

PET ANGELI R. CARLOTO, PETITIONER, VS. COMMISSION ON ELECTIONS, HON. ARTURO M. PACULANANG, IN HIS CAPACITY AS ACTNG. PRESIDING JUDGE, RTC BRANCH 28, LILOY, ZAMBOANGA DEL NORTE A...

G.R. NO. 174155. January 24, 2007

Ponente: AZCUNA, J.

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AZCUNA, J.:

This is a petition for certiorari[1] and prohibition with prayer for the issuance of a temporary restraining order (TRO) and/or writ of preliminary injunction with motion for special raffle.

Petitioner seeks the nullification of the resolutions, respectively dated January 31, 2006 and August 18, 2006, of the Commission on Elections (COMELEC), First Division, and the COMELEC en banc, allowing execution pending appeal the decision[2] of public respondent Judge Arturo M. Paculanang of the Regional Trial Court of Lilo, Zamboanga del Norte, Branch 28, in Election Case No. SE-03,[3] declaring private respondent as the duly elected mayor of Gutalac, Zamboanga del Norte in the May 10, 2004, Synchronized National and Local Elections.

The antecedents are as follows:

Petitioner Pet Angeli R. Carloto and private respondent Mariano C. Candelaria vied for the mayoralty post in the Municipality of Gutalac, Zamboanga del Norte in the May 10, 2004 elections.

After the canvassing of election returns, petitioner was proclaimed mayor with 6,466 votes as compared to private respondent's 6,314 or with a marginal lead of 152 votes.

Private respondent filed an election protest before the Regional Trial Court of Lilo, Zamboanga del Norte, Branch 28, docketed as SE-03, alleging massive fraud and irregularities in the conduct of the election purportedly employed by petitioner to ensure her victory.

On July 6, 2004, the trial court issued an order directing the transfer of the ballot boxes and other election paraphernalia to its custody. It likewise ordered the revision of the ballots, and appointed the members of the revision committee.

Petitioner filed her Answer/Opposition with Counter-Protest for a judicial recount asserting that the election was conducted in accordance with the Omnibus Election Code, and the contested votes in favor of private respondent cannot offset her marginal lead.

On September 14, 2005, the trial court rendered its decision declaring private respondent as the winning mayoralty candidate after it annulled the election results in four precincts of the Municipality of Gutalac on the ground that rampant irregularities took place in violation of the Omnibus Election Code (B.P. 881), such as the following: a) the members of the Board of Election Inspectors (BEI) of these precincts failed to affix their signatures at the back portion of the ballots; b) the assistants who voted in behalf of the illiterates were not able to

take their oaths; c) some signatures of the voters found in the front page of the voter's registration record (VRR) did not tally with the signatures of the voters appearing at the back of the VRR; d) the poll clerks failed to indicate against the names of the voters whether they were disabled or illiterate; and 5) the assistants for the illiterate voters were already allowed to cast the votes for the latter even before their names and signatures were recorded.[4]The dispositive portion of the decision reads:

WHEREFORE, the Court DECLARES protestant-petitioner Mariano C. Candelaria, Jr. to have won the elections for Mayor of Gutalac, Zamboanga del Norte, with a plurality of one hundred thirty three (133) votes over that of protestee-respondent Pet Angeli Carloto, and not being disqualified from holding the office of Mayor for the Municipality of Gutalac, Zamboanga del Norte, Philippines; and DECLARING the election of private-potestee Pet Angeli Carloto, for the office of the Municipal Mayor of Gutalac, Zamboanga del Norte, [in the] May 10, 2004 election[s] NULL and VOID ab initio.

CLAIM for damages DISMISSED for insufficiency of evidence.

No pronouncement as to costs.

SO ORDERED.[5]

Petitioner filed her notice of appeal with the trial court. The cases were docketed as EAC No. A-27-2005 and EAC No. A-28-2005 and were later consolidated.

