

## HECTOR T. HIPE, PETITIONER, VS. COMMISSION ON ELECTIONS AND MA. CRISTINA L. VICENCIO, RESPONDENTS.

*G.R. No. 181528. October 02, 2009*

Ponente: VELASCO JR., J.

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### VELASCO JR., J.:

#### The Case

Before us is a Petition for Certiorari and Prohibition under Rule 64, in relation to Rule 65, of the Rules of Court seeking to nullify and enjoin the implementation of the January 30, 2008 Resolution[1] issued by the Commission on Elections (COMELEC) En Banc, which affirmed the July 11, 2007 Resolution[2] issued by its Second Division.

#### The Facts

Petitioner Hector T. Hipe and respondent Ma. Cristina L. Vicencio were candidates for the mayoralty post in Catubig, Northern Samar in the May 14, 2007 elections. During the canvass proceedings of the Municipal Board of Canvassers of Catubig, Northern Samar (MBOC), Vicencio petitioned for the exclusion of seven election returns of Precinct Nos. 0037B, 0052A, 0053A, 0058A, 0080A, 0081A and 0082A on the grounds that they were prepared under duress, threats, intimidation or coercion; and that the election was marred by massive vote buying, widespread coercion, terrorism, threats, and intimidation, preventing voters from voting, so that the said returns did not reflect the will of the electorate.[3] In support of the said petition for exclusion, Vicencio presented affidavits of some of the members of the Board of Election Inspectors, a sample ballot and an ISO Assessment.[4]

On May 19, 2007, the MBOC ruled in favor of Vicencio and excluded the seven election returns adverted to. On the same day, petitioner Hipe filed a notice of appeal. Thereafter, on May 29, 2007, petitioner Hipe filed his Verified Appeal with the COMELEC, docketed as SPC No. 07-206 entitled "In the Matter of the Petitions to Exclude Election Returns, Hector T. Hipe vs. Ma. Cristina L. Vicencio," arguing that the written petition to exclude the election returns was filed out of time, and that the grounds used to exclude the questioned returns were not proper for a pre-proclamation controversy, were not supported by credible evidence, and were beyond the jurisdiction of the MBOC.[5]

In a July 11, 2007 Resolution,[6] the Second Division of COMELEC dismissed the appeal for being filed out of time. As stated in the dispositive portion of the said Resolution:

WHEREFORE, premises considered, the instant Verified Appeal is hereby dismissed for being filed out of time.

SO ORDERED.[7]

Subsequently, on July 17, 2007, petitioner Hipe filed a Motion for Reconsideration.[8] On even date, respondent Vicencio was proclaimed as the mayor.[9] On January 30, 2008, the COMELEC En Banc resolved to deny

petitioner Hipe's Motion for Reconsideration.[10]

In the challenged Resolution,[11] the COMELEC En Banc held that the ruling of the MBOC had already attained finality considering that the filing of the Verified Appeal with the COMELEC was five days late. It stated that the filing of the Verified Appeal should have been made within the inextendible period of five days from the filing of the written and verified notice of appeal with the MBOC, with which petitioner Hipe failed to comply. Further, the COMELEC En Banc held that it was already deprived of proper jurisdiction to entertain the instant case since the case should no longer be considered as a pre-proclamation controversy, but should rather be ventilated in an election protest. In addition, the COMELEC En Banc stated that the ruling of the MBOC was amply supported by the affidavits of the Members of the Board of Election Inspectors, and that the MBOC retained sufficient discretion to avail itself of all available means to ascertain the results of the elections through witnesses, as well as through an examination of the election returns themselves.

The dispositive portion of the January 30, 2008 Resolution reads:

WHEREFORE, premises considered, the Commission (En Banc) RESOLVED as it hereby RESOLVES, to deny the instant Motion for Reconsideration filed by Appellant-Movant Hector Hipe. The questioned Resolution dated July 11, 2007, issued by the Second Division of the Commission on Elections for the exclusion of seven (7) election returns in favor of the appellee, Maria Cristina L. Vicencio, therefore, stands and remains valid.

SO ORDERED.[12]

Aggrieved, Hipe filed this petition.

The Issue

Whether or not the COMELEC En Banc acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing its challenged Resolution dated January 30, 2008, which affirmed the Resolution dated July 11, 2007 issued by its Second Division dismissing petitioner Hipe's appeal for being filed out of time.

