

ANTONIO A. DIMAYUGA, PETITIONER, VS. COMMISSION ON ELECTIONS AND MARIO V. MAGSAYSAY, RESPONDENTS.

G.R. NO. 174763. April 24, 2007

Ponente: AZCUNA, J.

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AZCUNA, J.:

This is a petition[1] for Certiorari and Prohibition with Prayer for the Issuance of a Writ of Preliminary Injunction and/or Temporary Restraining Order seeking the nullification of the Order of the Commission on Elections (COMELEC) en banc issued on October 10, 2006.

The facts[2] are as follows:

Petitioner and private respondent vied for the mayoralty post of the Municipality of San Pascual, Batangas in the May 10, 2004 elections. Private respondent won with 9,005 votes as against petitioner's 7,775 votes or a difference of 1,230 votes in favor of the former.

Petitioner filed an election protest[3] before the Regional Trial Court, Branch 3, of Batangas City based on the following grounds: a) misreading or miscounting of ballots; b) substitute voting; c) disenfranchisement of voters when they failed to register; d) clustering of precincts; and e) erasures in the Statement of Votes by Precinct.

After the revision of ballots, the case was submitted for decision. On April 18, 2006, the trial court rendered its Decision declaring petitioner the winner by 41 votes after invalidating a total of 1,192 ballots for private respondent.

On April 21, 2006, private respondent filed with the trial court a Notice of Appeal.[4] On the same date, petitioner filed his Motion for Execution Pending Appeal. An Opposition to the aforesaid motion was filed by private respondent on April 27, 2006.

On May 2, 2006, the trial court issued a Special Order granting execution pending appeal, hence, a Writ of Execution was subsequently issued on May 3, 2006.

On May 4, 2006, private respondent filed a petition for certiorari with prayer for a temporary restraining order (TRO) and/or writ of preliminary injunction with the COMELEC, Second Division,[5] assailing the May 2, 2006 Special Order of the trial court. He alleged that: a) no good reason was cited to justify the issuance of the Special Order and the Writ of Execution; b) the Writ of Execution did not comply with the requirements of the Special Order since it was issued without the required bond of P100,000; c) there is yet no final determination that a "majority" of the electorate of San Pascual, Batangas really voted for petitioner; and d) and that there is no certainty that the appealed decision of the trial court would be affirmed.

On May 5, 2006, the COMELEC, Second Division, issued an Order granting private respondent's prayer for the issuance of a TRO, the pertinent portion of which reads:

The margin of forty-one (41) votes coupled with the grounds mentioned in the Special Order which, to our

mind, were merely general statements lacking in specific justifications, do not warrant the issuance of the extra-ordinary writ of execution pending appeal. It is therefore deemed that great or irreparable injury shall befall upon the petitioner if the order granting execution pending appeal is immediately implemented.

And it is also to the best interest of the electorate of San Pascual, Batangas that the said Order is stayed for the meantime.

WHEREFORE, premises considered, the prayer for the issuance of [a] temporary restraining order is hereby granted.

Respondent Judge Galvez is hereby ordered to cease and desist from implementing the May 2, 2006 Special Order together with the May 3, 2006 Writ of Execution.

The hearing for the issuance of the writ of preliminary injunction is hereby set on May 23, 2006 at 10:00 o'clock in the morning at the COMELEC Session Hall.

Respondent Antonio A. Dimayuga is also hereby ordered to submit his comment and/or answer to the petition within five (5) days from receipt hereof.

SO ORDERED.[6]

On May 20, 2006, petitioner filed his motion to lift the temporary restraining order.

Meanwhile, the hearing for the issuance of the writ of preliminary injunction was reset to June 13, 2006.

In his Manifestation and Motion filed on May 25, 2006, petitioner intimated his re-assumption to the Office of the Mayor of San Pascual, Batangas on May 29, 2006 in view of the expiration of the injunctive writ issued on May 5, 2006.