Meanwhile, private respondent moved for the execution of the trial court's decision pending appeal, citing the following reasons: a) public interest; b) shortness of the remaining portion of the term of the contested office; and, c) the length of time that the election contest had been pending. Sustaining the aforesaid reasons, and the ruling in *Ramas v. Commission on Elections*,^[6]the motion was granted by the trial court in its resolution dated September 26, 2005, thus:

WHEREFORE, upon the filing of a CASH BOND in the amount of FIVE HUNDRED THOUSAND PESOS (P500,000.00), let a writ of execution pending appeal issue against protestant-respondent Pet Angeli R. Carloto who is hereby ordered to cease and desist from discharging the duties and functions of the Office of the Municipal Mayor of Gutalac, Zamboanga del Norte.

...

Thereafter, let the entire records of this case be forwarded to the Commission on Elections, on appeal.

SO RESOLVED.[7]

A writ of execution was subsequently issued by the trial court on September 26, 2005.

Consequently, petitioner filed a petition for certiorari and prohibition with prayer for a temporary restraining order (TRO) or status quo order with the COMELEC (First Division) assailing the above resolution and the writ of execution issued by the trial court.

Acting on the petition, the COMELEC (First Division), on September 28, 2005, issued a TRO and a status quo ante order, thus:

In the meantime, in the interest of justice and so as not to render moot and academic the serious issues raised in the petition, a TEMPORARY RESTRAINING ORDER is hereby issued effective immediately.... In the event that the resolution of September 26, 2005 had already been executed and respondent MARIANO C. CANDELARIA, JR. had assumed and performed the function of Mayor of the Municipality of Gutalac, Zamboanga del Norte, a STATUS QUO ANTE ORDER is hereby ISSUED directing the parties to observe and maintain the status prior to the promulgation of the September 14, 2005 Decision of the public respondent as

well as his Resolution of September 26, 2005. In which case, private respondent shall forthwith vacate the post in favor of the petitioner. Moreover, municipal officials and employees including barangay officials of the Municipality of Gutalac are hereby directed to recognize the petitioner Pet Angeli R. Carloto as the legitimate mayor of Gutalac, Zamboanga del Norte until further orders from this Commission. The depository banks of the municipality...and all other banks or financial institutions where funds are deposited under the account of the Municipality of Gutalac, Zamboanga del Norte are instructed to recognize the petitioner as the legally authorized local official to transact business in behalf of the municipality.[8]

On January 31, 2006, however, the COMELEC (First Division) issued a resolution dismissing the petition based on the following grounds: a) the presence of good reasons in the issuance of the writ of execution by the trial court such as: the shortness of the remaining period of the term of the contested office, the length of time that the election contest had been pending, and public interest; and b) the alleged errors committed by the public respondent judge in his decision declaring private respondent as the duly elected mayor of the Municipality of Gutalac was reviewable only on appeal and not via a petition for certiorari:

WHEREFORE, premises considered, the Commission (First Division) RESOLVED, as it hereby RESOLVES, to DISMISS the instant PETITION for LACK OF MERIT.[9]

Petitioner filed her motion for reconsideration with the COMELEC en banc but the same was denied in a resolution, dated August 18, 2006:

The Decision rendered by public respondent court in declaring the private respondent winner was made after the annulment of election results in four (4) precincts for the following reasons: (i) the member of the BEI of these precincts failed to affix their signatures at the back portion of the ballots, and (ii) the assistants who voted in behalf of the illiterates were not able to take their oath as required under the Omnibus Election Code.

When the petitioner questioned the court's Resolution granting the motion for execution of judgment pending appeal on this ground, what is being questioned in effect is an error of judgment. Errors of judgment are subject to the judicial remedy of appeal. It must be reminded that petitioner Carloto did appeal the public respondent court's decision in EAC No. A-27-2005. Thus, this issue should be properly heard and resolved on appeal and not in a petition for certiorari.[10]

We find the motion for reconsideration on the first issue not impressed with merit since there was no grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public respondent.

Anent the SECOND issue of whether or not the Status Quo Ante Order dated September 28, 2005 is still effective, the answer is in the negative. The Resolution of the First Division promulgated 31 January 2006 automatically vacated the status quo ante order issued by the same. The issue has been mooted by the said resolution.