Our Ruling

The petition is partly meritorious.

Appeal Should Be Given Due Course

In its En Banc Resolution, the COMELEC held that the ruling of the MBOC had already become final and executory; and thus, its Second Division had not acquired appellate jurisdiction to act on Hipe's verified appeal. In support of its ruling, the COMELEC En Banc relied on the Certification issued by Renato I. Madronio, Acting Election Officer II, Catubig, Northern Samar, attesting that hard or printed copies of the MBOC's ruling to exclude the seven contested election returns were received by Atty. V.B. Desales, counsel for the KAMPI-Liberal Party Coalition, at 10:37 p.m. on May 19, 2007 at the provincial Election Supervisor's Office.[13] On this basis, the COMELEC En Banc opined that when petitioner Hipe filed the Verified Appeal on May 29, 2009, said filing was already five days late and should no longer be entertained.

We disagree. Indeed, there is a disputable presumption that official duty has been regularly performed;[14] and that, corollary thereto, it is presumed that in its disposition of the contested election returns, the MBOC has regularly performed its official duty of issuing a written ruling on the prescribed form, authenticated by the signatures of its members as required under Section 20(d) of Republic Act No. 7166.[15] In fact, the alleged issuance and service upon the supposed counsel of petitioner Hipe of the written ruling of MBOC was even

supported by the aforementioned Certification of the Chairperson of the MBOC.

The records would, however, reveal that Atty. Venerando B. Desales, the counsel who was supposedly furnished the alleged written ruling of the MBOC, has denied under oath that he ever received a copy of the alleged written ruling.[16] He even categorically denied in his Affidavit that he was the counsel of petitioner Hipe.[17]

Notably, nothing in the Status of Canvass Report[18] or in the Minutes of the Proceedings of the MBOC on May 19, 2007[19] showed that a written ruling on the petition for exclusion has been rendered by the MBOC or received by petitioner Hipe.

On the contrary, a perusal of the Minutes of the Proceedings of the MBOC on May 19, 2007 would reveal that Election Officer Madronio even notified the counsels of petitioner Hipe that, as of that time, the Municipal COMELEC Office still did not have the prescribed form of the ruling, and that they would still have to get the prescribed forms in Catarman.[20] This militates against Madronio's statement in his Certification that hard or printed copies of the ruling of the MBOC were furnished to Atty. Desales on that same day.

When a plaintiff's case depends upon the establishment of a negative fact, and the means of proving the fact are equally within the control of each party, then the burden of proof is upon the party averring the negative fact.[21]

In the case at bar, petitioner Hipe asserted the negative fact, that is, that no copy of the written ruling of the MBOC was sent to him or his counsel. Thus, petitioner Hipe has the burden of proof to show that he was not furnished with a copy of the written ruling of the MBOC, which he was able to successfully prove in the instant case. Be that as it may, it then becomes incumbent upon respondent Vicencio to prove otherwise. This is because the burden of evidence is shifted if the party upon whom it is lodged was able to adduce preponderant evidence to prove its claim.[22]

Significantly, other than Madronio's statement in his Certification that hard or printed copies of the ruling of the MBOC were furnished to Atty. Desales on May 19, 2007, no other evidence was adduced by respondent Vicencio to support her claim. If indeed such written ruling exists and was indeed furnished to petitioner Hipe or his alleged counsel, it would have been very easy for respondent Vicencio to produce a copy of the written ruling with the signature of petitioner Hipe or his counsel, which she failed to do in the instant case.

Furthermore, the COMELEC has the discretion to construe its rules liberally and, at the same time, suspend the rules or any of their portions in the interest of justice.[23] As aptly stated by Commissioner Rene V. Sarmiento in his Dissenting Opinion:[24]

It is well settled that election laws should be reasonably and liberally construed to achieve their purpose - to effectuate and safeguard the will of the electorate in the choice of their representatives. The courts frown upon any interpretation that would hinder in any way not only the free and intelligent casting of votes in any election but also the correct ascertainment of the results thereof.

Disputes in the outcome of elections involve public interest. Technicalities and procedural barriers should not be allowed to stand if they constitute an obstacle to the determination of the true will of the electorate in the choice of their elective officials. Laws governing such disputes must be liberally construed to the end that the will of the people in the choice of public officials may not be defeated by mere technicalities. Hence, it is submitted that there is a need to suspend the procedural rules and resolve the merits of the case to promote justice and safeguard the will of the electorate of Catubig, Northern Samar.

