

DR. MAHID M. MUTILAN, PETITIONER, VS. COMMISSION ON ELECTIONS PROMULGATED: AND ZALDY UY AMPATUAN, RESPONDENTS.

G.R. NO. 171248. April 02, 2007

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

Before the Court is a petition for certiorari[1] assailing the 28 December 2005 Order[2] of the Commission on Elections (COMELEC) En Banc.

The Antecedent Facts

Dr. Mahid M. Mutilan (petitioner) and Zaldy Uy Ampatuan (private respondent) were candidates for Governor during the election of regional officials held on 8 August 2005 in the Autonomous Region of Muslim Mindanao (ARMM). On 11 August 2005, private respondent was proclaimed as the duly elected Governor of the ARMM.

On 19 August 2005, petitioner filed an Electoral Protest and/or Petition to Annul the Elections. The case was docketed as EPC No. 2005-3. Petitioner contested the results of the elections in Maguindanao, Basilan, Tawi-Tawi, and Sulu on the ground that no actual election was conducted in the precincts in these four provinces. Petitioner alleged that the voters did not actually vote and that the ballots were filled up by non-registered voters in the four provinces. Petitioner also contested the results in the municipalities of Butig, Sultan Gumander, Calanogas, Tagoloan, Kapaï, Masiu, and Maguing in Lanao del Sur where massive substitute voting allegedly took place.

The Ruling of the COMELEC Second Division

In its 21 November 2005 Order,[3] the COMELEC Second Division dismissed the petition.

The COMELEC Second Division stated that during the initial hearing of the case, petitioner's counsel admitted that the petition was not an election protest but one for annulment of elections. Petitioner's counsel prayed that the case be elevated to the COMELEC En Banc. Petitioner argued that "jurisdiction over the x x x petition is vested by law in the entire Honorable Commission both in banc and in division, such that this Honorable Commission (Second Division) can legally elevate the case to the Honorable Commission En Banc pursuant to its rules of procedure to expedite disposition of election case." [4]

The COMELEC Second Division ruled that jurisdiction over petitions for annulment of elections is vested in the COMELEC En Banc. However, the elevation of the case to the COMELEC En Banc is not sanctioned by the rules or by jurisprudence. Thus, the COMELEC Second Division dismissed the petition for lack of jurisdiction. The dispositive portion of the 21 November 2005 Order reads:

IN VIEW OF THE FOREGOING, and considering the categorical admission of the [petitioner] that the instant

petition is not an election protest but one for annulment of elections, the Commission (Second Division) hereby DISMISSES the same for lack of jurisdiction. Sec. 4 of Republic Act 7166 confers upon the Commission sitting en banc the exclusive jurisdiction over petition for annulment of election.

Anent the prayer to elevate the petition to annul the elections to the Commission en banc, the Commission (Second Division) hereby DENIES the same for want of requisite authority therefor under the Rules.

SO ORDERED.[5] (Emphasis in the original)

On 29 November 2005, petitioner filed a Motion for Reconsideration of the 21 November 2005 Order of the COMELEC Second Division. On 29 December 2005, petitioner filed a Motion to Admit Verified Copies of Motion for Reconsideration. Petitioner's counsel alleged that at the time of the filing of the motion for reconsideration, petitioner was in Marawi City and his verification arrived in Manila only after the filing of the motion for reconsideration. Petitioner's counsel alleged that he had to file the unverified motion for reconsideration because he had only five days from receipt of the 21 November 2005 Order to file the motion.

The Ruling of the COMELEC En Banc

In its Order dated 28 December 2005, the COMELEC En Banc denied the motion for reconsideration for petitioner's failure to verify it in accordance with Section 3, Rule 19 of the COMELEC Rules of Procedure. The COMELEC En Banc ruled that the 21 November 2005 Order of the COMELEC Second Division had become final and executory on 8 December 2005. Thus:

ACCORDINGLY, the Clerk of the Commission, Electoral Contests Adjudication Department (ECAD)[,] this Commission, is hereby directed to immediately issue an Entry of Judgment.

