dated June 24, 2004.[7]

A Motion for Reconsideration was filed by the respondent which was granted by the trial court in an Order dated July 23, 2004 because it found that the election protest was actually filed on time. Since the last day to file the protest fell on May 23, 2004 which was a Sunday, thus, under Section 1, Rule 22 of the Rules of Court, the time should not run until the next working day which was May 24, 2004. Section 5, Rule 135 of the Rules of Court gives the courts inherent power to amend and control its processes and orders to conform with law and justice.[8]

Petitioner appealed the Order granting respondent's motion for reconsideration to the COMELEC and was docketed as EAC No. A-11-2004 and was raffled to its Second Division. In the assailed Resolution dated April 11, 2005, the Second Division of the COMELEC dismissed the appeal for lack of merit. On August 5, 2005, the COMELEC En Banc denied petitioner's motion for reconsideration.

In the meantime, the Second Division of the COMELEC issued on May 9, 2005 a Resolution[9] in SPC No.

04-083 which is the petition to annul the proclamation of petitioner, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, the Petition To Declare Null And Void Proclamation dated 17 May 2004 filed by petitioners Amythis De Dios Batao, et al., is hereby DISMISSED for lack of merit.

SO ORDERED.[10]

Hence, this petition raising the following issues:

> - MAY A REGULAR COURT, IN AN ELECTION PROTEST, ACT ON A MOTION FOR RECONSIDERATION FROM AN ORDER OF DISMISSAL OF THE ELECTION PROTEST CONSIDERING THAT A MOTION FOR RECONSIDERATION IS A PROHIBITED PLEADING?
>
> - MAY A REGULAR COURT ADMIT AN ELECTION PROTEST PREMATURELY CONSIDERING THAT THE PROTESTANT HAS STILL A PENDING PETITION FOR PRE-PROCLAMATION CONTROVERSY IN THE ANNULMENT OF THE PROCLAMATION OF THE PROTESTEE IN THE COMELEC AND IF IT DOES SO, MAY THE PERIOD FOR THE FILING OF THE COUNTER-PROTEST BE COUNTED FROM THE RECEIPT OF THE RESOLUTION OF THE COMELEC DENYING THE PETITION FOR THE ANNULMENT OF THE PROCLAMATION?[11]

The core issues for resolution are as follows: (1) whether the trial court can act on a motion for reconsideration in an election protest; and (2) whether the trial court prematurely admitted respondent's election protest pending a pre-proclamation controversy.

We shall first discuss the second issue. As a general rule, the proper remedy after the proclamation of the winning candidate for the position contested would be to file a regular election protest or a petition for quo warranto.[12] 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.[13] The reason is that once the competent tribunal has acquired jurisdiction of an election protest or a petition for quo warranto, all questions relative thereto will have to be decided in the case itself and not in another proceeding. This procedure will prevent confusion and conflict of authority.[14]

Moreover, not all actions seeking the annulment of proclamation suspend the running of the period for filing an election protest or a petition for quo warranto.[15] For it is not the relief prayed for which distinguishes actions under § 248[16] from an election protest or quo warranto proceedings, but the grounds on which they are based.[17]

In the case at bar, respondent's petition to annul the proclamation rested mainly on the alleged illegal composition of the municipal board of canvassers[18] and its proceedings which is an issue that may be properly raised in a pre-proclamation controversy.[19] Under paragraph (b) of Section 5 of Rule 27 of the COMELEC Rules of Procedure, if the petition involves the illegal composition of the board of canvassers, it must be filed immediately when the board begins to act as such, or at the time of the appointment of the member whose capacity to sit as such is objected to if it comes after the canvassing of the board, or immediately at the point where the proceedings are or begin to be illegal. Thus, we held in Laodenio v. Commission on Elections[20] that when the issue involves the illegal composition of the Board, the same cannot be questioned after the proclamation of the winner, to wit:

> Although Sec. 17 of R.A. 7166 and Sec. 5 par. (a)(1) (not Sec. 4 as erroneously cited by petitioner), of Rule 27 of the COMELEC Rules of Procedure also allow filing of a petition directly with respondent COMELEC when the issue involves the illegal composition of the Board, Sec. 5, par. (b), of the same Rule requires that it must be filed immediately when the Board begins to act as such, or at the time of the appointment of the member

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> whose capacity to sit as such is objected to if it comes after the canvassing of the Board, or immediately at the point where the proceedings are or begin to be illegal. In the present case, the petition was filed five (5) days after respondent Longcop had been proclaimed by the Board. At any rate, the real issue appears to be - not what it appears to petitioner - whether he can still dispute the composition of the Board after having actively participated in the proceedings therein. In this regard, we sustain respondent COMELEC.[21]

In the instant case, respondent's petition to annul petitioner's proclamation based on the alleged illegal composition of the board of canvassers is a pre-proclamation controversy which should have been filed prior to petitioner's proclamation. However, respondent filed the petition on May 17, 2004 only or four days after petitioner's proclamation. As such, the filing of the petition to annul the proclamation of petitioner did not suspend the running of the reglementary period within which to file an election protest and inevitably, it did not suspend the latter's period to file an Answer with Counter Protest. Accordingly, the subsequent filing of the election protest on May 24, 2004 by respondent amounted to the abandonment of the pre-proclamation controversy earlier filed.

Anent the first issue, petitioner asserts that a motion for reconsideration of the election protest filed by respondent was a prohibited pleading thus its filing did not toll the running of the period to appeal. Consequently, when the latter failed to appeal within five days from the June 24, 2004 Order of the trial court, the dismissal of the election protest became final.

On the other hand, respondent alleges that a motion for reconsideration is not a prohibited pleading and claims that even if the motion was not filed, the trial court could reinstate the petition motu proprio before the said order became final.