Accordingly, the COMELEC should have not dismissed the appeal filed by petitioner Hipe on the ground of belated filing.

The Exclusion of the Seven Election Returns

### Was Amply Supported by Evidence

Nevertheless, even if we entertain petitioner Hipe's appeal from the decision of the MBOC on the questioned election returns, the Court still rules in favor of respondent Vicencio.

Petitioner Hipe claims that no proof was presented nor was there any showing that the seven election returns in question were defective.[25] Such contention is not persuasive.

The COMELEC, after a judicious evaluation of the documents on record, upheld the findings of the MBOC to exclude the subject election returns on the basis of the affidavits of the members of the Board of Election Inspectors. What exactly these documents and evidence are upon which the COMELEC based its resolution, and how they have been appreciated in respect of their sufficiency, are beyond this Court's scrutiny.[26] The rule that factual findings of administrative bodies will not be disturbed by courts of justice except when there is absolutely no evidence or no substantial evidence in support of such findings should be applied with greater force when it concerns the COMELEC, as the framers of the Constitution intended to place the COMELEC--created and explicitly made independent by the Constitution itself--on a level higher than statutory administrative organs.[27] The factual finding of the COMELEC is, therefore, binding on the Court. As found by the COMELEC En Banc:

Besides, we do not agree that the exclusion of the seven (7) election returns in question were not supported by any iota of evidence. This is amply supported by the affidavits of the Members of the Board of Election Inspectors; they were all made in clear and unequivocal language by public officers who are presumed to have performed such duties in the ordinary and regular execution thereof. A careful re-examination of the evidence on record reveals that there is sufficient justification to uphold the MBOC ruling to exclude the subject election returns. The MBOC retains sufficient discretion to avail itself of all available means to ascertain the results of the elections through witnesses as well as examination of the election returns themselves. Where there is no abuse of discretion the MBOC is presumed to have acted within its powers and its decision should be treated with some amount of respect.[28]

This is especially true in the instant case considering that, as noted by the COMELEC En Banc in its questioned Resolution, one of the witnesses petitioner Hipe previously presented later on recanted her testimony and admitted that she had made her previous statement as to the regularity of the conduct of the May 14, 1007 elections only out of fear due to threats upon her person.[29] As correctly observed by the COMELEC En Banc:

We also note that even one of the witnesses presented by the appellant, Melanie Robion, Chairman of the BEI for precinct No. 0037B, later on recanted her testimony. This spells doom to the appellant's cause as it even impacts on the veracity and truthfulness of the other affidavits that the appellant submitted. We are reminded of the legal principle that a falsity in one is a falsity in all, "Falsus in Onum, Falsus in Omnibus" and would now be more inclined to believe the assertions made by the appellee instead of those presented by the appellant, who has now been unmasked to have been less than truthful at one time or another.[30]

Considering the foregoing discussion, there is ample evidence to support the findings of the COMELEC that the seven election returns in question should be excluded. The contention of petitioner Hipe that said election returns were excluded from the canvass merely on the basis of pure procedural technicalities is, therefore, unfounded.

### Respondent Vicencio Substantially Complied with the Requirement that Objections Be Made in Writing

Petitioner Hipe contends that the written petition to exclude the election returns was filed beyond the prescribed time or almost 24 hours after the oral petition to exclude was manifested by the counsels of respondent Vicencio; hence, the latter's objections were raised out of time.[31]

This contention is without merit.

While the records reveal that respondent Vicencio manifested her oral objections on May 15, 2007 at around 7:00 p.m.,[32] filed the written objections on May 16, 2007 at 6:40 p.m., and submitted the documentary evidence in support of the protest at 2:45 p.m. only on the following day, the Court nevertheless considers the foregoing acts of Vicencio as substantial compliance with the requirement that objections be reduced into writing.

In *Marabur v. COMELEC*,[33] we held that while respondent failed to submit his written objections, respondent's submission of his formal offer of evidence, including the evidence itself, within the prescribed period constituted substantial compliance with the requirement that objections be reduced into writing.

