NESTOR SAN JUAN, PETITIONER, VS. COMMISSION ON ELECTIONS (FIRST DIVISION) AND NAPOLEON SELPO, RESPONDENTS.

G.R. No. 170908. August 24, 2007

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This petition for certiorari and prohibition with application for the issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction assails both the Resolution[1] dated October 25, 2004 and Order[2] dated December 5, 2005 of the Commission on Elections (COMELEC) First Division in EAC No. 3-2003. The COMELEC First Division had affirmed the Decision[3] dated December 4, 2002 of the Municipal Trial Court (MTC) of Tinambac, Camarines Sur, 5th Judicial Region proclaiming private respondent Napoleon Selpo the duly elected Barangay Captain of San Ramon, Tinambac, Camarines Sur and declaring the proclamation of petitioner Nestor San Juan null and void. It also denied San Juan's Motion for Reconsideration.

The facts are as follows.

Petitioner Nestor San Juan and private respondent Napoleon Selpo were the candidates for Punong Barangay of San Ramon, Tinambac, Camarines Sur during the July 15, 2002 Synchronized Barangay and Sangguniang Kabataan elections.

Based on the certificates of canvass of votes and proclamation of winning candidates dated July 15, 2002, the Barangay Board of Canvassers proclaimed San Juan the duly elected Punong Barangay.[4]

On July 22, 2002, Selpo filed a Petition[5] docketed as Election Protest Case No. T-02-003 before the MTC impugning the correctness of the certificates of canvass in Precinct Nos. 45-A, 45-A1 and 45-A2/45-A3 of Barangay San Ramon and praying for a revision of the ballots cast in these precincts.

In his Answer with Counter-Protest,[6] San Juan argued that, contrary to Selpo's allegations, there was no fraud, cheating and/or vote buying allegedly committed by him; and if there was any misreading of ballots/votes as claimed by Selpo, it was made to favor the latter who, despite said alleged illegal and irregular acts, failed to subvert the true will of the people of xSan Ramon. San Juan also prayed that a revision of ballots be made.

In an Order[7] dated August 12, 2002, the MTC, noting that Selpo and San Juan had both agreed to a recount, ordered a recount or revision and directed the Municipal Treasurer of Tinambac to deposit in court the ballot boxes in Precinct Nos. 45-A, 45-A1, and 45-A2/45-A3.

In a Decision dated December 4, 2002, the MTC proclaimed Selpo the duly elected Barangay Captain and declared the proclamation of San Juan null and void. The MTC ruled as follows:

> The Protestant having won by Thirteen (13) votes over the Protestee, decision is hereby rendered,
>
> (1) Proclaiming Napoleon Selpo, to be the duly elected Barangay Captain, of San Ramon, Tinambac, Camarines Sur, in the Barangay election held last July 15, 2002; and

(2) Declaring the proclamation of Nestor San Juan to be NULL and VOID.

SO ORDERED.[8]

San Juan appealed to the COMELEC. In a Resolution dated October 25, 2004, the COMELEC First Division dismissed San Juan's appeal. The dispositive portion of the resolution states:

WHEREFORE, premises considered, the Commission First Division) RESOLVED, as it hereby RESOLVES, to DISMISS the instant appeal for LACK OF MERIT.

SO ORDERED.[9]

San Juan then filed a Motion for Reconsideration on November 16, 2004. However, in an Order dated December 5, 2005, the COMELEC First Division denied his motion. The dispositive portion of the order reads:

In view thereof, this Commission (First Division) do hereby resolves to treat the receipt on November 3, 2005* by the lead counsel as receipt of protestee-appellant of the resolution denying his appeal, and to DENY the Motion for Reconsideration for being filed out of time per Sec. 2, Rule 19 of the Comelec Rules of Procedure and for lack of verified statement on the date of receipt of the assailed resolution.

SO ORDERED.[10]

Consequently, San Juan filed this petition where he raises the following issues:

I.

WHETHER PUBLIC RESPONDENT COMELEC (FIRST DIVISION) COMMITTED A GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN RESOLVING PETITIONER'S MOTION FOR RECONSIDERATION AND IN REFUSING TO ELEVATE [THE] MOTION FOR RECONSIDERATION AND THE RECORDS OF THE ELECTION APPEALED CASE TO THE COMMISSION ON ELECTIONS EN BANC;

II.