WHEREFORE, in view of the foregoing, the motion for reconsideration is hereby denied. Let the Writ of Execution issued by the public respondent dated September 26, 2005 be implemented.

SO ORDERED.[11]

Hence, the petition to this Court. Incidentally, acting on petitioner's Motion Reiterating the Prayer for the Issuance of a Temporary Restraining Order or Status Quo Order, the Court en banc issued a resolution dated September 19, 2006, granting the motion and requiring the parties to observe the status quo prevailing before the rendition of the September 14, 2005 decision of the RTC, Branch 28, Liloy, Zamboanga del Sur in election Case No. SE-03.

Petitioner raises the following issues:

I

THE MAJORITY OF THE COMELEC COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT SUSTAINED THE TRIAL COURT IN ALLOWING EXECUTION PENDING APPEAL OF THE LATTER'S DECISION WHICH, ON ITS FACE, THE GROUNDS FOR INVALIDATING MORE THAN 666 BALLOTS ARE CONTRARY TO EXISTING RULES AND JURISPRUDENCE.

II

IT WAS GRAVE ABUSE OF DISCRETION FOR THE MAJORITY OF THE COMELEC TO RULE THAT THE ISSUES RAISED BY CARLOTO IN HER CERTIORARI PETITION SHOULD BE PROPERLY HEARD ON THE APPEAL SHE FILED WITH THE COMELEC.

III

IT WAS GRAVE ABUSE OF DISCRETION FOR THE MAJORITY OF THE COMELEC TO DISREGARD THE DOCTRINE THAT EXECUTION PENDING APPEAL IS AN EXCEPTION TO THE GENERAL RULE ON EXECUTION OF JUDGMENTS. NO SPECIAL ORDER WAS EVEN ISSUED TO ALLOW SUCH ADVANCE EXECUTION.

IV

IT WAS GRAVE ABUSE OF DISCRETION FOR THE MAJORITY OF THE COMELEC TO RULE THAT THE STATUS QUO ANTE ORDER DATED SEPTEMBER 28, 2005 IS NO LONGER EFFECTIVE.

The primary issue to be resolved is whether or not the COMELEC committed grave abuse of discretion in allowing the execution of the trial court's decision pending appeal.

In the absence of an express provision in the Omnibus Election Code, execution of judgment pending appeal in election cases is governed by Section 2, Rule 39 of the Rules of Court[12] which finds suppletory application in this case, thus:

Section 2. Discretionary execution. –

(a) Execution of a judgment or a final order pending appeal. -- On motion of the prevailing party with notice to the adverse party filed in the trial court while it has jurisdiction over the case and is in possession of either the original record or the record on appeal, as the case may be, at the time of the filing of such motion, said court may, in its discretion, order execution of a judgment or final order even before the expiration of the period to appeal.

After the court has lost jurisdiction, the motion for execution pending appeal may be filed in the appellate court.

Discretionary execution may only issue upon good reasons to be stated in a special order after hearing....

To grant execution pending appeal in election protest cases, the following requisites must concur: a) there must be a motion by the prevailing party with notice to the adverse party; b) there must be "good reasons" for the execution pending appeal; and c) the order granting execution pending appeal must state "good reasons." [13]

Ramas v. Commission on Elections[14] held that the following constitute "good reasons" and a combination of two or more of them will suffice to justify execution pending appeal: (1) public interest involved or the will of the electorate; (2) the shortness of the remaining portion of the term of the contested office; and (3) the length of time that the election contest has been pending.