Let copies of this Order, the Entry of Judgment and Order of 21 November 2005 be furnished Her Excellency, Hon. Gloria Macapagal-Arroyo, President of the Republic of the Philippines, the Hon. Secretary, Department of Interior and Local Government, the Hon. Chairman, Commission on Audit and the Secretary, Regional Assembly, Autonomous Region in Muslim Mindanao (ARMM).

SO ORDERED.[6] (Emphasis in the original)

Hence, the petition before this Court.

The Issues

Petitioner raises the following issues before this Court:

- Whether the COMELEC Second Division acted in excess of its jurisdiction and with grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing the petition to annul elections and in not elevating the petition to the COMELEC En Banc.
- Whether the COMELEC En Banc acted in excess of its jurisdiction and with grave abuse of discretion amounting to lack or excess of jurisdiction in denying petitioner's motion for reconsideration for lack of verification.[7]

The Ruling of this Court

The petition is partly meritorious

The COMELEC Second Division is Not Prohibited from Elevating the Petition to the COMELEC En Banc

Petitioner alleges that the COMELEC Second Division gravely abused its discretion in dismissing the petition for annulment of elections. Citing Section 3, Article IX-C of the 1987 Constitution, petitioner alleges that "[p]ublic

respondent en banc or in division possesses the jurisdiction conferred by the Constitution in the entire public respondent as one whole collegial body or unit and such jurisdiction continues to exist when the public respondent sits either en banc or in a division." [8] As such, the COMELEC Second Division has the "jurisdiction and authority to take action on the petition x x x [and] to legally elevate the petition to public respondent sitting en banc." [9]

Section 3, Article IX-C of the 1987 Constitution provides:

The Commission on Elections may sit en banc or in two divisions, and shall promulgate its rules of procedure in order to expedite disposition of election cases, including pre-proclamation controversies. All such election cases shall be heard and decided in division, provided that motions for reconsideration of decisions shall be decided by the Commission en banc.

Under Section 3, Article IX-C of the 1987 Constitution, all election cases, including pre-proclamation controversies, must be heard and decided by a division of the COMELEC.

In his Electoral Protest and/or Petition to Annul the Elections, petitioner seeks for a declaration of failure of elections in the contested areas. Petitioner's counsel readily admitted during the initial hearing that the petition was for annulment of elections.

Under Section 4 of Republic Act No. 7166 (RA 7166), [10] jurisdiction over postponements, failure of elections and special elections vests in the COMELEC En Banc. [11] The jurisdiction of the COMELEC En Banc over a petition to declare a failure of elections has been affirmed by this Court which ruled that a petition to declare a failure of elections is neither a pre-proclamation controversy nor an election case. [12] A prayer to annul election results and a prayer to declare failure of elections based on allegations of fraud, terrorism, violence or analogous causes are actually of the same nature and are denominated similarly in the Omnibus Election Code. [13] Thus, the COMELEC Second Division has no jurisdiction over the petition to annul the elections.

Petitioner alleges that the docketing of the case as an election protest case was based on the determination of the administrative docket staff. Petitioner argues that the internal docketing should not prejudice his rights and should not divest the COMELEC, sitting either En Banc or in Division, of its jurisdiction over the petition.

The argument has no merit. Petitioner filed an Electoral Protest and/or Petition to Annul the Elections. Petitioner cannot put the blame on the docketing clerk because he clearly tried to avail of two different remedies, each one falling under separate jurisdictions.

The COMELEC Second Division ruled that automatic elevation of the case to the En Banc is not sanctioned by the rules or by jurisprudence. Petitioner argues that the COMELEC Second Division should have elevated the petition to the COMELEC En Banc instead of dismissing the petition for lack of jurisdiction.

We agree with petitioner. While automatic elevation of a case erroneously filed with the Division to En Banc is not provided in the COMELEC Rules of Procedure, such action is not prohibited. Section 4, Rule 2 of the COMELEC Rules of Procedure provides:

Means to Effect Jurisdiction. — All auxiliary writs, processes and other means necessary to carry into effect its powers or jurisdiction may be employed by the Commission; and if the procedure to be followed in the exercise of such power or jurisdiction is not specifically provided for by law or these rules, any suitable process or proceeding may be adopted. (Emphasis supplied)

Hence, there is nothing in the COMELEC Rules of Procedure to prevent the COMELEC Second Division from referring the petition to annul the elections to the COMELEC En Banc.