Notably, the relaxation of the rules becomes all the more necessary in the instant case, considering that respondent Vicencio has even filed his written objections within the prescribed period; and soon thereafter, the documentary evidence in support of the written objections.

Technicalities and procedural barriers should not be allowed to stand in the way if they constitute an obstacle to the determination of the electorate's true will in the choice of its elective officials.[34]

It should be borne in mind that the object of the canvass is to determine the result of the elections based on the official election returns. In order that the result of the canvass would reflect the true expression of the people's will in the choice of their elective officials, the canvass must be based on true, genuine, correct--nay, untampered--election returns.[35] It is in these proceedings that the COMELEC exercises its supervisory and administrative power in the enforcement of laws relative to the conduct of elections, by seeing to it that the canvass is based on the election returns as actually certified by the members of the board of inspectors.[36]

Taking into consideration the findings of the COMELEC En Banc that there was ample evidence to support the exclusion of the seven election returns in question based on the grounds raised by respondent Vicencio, this should suffice in upholding the latter's proclamation, absent a finding of grave abuse of discretion on the part of the COMELEC En Banc, in order not to frustrate the electorate's will.

WHEREFORE, the petition is PARTLY GRANTED. The January 30, 2008 COMELEC En Banc Resolution and the July 11, 2007 COMELEC Second Division Resolution are hereby SET ASIDE insofar as they dismissed petitioner Hipe's appeal. The January 30, 2008 COMELEC En Banc Resolution is, however, AFFIRMED insofar as it declared the exclusion of the seven election returns of Precinct Nos. 0037B, 0052A, 0053A, 0058A, 0080A, 0081A and 0082A to be valid.

### **SO ORDERED.**

Puno, C.J., Ynares-Santiago, Corona, Carpio Morales, Chico-Nazario, Nachura, Leonardo-De Castro, Peralta, Bersamin, Del Castillo, and Abad, JJ., Concur.

Quisumbing and Carpio, JJ., concur.

Brion, J., concur.

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[1] Rollo, pp. 36-47.

[2] *Id.* at 48-55.

[3] COMELEC records, pp. 16-36.

[4] *Id.* at 6-7.

[5] *Id.* at 1-11.

[6] Rollo, pp. 48-55.

[7] Id. at 51.

[8] Id. at 160-169.

[9] Id. at 42-43.

[10] Id. at 46-47.

[11] Id. at 36-47.

[12] Id. at 11-12.

[13] Id. at 38.

[14] See Rules of Court, Rule 131, Sec. 3(m).

[15] An Act Providing for Synchronized National and Local Elections and for Electoral Reforms, Authorizing Appropriations Therefor, and for Other Purposes.

[16] COMELEC records, p. 146.

[17] Id.

[18] Id. at 147.

[19] Id. at 113-121.

[20] Id. at 119.

[21] Spouses Cheng v. Spouses Dailisan, G.R. No. 182485, July 3, 2009.

[22] Bank of the Philippine Islands v. Royeca, G.R. No. 176664, July 21, 2008, 559 SCRA 207; citing Asian Transmission Corporation v. Canlubang Sugar Estates, G.R. No. 142383, August 29, 2003, 410 SCRA 202.

[23] Abainza v. Arellano, G.R. No. 181644, December 8, 2008, 573 SCRA 332, 340; citing Suliguin v. COMELEC, G.R. No. 166046, March 23, 2006, 485 SCRA 227.

[24] Rollo, pp. 60-63.

[25] Id. at 23.

[26] Dagloc v. COMELEC, G.R. Nos. 154442-47, December 10, 2003, 417 SCRA 574, 594; citing Sison v. COMELEC, G.R. No. 134096, March 3, 1999, 304 SCRA 170, 179.

[27] Dagloc, id.; citing Mastura v. COMELEC (Second Division), G.R. No. 124521, January 29, 1998, 285 SCRA 493, 499.

[28] Rollo, p. 45.

[29] COMELEC records, p. 79.

[30] Rollo, p. 45.

[31] Id. at 19-20.

[32] COMELEC records, pp. 109-110.

[33] G.R. No. 169513, February 26, 2007, 516 SCRA 696.

[34] *Marabur v. COMELEC*, G.R. No. 169513, February 26, 2007, 516 SCRA 696.

[35] *Cauton v. COMELEC*, No. L-25467, April 27, 1967, 19 SCRA 911.

[36] *Id.*

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