The above reasons were adopted by the trial court when it issued a resolution granting the execution of its

decision pending appeal:

CONSIDERING that the attendant circumstances in this motion is in accord with the jurisprudence laid down by the Supreme Court in the RAMAS and NAVAROSA[15] cases, supra, and finding the “good reasons” submitted by movant-petitioner, consisting:

- the fact that the above-entitled case has been pending for more than one (1) year by reason of protestee’s delaying tactics, (to be precise for almost seventeen (17) months;
- the fact that the remaining portion of the term of the contested office is also more than one (1) year before it will be due for the next election (to be precise, for almost twenty (20) months from now; and,
- by reason of public interest, convincing and meritorious, this court hereby GRANTS the motion of protestant-movant for the execution pending appeal of the decision of this Court in this case dated September 14, 2005 and promulgated on September 20, 2005, the same being in ORDER.[16]

The Court agrees that these constitute justifiable and good reasons for the issuance of an order of execution pending appeal. Similarly, in *Lindo v. Comelec*,[17] it was held that the grant of execution pending appeal would give substance and meaning to the people’s mandate because they had the right to be governed by their chosen mayor, and barely eighteen months were left in the tenure of the Mayor.

Petitioner, however, in questioning the propriety of the execution pending appeal, is also putting in issue the basis for the trial court’s decision, particularly the grounds upon which the annulment of the election results were based that resulted in the victory of private respondent, who is now sitting as mayor of the Municipality of Gutalac by virtue of the challenged resolution ordering execution pending appeal.

Petitioner opines that the trial court’s reasons for invalidating the ballots, i.e., the lack of necessary oath by the assistants of illiterate and disabled voters, and the absence of the signature of the Chairman of the BEI at the back of the ballots, are not valid grounds for the annulment of election returns but merely constitute election offenses under the Omnibus Election Code, which states:

Sec. 196. Preparation of ballots for illiterate and disabled persons. – a voter who is illiterate or physically unable to prepare the ballot by himself may be assisted in the preparation of his ballot by a relative by affinity or consanguinity within the fourth civil degree or if he has none, by any person of his confidence who belong to the same household or any member of the board of election inspectors, except the two party members. Provided, That no voter shall be allowed to vote as illiterate or physically disabled unless it is so indicated in his registration record: Provided, further, that in no case shall an assistant assist more than three times except the non-party members of the board of election inspectors. The person thus chosen shall prepare the ballot for the illiterate or disabled voter inside the voting booth. The person assisting shall bind himself in a formal document under oath to fill out the ballot strictly in accordance with the instructions of the voter and not to reveal the contents of the ballot prepared by him. Violation of this provision shall constitute an election offense (Sec. 141, 1978 EC).[18]

Thus, according to petitioner, pursuant to the above provision, the 466 votes garnered by petitioner out of a total of 666 votes from these four precincts should not have been invalidated. The COMELEC erred in allowing execution pending appeal of a decision which disenfranchised hundreds of voters on grounds not authorized by law and existing jurisprudence. Therefore, since the assailed resolutions of the COMELEC and the trial court’s decision contravene existing laws and jurisprudence, they should be nullified. Consequently, the resolution allowing execution pending appeal must be set aside because a void judgment can never be validly executed.

With respect to the above contentions by petitioner, the Court agrees with the COMELEC that they involve an alleged error of judgment on the part of the trial court for which the proper judicial remedy is an appeal from the

decision rendered by that court. It is settled that where the issue or question involved affects the wisdom or legal soundness of the decision – not the jurisdiction of the court to render said decision – the same is beyond the province of a special civil action for certiorari.[19]

Thus, in a special civil action of certiorari[20] under Sec. 1 of Rule 65, such as in the instant case, the only question that may be raised and/or resolved is whether or not the respondent has acted without or in excess of jurisdiction or with grave abuse of discretion.[21] The Court cannot correct errors of fact or law which the lower court may have committed.[22]

Moreover, the rule is that certiorari will not lie to review a discretionary action of any tribunal except when the latter has acted without or in excess of jurisdiction, where an order does not conform to the requirements prescribed by law and may reasonably cause material injury throughout subsequent proceedings for which the remedy of appeal will be inadequate, or where there is a clear or serious abuse of discretion.[23] In this case, absent such a finding of a capricious and whimsical exercise of judgment, therefore, the Court holds that the trial court did not abuse its discretion in granting execution pending appeal.