On June 5, 2006, private respondent filed his Opposition to Motion and Comment on the Manifestation of petitioner, averring that Section 5, Rule 30 of the Comelec Rules of Procedure has been amended by Comelec Resolution No. 7630, extending the effectivity of an injunctive writ from 20 to 60 days.

Meanwhile, the hearing for the issuance of the writ of preliminary injunction was again reset to June 15, 2006. During the hearing, the parties agreed that the main petition and all incidents thereto be deemed submitted for resolution without the filing of memoranda.

On July 4, 2006, the COMELEC, Second Division, issued a Resolution denying the petition, and affirming the Special Order of the Trial Court, thus:

WHEREFORE, the petition is hereby DENIED. Let the Writ of Execution issued by public respondent dated May 3, 2006 be implemented.

SO ORDERED.[7]

On July 5, 2006, private respondent filed a Motion for Reconsideration of the above resolution, and the case was elevated to the COMELEC en banc.

On September 29, 2006, petitioner and his supporters occupied the Mayor's Office of the municipality by forcibly opening the door and breaking its locks. This resulted to a complicated situation wherein there were two persons, petitioner and private respondent, discharging the duties, powers and functions of the Mayor.

Due to this mayoralty controversy, Secretary Ronaldo V. Puno of the Department of the Interior and Local Government issued a Memorandum on October 2, 2006, stating:

...

It could be recalled that in view of the legal question involved in the mayoralty controversy in San Pascual, Batangas, the Department initially referred the matter to the COMELEC for clarification and guidance in taking further actions. As of this date, however, we are still awaiting the reply of the COMELEC.

In view of this turn of events, and in order to ease the tension brought about by the intense emotions from the supporters of each camp, and in order to restore order in the municipal government so as not to jeopardize the delivery of essential basic public services, this Department is thus constrained, based on available records whereupon we can reasonably draw our objective and fair legal position, to recognize the incumbency of Mr. Antonio A. Dimayuga as Mayor of San Pascual, Batangas, his re-assumption to office having been made by virtue of a Writ of Execution Pending Appeal earlier issued by the court.

May we emphasize, however, that this pronouncement is subject to whatever official reply that the COMELEC will make on our earlier query...[8]

On October 4, 2006, private respondent filed an Urgent Motion for Resolution of the Issue as to Whether the Special Order of Execution Pending Appeal Could be Executed Pending Resolution of the Motion for Reconsideration and/or Motion for Immediate Resolution of the Pending Motion for Reconsideration with the COMELEC en banc.

On October 10, 2006, the COMELEC en banc issued an Order granting the above Motion. The pertinent portions of the Order read:

In said Urgent Motion, petitioner raised that the Special Order of Execution Pending Appeal was issued by the lower court with grave abuse of discretion amounting to lack of jurisdiction. He stated that on the basis alone of Precinct 53A/B, the respondent court invalidated a total of 105 ballots of petitioner being allegedly "fake and spurious" without identifying the Exhibit numbers of the said 105 ballots but as shown in page 67 of the Decision of the said lower court, the private respondent objected to only 38 ballots of the petitioner in the said precinct marked as EXHIBITS D-1 to D-38. Petitioner likewise raised the question as to why the lower court annulled 105 ballots when it ruled that of the said 105 ballots, 33 ballots are genuine ballots.

ACCORDINGLY, finding the reasons stated in the petitioner's Urgent Motion to be impressed with merit the Commission en banc hereby GRANTS the same pursuant to Section 2, Rule 19 of the 1993 Comelec Rules of Procedure.

In the meantime that the Commission en banc is resolving the petitioner's Motion for Reconsideration and the case on the merits, the Commission en banc hereby issues a STATUS QUO ANTE ORDER directing both parties to observe and maintain the status of the case prior to the promulgation of the Decision of the Regional Trial Court, Branch 3, Batangas City dated April 18, 2006 effective immediately for a period of sixty (60) days or until December 9, 2006. In which case, private respondent Antonio A. Dimayuga is hereby directed to cease and desist from performing the duties and functions of the Mayor of San Pascual, Batangas and to peacefully vacate the said post in favor of petitioner Mario V. Magsaysay.

