

LIBRADO M. CABRERA, PETITIONER, VS. THE COMMISSION ON ELECTIONS AND MICHAEL D. MONTENEGRO, RESPONDENTS.

G.R. No. 182084. October 06, 2008

Ponente: NACHURA, J.

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NACHURA, J.:

The petitioner in this case seeks from this Court the issuance of a certiorari writ to annul and modify, for having been issued allegedly with grave abuse of discretion, the November 20, 2007 Resolution[1] of the Commission on Elections (COMELEC) First Division in SPR No. 18-2007, and the March 12, 2008 Resolution[2] of the COMELEC en banc affirming the said division ruling.

The relevant antecedent facts and proceedings follow.

Dissatisfied with the results of the mayoralty race in Taal, Batangas during the May 14, 2007 National and Local Elections, petitioner Librado M. Cabrera (Cabrera), the candidate who placed second with 10,272 votes, filed an election protest against private respondent Michael D. Montenegro (Montenegro), the winning candidate who garnered 10,742 votes. The case was docketed as Election Case No. 1-2007 with the Regional Trial Court (RTC) of Taal, Batangas, Branch 86.[3]

Following Montenegro's filing of an answer with counterclaim, the trial court set the case for preliminary conference and required the parties to submit their respective preliminary conference briefs. On June 12, 2007, the parties filed the requisite pleadings.[4]

Finding fatal defects in Cabrera's preliminary conference brief, Montenegro, on June 15, 2007, moved for the dismissal of the protest on the following grounds: (1) Cabrera did not serve a copy of his preliminary conference brief to Montenegro at least one day before the scheduled conference; and (2) Cabrera did not comply with Rule 9, Section 4 of A.M. No. 07-4-15-SC or the Rules of Procedure in Election Contests Before the Courts Involving Elective Municipal and Barangay Officials,[5] particularly on the required contents of the preliminary conference brief.[6]

Unconvinced by Montenegro's contention, the trial court denied the motion to dismiss, and his subsequent motion for reconsideration.[7] This prompted him to bring the issue to the COMELEC via a petition for certiorari and prohibition in SPR No. 18-2007.[8]

In the assailed November 20, 2007 Resolution,[9] the First Division of the Commission granted Montenegro's petition, annulled and set aside the orders of the trial court denying the motion to dismiss, directed it to cease and desist from continuing with the proceedings in the election protest and consequently to dismiss the same. The First Division ruled that Rule 9 of the aforementioned Rules of Procedure in Election Contests, providing for the dismissal of the protest in case of failure to state in the preliminary conference brief its required contents, was mandatory in character and would leave no room for the exercise of discretion on the part of the trial judge. Given that Cabrera admitted his failure to include the following in the Protestant's Brief for Preliminary

Conference[10]--(1) a manifestation of his having availed, or his intention to avail, of discovery procedures or referral to commissioners; (2) a manifestation of withdrawal of certain protested or counter-protested precincts, if such is the case; and (3) in case the election protest or counter-protest seeks the examination, verification or re-tabulation of election returns, the procedure to be followed - the trial court gravely abused its discretion in denying the motion to dismiss. Mere substantial compliance would not suffice to cure the obvious omissions because the rules demand strict compliance.[11]

Aggrieved, Cabrera moved for the reconsideration of the division ruling. The COMELEC en banc, however, denied his motion in the further challenged March 12, 2008 Resolution.[12] Left with no other recourse, he instituted the instant petition for certiorari before this Court on the following grounds:

5.1.

The Commission on Elections (First Division) and the En Banc grievously erred in their Resolutions of November 20, 2007 and March 12, 2008, respectively, when they dismissed the election protest case pending before the Regional Trial Court, Branch 86, Taal, Batangas, without taking into consideration the fact that proceedings in said protest case had already gone halfway with protestee/private respondent actively participating therein.

5.2.

The Commission (First Division) and the En Banc, in rendering the Resolutions of November 20, 2007 and March 12, 2008, respectively, committed grave abuse of discretion tantamount to lack of, or excess of jurisdiction when they resolved to consider as ground for the dismissal of the election protest case, the omission in Petitioner's Preliminary Conference Brief of matters which even the New Rules of Procedure allows the exercise of option either to include or omit.[13]

We dismiss the petition.

In applying for a certiorari writ, it is imperative for the petitioner to show that caprice and arbitrariness characterized the act of the court or agency whose exercise of discretion is being assailed. This is because "grave abuse of discretion" is the capricious and whimsical exercise of judgment that amounts to lack of jurisdiction. It contemplates a situation where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility--so patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform the duty enjoined by, or to act at all in contemplation of, law. "Grave abuse of discretion" arises when a lower court or tribunal violates the Constitution, the law or existing jurisprudence.[14]

In the instant case, the petitioner has utterly failed to show to the Court that the COMELEC, in issuing the assailed resolutions, acted capriciously, whimsically and arbitrarily, such that its act is annulable by the extraordinary writ of certiorari.