Finally, the Court notes that at this stage, a resolution of the errors attributed by petitioner to the trial court's decision would result in a final disposition of the election case on its merits which will, in effect, render the appeal pending before the COMELEC (EAC No. A-27-2005 and EAC No. A-28-2005) moot and academic.[24]

In view of the foregoing, the Court finds it unnecessary to delve into the other arguments made by petitioner.

WHEREFORE, the petition is DISMISSED. The resolutions of the First Division of the COMELEC and the COMELEC en banc, respectively dated January 31, 2006 and August 18, 2006, allowing execution pending appeal of the decision[25] of the Regional Trial Court of Liloy, Zamboanga del Norte, Branch 28, in Election Case No. SE-03, are hereby AFFIRMED. Accordingly, the Status Quo Order issued by this Court en banc in the resolution dated September 19, 2006 is hereby LIFTED.

No costs.

SO ORDERED.

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

[1] Under rule 65 of the Rules of Court.

[2] Promulgated on September 14, 2005.

[3] Mariano C.Candelaria, Jr. v. Pet Angeli R. Carloto and Municipal Board of Canvassers of Gotalac, Zamboanga del Norte.

[4] Rollo, pp.95-105.

[5] Id. at 115.

[6] G.R. No. 130831, February 10, 1998, 286 SCRA 188.

[7] Rollo, pp. 135-136.

[8] Rollo, pp. 155-156.

[9] Id. at 37.

[10] Emphasis supplied.

[11] Rollo, p. 44.

[12] The rule must be strictly construed against the movant as it is an exception to the general rule on execution of judgments. Sec.1, Rule 39 of the Rules of Court states: "Execution shall issue as a matter of right, on motion, upon a judgment or order that disposes of the action or proceeding upon the expiration of the period of appeal therefrom if no appeal has been duly perfected..." The reason for allowing immediate execution pending appeal must constitute superior circumstances demanding urgency as to outweigh the injury or damage of the losing party should it secure a reversal of the judgment on appeal. Absent any such justification, the order of execution must be struck down as flawed with grave abuse of discretion [*Camlan v. Commission on Elections*, 338 Phil. 474 (1997)].

[13] *Navarosa v. COMELEC*, 458 Phil. 233 (2003).

[14] *Supra*, note 6.

[15] *Supra*, note 13.

[16] Rollo, pp. 132-134.

[17] G.R. No. 127311, June 19, 1997, 274 SCRA 511.

[18] Emphasis supplied.

[19] *Planters Products, Inc. v. Court of Appeals*, G.R. No. 76591, February 6, 1991, 193 SCRA 563.

[20] The function of a writ of certiorari is to keep an inferior court within the bounds of its jurisdiction or to prevent it from committing such a grave abuse of discretion amounting to excess of jurisdiction. It is available only for these purposes and not to correct errors of procedure or mistakes in the judge's findings or conclusions (*Regala v. CFI of Bataan*, 77 Phil. 684).

[21] The mere fact that the court decides the question wrongly is utterly immaterial to the question of its jurisdiction (*Estrada v. Sto. Domingo*, 28 SCRA 891). Thus, assuming *arguendo* that the court had committed a mistake, the error does not vitiate the decision considering that it had jurisdiction over the case (*People v. Francisco*, 128 SCRA 110).

[22] *Ybanez v. Court of Appeals*, 253 SCRA 540.

[23] *Fortune Corporation v. Court of Appeals*, 229 SCRA 359.

[24] Article IX-C, Section 2(2), of the 1987 Constitution states that "[t]he Commission on Elections shall exercise...appellate jurisdiction over all contests involving elective municipal officials decided by trial courts of general jurisdiction, or involving elective barangay officials decided by trial courts of limited jurisdiction. Decisions, final orders, or rulings of the Commission on election contests involving elective municipal; and barangay offices shall be final, executory, and not appealable."

This does not preclude the Supreme Court, however, from reviewing the decisions of the COMELEC via certiorari under Rules 64 and 65.

[25] Promulgated on September 14, 2005.

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