WHETHER RESPONDENT COMELEC (FIRST DIVISION) COMMITTED A GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OR EXCESS OF JURISDICTION IN CONSIDERING AGREEMENT OF PARTIES AS SUFFICIENT TO WARRANT THE TOTAL ABSENCE OF RECEPTION OF EVIDENCE IN THE ELECTION PROTEST BEFORE THE TRIAL COURT, WHICH IN EFFECT CONSTITUTES VIOLATION OF PETITIONER'S RIGHT TO DUE PROCESS; AND

III.

WHETHER COMELEC (FIRST DIVISION) COMMITTED A GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN FAILING TO RESOLVE THE PETITIONER'S 3RD ASSIGNED ERROR IN APPELLANT'S BRIEF INVOLVING VIOLATION OF INTEGRITY OF BALLOTS IN PRECINCT NOS. 45A-2/45A-3 AFTER COMPLETION OF PROCEEDINGS OF THE BOARDS OF ELECTION TELLERS.[11]

The main issue to be resolved in this case is whether or not the COMELEC First Division acted with grave abuse of discretion and/or lack of jurisdiction in denying San Juan's Motion for Reconsideration.

Election cases must be heard and decided first in division, and any motion for reconsideration of decisions shall be decided by the Commission en banc.[12]

The procedure for disposition of motions for reconsideration in the COMELEC is found in Rule 19 of the COMELEC Rules of Procedure. Sections 5 and 6 of Rule 19 state:

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> Rule 19 - Motions for Reconsideration
>
> x x x x
>
> Sec. 5. How Motion for Reconsideration Disposed Of. - Upon the filing of a motion to reconsider a decision, resolution, order or ruling of a Division, the Clerk of Court concerned shall, within twenty-four (24) hours from the filing thereof, notify the Presiding Commissioner. The latter shall within two (2) days thereafter certify the case to the Commission en banc.
>
> Sec. 6. Duty of Clerk of Court of Commission to Calendar Motion for Resolution. - The Clerk of Court concerned shall calendar the motion for reconsideration for the resolution of the Commission en banc within ten (10) days from the certification thereof.

In this case, however, we need not tarry on the question of jurisdiction.

San Juan's Motion for Reconsideration was filed out of time. His lead counsel received a copy of the October 25, 2004 Resolution of the COMELEC First Division on November 3, 2004, yet he filed his Motion for Reconsideration only on November 16, 2004.[13] Under Section 2,[14] Rule 19 of the COMELEC Rules of Procedure, a motion for reconsideration of a decision, resolution, order or ruling of a Division must be filed within five days from promulgation thereof. The Motion for Reconsideration having been filed out of time, its dismissal by the COMELEC First Division was valid and proper, not a grave abuse of discretion. Moreover, we find no need, in this case, to forward the matter to the COMELEC en banc where the result will be the same.

In Cayat v. COMELEC,[15] this Court upheld the Order of the COMELEC First Division denying reconsideration of its Resolution of April 12, 2004 canceling Rev. Fr. Nardo B. Cayat's certificate of candidacy for failure of the movant to pay the prescribed filing fees when he filed his motion for reconsideration. This Court held that the failure to pay the filing fees made the motion for reconsideration a mere scrap of paper, as if Cayat did not file any motion for reconsideration at all. In the same manner, we find no grave abuse of discretion on the part of the COMELEC First Division in according the same treatment to herein petitioner's belatedly filed Motion for Reconsideration.

WHEREFORE, the petition is DENIED for lack of merit.

Costs against petitioner.

SO ORDERED.

Puno, C.J., Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Azcuna, Tinga, Chico-Nazario, Garcia, Velasco, Jr., Nachura, and Reyes, JJ., concur.

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[1] Rollo, pp. 25-34.

[2] Id. at 35-36.

[3] Id. at 37-40.

[4] Records, p. 7.

[5] Id. at 1-6.

[6] Id. at 12-16.

[7] Id. at 17.

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[8] Rollo, p. 40.

[9] Id. at 33.

[*] The correct date of receipt is November 3, 2004.

[10] Id. at 35-36.

[11] Id. at 99-100.

[12] Kho v. Commission on Elections, G.R. No. 124033, September 25, 1997, 279 SCRA 463, 471.

[13] Rollo, p. 35.

[14] 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.

[15] G.R. Nos. 163776 and 165736, April 24, 2007, pp. 13-14.

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