Nevertheless, the petition must still fail.

In his Electoral Protest and/or Petition to Annul the Elections, petitioner alleged that no actual election was conducted in the contested areas. Petitioner further alleged that the voters did not actually vote and the ballots were filled up by non-registered voters. Petitioner also alleged massive disenfranchisement and substitute voting. Petitioner argued that the irregularities warrant the annulment and setting aside of the elections in the contested areas.

There are three instances where a failure of elections may be declared, thus:

- (a) the election in any polling place has not been held on the date fixed on account of force majeure, violence, terrorism, fraud or other analogous causes;
- (b) the election in any polling place has been suspended before the hour fixed by law for the closing of the voting on account of force majeure, violence, terrorism, fraud or other analogous causes; or
- (c) after the voting and during the preparation and transmission of the election returns or in the custody or canvass thereof, such election results in a failure to elect on account of force majeure, violence, terrorism, fraud or other analogous causes.[14]

In all three instances, there is a resulting failure to elect.[15] In the first instance, the election has not been held. In the second instance, the election has been suspended. In the third instance, the preparation and the transmission of the election returns give rise to the consequent failure to elect; the third instance is interpreted to mean that nobody emerged as a winner.[16]

None of the three instances is present in this case. In this case, the elections took place. In fact, private respondent was proclaimed the winner. Petitioner contests the results of the elections on the grounds of massive disenfranchisement, substitute voting, and farcical and statistically improbable results. Petitioner alleges that no actual election was conducted because the voters did not actually vote and the ballots were filled up by non-registered voters.

Petitioner alleges that "[i]n some instances, the ballots were forcibly grabbed by armed persons and the same were filled-up even before election day." [17] However, petitioner did not cite the particulars of his allegations. Petitioner further alleges that "election returns were already filled up even before the counting started;" [18] "votes credited to candidates even exceeded the number of registered voters of the precincts;" [19] and "in one of the counting areas, the tally boards were filled up in the presence of some Comelec officials even before the ballots were counted." [20] Again, petitioner failed to state the particulars of these incidents except that "[s]ome of these anomalies were committed in the municipalities of Butig, Sultan Gumander, Calanogas, Tagoloan, Kapa and Maguing of Lanao del Sur." [21]

The other allegations of petitioner, particularly the transfer of venue of the canvass without previous notice to the candidates, the proclamation of private respondent without canvassing the results of the "farcical election" in Tawi-Tawi, the erasures in the certificate of canvass, the lack of initials by the Provincial Board of Canvassers, the use of different inks and handwritings, and the act of the Provincial Board of Canvassers in simply noting his objections to the canvass of the returns, are not grounds that would warrant the annulment of the elections.

In *Pasandalan v. Commission on Elections*, the Court explained:

To warrant a declaration of failure of election on the ground of fraud, the fraud must prevent or suspend the holding of an election, or mar fatally the preparation, transmission, custody and canvass of the election returns. The conditions for the declaration of failure of election are stringent. Otherwise, elections will never end for losers will always cry fraud and terrorism.

The allegations of massive substitution of voters, multiple voting, and other electoral anomalies should be resolved in a proper election protest in the absence of any of three instances justifying a declaration of failure of election. In an election protest, the election is not set aside, and there is only a revision or recount of the ballots cast to determine the real winner.

The nullification of elections or declaration of failure of elections is an extraordinary remedy. The party who seeks the nullification of an election has the burden of proving entitlement to this remedy. It is not enough that a verified petition is filed. The allegations in the petition must make out a prima facie case for declaration of failure of election, and convincing evidence must substantiate the allegations.[22]

Here, the allegations of petitioner in his petition to annul the elections fail to make out a prima facie case to warrant the declaration of failure of elections.

Motion for Reconsideration Must Be Verified

Section 3, Rule 19 of the COMELEC Rules of Procedure requires that the motion for reconsideration be verified.[23] The COMELEC En Banc ruled that there was no valid motion for reconsideration because petitioner failed to comply with Section 3, Rule 19 of the COMELEC Rules of Procedure. The COMELEC En Banc ruled that the Order of the COMELEC Second Division had become final and executory.