SO ORDERED.[9]

Subsequently, on December 5, 2006, the COMELEC en banc adopted a Resolution stating:

Herein resolved is the petitioner's Motion for Clarification and/or to Extend Period of Suspension of Implementation, referring to the en banc Order of the Commission, dated 10 October 2006, directing a STATUS QUO ANTE with a duration of sixty (60) days or until December 9, 2006, in this case, under Section 2, Rule 19 of the COMELEC Rules of Procedure, suspending the assumption of the respondent of the office of the mayor of San Pascual, Batangas per the order of execution of judgment pending appeal granted by public respondent Judge of the Regional Trial Court, Branch 3, Batangas City.

The said status quo ante was ordered by this Commission en banc pending resolution of petitioner's motion for

reconsideration (of the adverse decision of the Second Division of this Commission) based on serious allegations of errors apparently committed by the presiding judge of the court a quo, citing the record of the case as prima facie evidence, in order to afford this Commission en banc sufficient time to study the voluminous record of the case and render a just judgment to both parties. However, the sixty-day period has proven to be insufficient for the Commission en banc to complete its preparation of this resolution of the said motion for reconsideration in view of the thorough review and analysis that it has had to conduct of each and every one of the many ballots contested by the parties.

In view of the foregoing, the Commission en banc finds the necessity of further extending the implementation of said order of execution pending appeal issued by the court a quo, relying on Section 2, Rule 19 of the COMELEC Rules of Procedure, and on the suspension of its rules of procedure "in the interest of justice" as provided for in Section 4, Rule 1 of said Rules.

WHEREFORE, finding that the interest of justice will best be subserved and, in order to maintain peace in the Municipality of San Pascual, Batangas, with specific reference to the position of Municipal Mayor thereof, the STATUS QUO ANTE issued on October 10, 2006, is hereby extended until the herein petitioner's Motion for Reconsideration is finally resolved by the Commission en banc.

SO ORDERED.[10]

Hence, this petition raising the sole issue of whether the COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the Status Quo Ante Order and/or Resolution.

The petition should be dismissed for the following reasons:

One, the assailed Order of the COMELEC en banc was issued pursuant to Section 2, Rule 19 of the 1993 COMELEC Rules of Procedure which provides that "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."

Thus, the above motion that was timely filed by private respondent, and which the COMELEC en banc did not find to be pro forma, suspended the implementation of the Resolution issued by the COMELEC, Second Division, on July 4, 2006. Given this, the COMELEC en banc did not commit grave abuse of discretion, and its issuance of the status quo ante order was proper under the circumstances.

Two, the power of this Court to review[11] decisions of the COMELEC as prescribed in Section 7, Article IX-A of the Constitution refers to final orders, rulings and decisions of the COMELEC en banc, in accordance with the pronouncement in *Ambil, Jr. v. Commission on Elections*.^[12] Hence, the status quo ante order of the COMELEC en banc, being in the nature of an interlocutory order, will not be reviewed herein by this Court.

WHEREFORE, the petition is DISMISSED but the Commission on Elections is ORDERED to finally resolve SPR Case No. 5-2006 with utmost dispatch.

No costs.

SO ORDERED.

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

[1] Under Rule 64 of the Rules of Court.

[2] Rollo, pp. 30-36, 60-61.

[3] Docketed as Civil Case No. 7491.

[4] Docketed as EAC No. A-08-2006.

[5] SPR No. 05-2006.

[6] Rollo, p. 59.

[7] Id. at 65.

[8] Id. at 84.

[9] Id. at 93-94.

[10] Id. at 147-148.

[11] Section 2, Rule 64 of the Rules of Court states: "A judgment or final order or resolution of the Commission on Elections ... may be brought by the aggrieved party to the Supreme Court on certiorari under Rule 65, except as hereinafter provided."

[12] G.R. No. 143398, October 25, 2000, 344 SCRA 358.

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