We agree with petitioner.

Under Section 256 of the Omnibus Election Code (OEC),[22] the trial court cannot entertain a motion for reconsideration of its decision in an election contest affecting municipal officers filed by the aggrieved party. However, the latter may appeal to the Intermediate Appellate Court (now COMELEC) within five days after the receipt of a copy of the decision. Likewise, Section 19, Rule 35 of the COMELEC Rules of Procedure implementing the abovementioned Section 256 provides:

> Sec. 19. Promulgation and Finality of Decision. - The decision of the Court shall be promulgated on a date set by it of which due notice must be given the parties. It shall become final five (5) days after its promulgation. No motion for reconsideration shall be entertained. (Emphasis supplied)

Respondent received a copy of the Order dismissing the election protest for lack of jurisdiction on June 25, 2004. Thus, respondent had until June 30, 2004 within which to file an appeal with the COMELEC but failed to do so. Instead, respondent filed a motion for reconsideration which is a prohibited pleading. As such, it did not toll the running of the prescriptive period.

In Veloria v. Commission on Elections,[23] a case involving candidates for municipal mayor, vice-mayor, and members of the Sangguniang Bayan of Manaoag, Pangasinan, where instead of perfecting an appeal within five days as provided by law, petitioners filed a motion for reconsideration, we held that:

> The COMELEC, therefore, correctly ruled that the motion for reconsideration filed by the petitioners in the trial court on March 20, 1990 did not suspend the period to appeal since a "motion for reconsideration" is prohibited under Section 256 of the Omnibus Election Code.
>
> Since the right to appeal is not a natural right nor is it a part of due process, for it is merely a statutory privilege that must be exercised in the manner and according to procedures laid down by law, x x x and its timely perfection within the statutory period is mandatory and jurisdictional x x x, Judge Abasolo gravely abused his

> discretion when he gave due course to the petitioners' tardy appeal from his predecessor's x x x resoluti(o)n x x x dismissing the petitioners' election protest. Said resolution had become final and unappealable.[24]

The rules in ordinary civil procedure do not apply in election cases except by analogy or in a suppletory character and whenever practicable and convenient.[25] Section 256 of the Omnibus Election Code and Section 19, Rule 35 of the COMELEC Rules of Procedure clearly state that no motion for reconsideration should be entertained. Thus, there is no room to apply the rules of ordinary civil procedure suppletorily. Nor can resort be made by the trial court to Section 5(g)[26] of Rule 135 of the Rules of Court to sustain its actions. The trial court did not conform to law and justice when it granted the motion for reconsideration which is a prohibited pleading.

WHEREFORE, in light of the foregoing, the petition is GRANTED. The Resolution dated April 11, 2005 of the COMELEC Second Division and the Order dated August 5, 2005 of the COMELEC En Banc in EAC No. A-11-2004 which affirmed the Order dated July 23, 2004 of the Regional Trial Court of Danao City, Branch 25 in Case No. EP-2004-02 granting the motion for reconsideration of respondent Amytis De Dios-Batao, are ANNULLED and SET ASIDE. The Order dated June 24, 2004 of the Regional Trial Court dismissing respondent's election protest for lack of jurisdiction is REINSTATED.

SO ORDERED.

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

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[*]Referred to as Amythis in some part of the records.

[1] Penned by Presiding Commissioner Mehol K. Sadain and concurred in by Commissioners Florentino A. Tuason, Jr. and Manuel A. Barcelona, Jr.; rollo, pp. 12-17.

[2] Id. at 25-41. Penned by Judge Sylva G. Aguirre Paderanga.

[3] Id. at 21-24.

[4] Id. at 42-43.

[5] Id. at 21.

[6] Id. at 21-24.

[7] Id. at 24.

[8] Id. at 26-28.

[9] Id. at 42-47.

[10] Id. at 47.

[11] Id. at 4.

[12] Lorenzo v. Commission on Elections, 463 Phil. 863, 868 (2003).

[13] Dumayas, Jr. v. Commission on Elections, G.R. Nos. 141952-53, April 20, 2001, 357 SCRA 358, 367.

[14] Abdulmadid P.B. Maruhom v. Commission on Elections, 387 Phil. 491, 514 (2000), citing Datu Sukarno S. Samad v. Commission on Elections, G.R. Nos. 107854 and 108642, July 16, 1993, 224 SCRA 631, 638.

[15] Salipongan Dagloc v. Commission on Elections, 378 Phil. 906, 916 (1999).

[16] The Omnibus Election Code.
Sec. 248. Effect of filing petition to annul or to suspend the proclamation. - The filing with the Commission of a petition to annul or to suspend the proclamation of any candidate shall suspend the running of the period within which to file an election protest or quo warranto proceedings.

[17] Salipongan Dagloc v. Commission on Elections, supra note 17.

[18] Rollo, p. 43.

[19] See COMELEC Rules of Procedure, Rule 27, Sec. 4(a).

[20] 342 Phil. 676 (1997).

[21] Id. at 683-684.

[22] Sec. 256. Appeals. - Appeals from any decision rendered by the regional trial court under Section 251 and paragraph two, Section 253 hereof with respect to quo warranto petitions filed in election contests affecting municipal officers, the aggrieved party may appeal to the Intermediate Appellate Court within five days after receipt of a copy of the decision. No motion for reconsideration shall be entertained by the court. The appeal shall be decided within sixty days after the case has been submitted for decision.

[23] G.R. No. 94771, July 29, 1992, 211 SCRA 907.

[24] Id. at 913-914.

[25] Rules of Court, Rule 1, Sec. 4 and Rule 143.

[26] Sec. 5. Inherent powers of courts. - Every court shall have power:
x x x x
(g) To amend and control its process and orders so as to make them comformable to law and justice[.]

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