Petitioner alleges that the absence of verification in his motion for reconsideration constitutes a slight or minor lapse and defect. Petitioner further alleges that the absence of verification is merely a formal defect and does not affect the validity and efficacy of the pleading.

Petitioner alleges that the motion for reconsideration was filed within five days from receipt of the COMELEC Second Division's Decision in accordance with Section 2, Rule 19 of the COMELEC Rules of Procedure. Petitioner alleges that the motion for reconsideration was not verified because he was then in Marawi City. Petitioner's verification did not arrive in Manila until after the filing of the motion for reconsideration. Petitioner alleges that upon the arrival of the verification in Manila, his counsel filed a Motion to Admit Verified Copies of Motion for Reconsideration and explained the reason for the delayed submission of petitioner's verification.

Petitioner's motion for reconsideration was filed on 29 November 2005. The COMELEC En Banc denied the motion for reconsideration in its Order dated 28 December 2005. Petitioner filed the Motion to Admit Verified Copies of Motion for Reconsideration only on 29 December 2005, one day after the COMELEC En Banc's denial of his motion for reconsideration and one month after the filing of the original motion for reconsideration.

Grave abuse of discretion implies capricious and whimsical exercise of judgment amounting to lack of jurisdiction, or arbitrary and despotic exercise of power because of passion or personal hostility.[24] It is not sufficient that a tribunal, in the exercise of its power, abused its discretion; such abuse must be grave.[25] The grave abuse of discretion must be so patent and gross as to amount to an evasion or refusal to perform a duty enjoined by law.[26] In this case, we see no grave abuse of discretion on the part of the COMELEC En Banc in denying petitioner's motion for reconsideration. The Motion to Admit Verified Copies of Motion for Reconsideration was filed only after the denial by the COMELEC En Banc of the original and unverified motion for reconsideration.

WHEREFORE, we DISMISS the petition. We AFFIRM the 28 December 2005 Order of the COMELEC En Banc.

SO ORDERED.

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

[1] Under Rule 64 in relation to Rule 65 of the 1997 Rules of Civil Procedure.

[2] Rollo, pp. 119-121. Signed by Chairman Benjamin S. Abalos and Commissioners Rufino S.B. Javier, Mehol K. Sadain, Resurreccion Z. Borra, Florentino A. Tuason, Jr., and Romeo A. Brawner.

[3] Id. at 80-81. Signed by Presiding Commissioner Mehol K. Sadain and Commissioner Florentino A. Tuason, Jr.

[4] Id. at 69.

[5] Id. at 81.

[6] Id. at 120-121.

[7] Id. at 11.

[8] Id. at 23-24.

[9] Id. at 24.

[10] An Act Providing for Synchronized National and Local Elections and for Electoral Reforms, Authorizing Appropriations Therefor and For Other Purposes. Approved on 26 November 1991.

[11] Section 4 of RA 7166 states:

SEC. 4. Postponements, Failure of Elections and Special Elections. — The postponements, declaration of failure of elections and the calling of special elections as provided in Sections 5, 6 and 7 of the Omnibus Election Code shall be decided by the Commission sitting en banc by a majority vote of its members. The causes for the declaration of failure of election may occur before or after the casting of votes or on the day of the election. x x x

[12] Borja, Jr. v. Commission on Elections, G.R. No. 120140, 21 August 1996, 260 SCRA 604.

[13] Mayor Cawasa v. Comelec, 433 Phil. 312 (2002).

[14] Banaga, Jr. v. Commission on Elections, 391 Phil. 596 (2000).

[15] Id.

[16] Id.

[17] Rollo, p. 40.

[18] Id.

[19] Id.

[20] Id.

[21] Id.

[22] 434 Phil. 161, 173 (2002).

[23] Section 3, Rule 19 provides:

Sec. 3. Form and Contents of Motion for Reconsideration. — The motion shall be verified and shall point out specifically the findings or conclusions of the decision, resolution, order or ruling which are not supported by the evidence or which are contrary to law, making express reference to the testimonial or documentary evidence or the provisions of law alleged to be contrary to such findings or conclusions.

[24] *Navarosa v. Comelec*, 458 Phil. 233 (2003).

[25] *Benito v. Commission on Elections*, 402 Phil. 764 (2001).

[26] *Navarosa v. Comelec*, *supra* note 24.

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