The nullification by the COMELEC of the RTC's orders and the consequent dismissal of Election Case No. 1-2007 are in accordance with the express mandate of the Rules of Procedure in Election Contests Before the Courts Involving Elective Municipal and Barangay Officials (A.M. No. 07-4-15-SC),[15] Rule 9, Sections 4, 5 and 6 of which provide as follows:

SEC. 4. Preliminary conference brief.--The parties shall file with the court and serve on the adverse party, in such manner as shall ensure their receipt at least one day before the date of the preliminary conference, their respective briefs which shall contain the following:

- A summary of admitted facts and proposed stipulation of facts;
- The issues to be tried or resolved;

- The pre-marked documents or exhibits to be presented, stating their purpose;
- A manifestation of their having availed or their intention to avail themselves of discovery procedures or referral to commissioners;
- The number and names of the witnesses, their addresses, and the substance of their respective testimonies. The testimonies of the witnesses shall be by affidavits in question and answer form as their direct testimonies, subject to oral cross examination;
- A manifestation of withdrawal of certain protested or counter-protested precincts, if such is the case;
- The proposed number of revision committees and names of their revisors and alternate revisors; and
- In case the election protest or counter-protest seeks the examination, verification or re-tabulation of election returns, the procedure to be followed.

SEC. 5. Failure to file brief.-- Failure to file the brief or to comply with its required contents shall have the same effect as failure to appear at the preliminary conference.

SEC. 6. Effect of failure to appear.--The failure of the protestant or counsel to appear at the preliminary conference shall be cause for dismissal, *motu proprio*, of the protest or counter-protest. The failure of the protestee or counsel to appear at the preliminary conference shall have the same effect as provided in Section 4(c), Rule 4 of these Rules, that is, the court may allow the protestant to present evidence *ex parte* and render judgment based on the evidence presented.[16]

Clearly, the said Rules command, in no uncertain terms, the filing of the preliminary conference brief and compliance with the required contents of the said brief. By the Rules' express language, the failure to comply therewith shall have the same effect as failure to appear at the preliminary conference which, in turn, shall be a sufficient cause for the dismissal of the protest.

As the petitioner himself admitted, his preliminary conference brief did not contain essential statements required by the Rules, namely: a manifestation of his having availed or intention to avail of discovery procedures or referral to commissioners; a manifestation of withdrawal of certain protested or counter-protested precincts, if such is the case; and, in the event the protest or counter-protest seeks the examination, verification or re-tabulation of election returns, the procedure to be followed. The petitioner's abject disregard of the express mandate of the Rules must bear dire consequences, for, following the aforesaid Rules, his protest must now be dismissed. We, therefore, find no abuse of discretion, much more a grave one, on the part of the COMELEC, when it imposed the sanction prescribed in the Rules.

Petitioner seeks to justify his failure to comply with the Rules by contending that after all, he will not avail of discovery procedures or referral to commissioners; he does not intend to withdraw protested precincts; and he does not seek the examination, verification or re-tabulation of election returns. Thus, petitioner argues that the absence in his preliminary conference brief of any statement on these specific content items may be interpreted as an expression of "no intent," i.e., that he does not intend to avail of the options open to him under each item. In that sense, then there would be no real imperative for the petitioner to manifest his response to the query posed by each content item. Accordingly, petitioner concludes, the omission of these items from his preliminary conference brief is of no moment.

The Court, however, observes that these proffered excuses are contradicted by the petitioner's preliminary conference brief[17] itself, which contains the following assertions: (1) protestant is to present 22 witnesses to testify on alleged irregularities in the voting and counting in 22 precincts;[18] (2) the witnesses will further testify that votes for the protestant were not entered in the election returns;[19] and (3) protestant shall also present as

documentary evidence the election returns.[20]

The petitioner's commitment that he does not seek the examination, verification or re-tabulation of election returns is belied by the preliminary conference brief's statement that the protestant shall present the election returns as documentary evidence, and that he will present witnesses who will testify that the entries thereon are erroneous. Clearly, the testimonies of these witnesses will entail the examination or verification of the election returns. Likewise, the petitioner's undertaking that he does not intend to withdraw any of the protested precincts appears inconsistent with the allegation in the preliminary conference brief that protestant will present 22 witnesses (who served as watchers) to give evidence on alleged irregularities in the voting and counting in 22 precincts. Considering that there is a total of 142[21] precincts in the locality, and in fact, the ballots in 88 precincts had already been revised by the trial court,[22] the probability is great that petitioner may have to withdraw some precincts from his protest.

The Rules should not be taken lightly. The Court has painstakingly crafted A.M. No. 07-4-15-SC precisely to curb the pernicious practice of prolonging election protests, a sizable number of which, in the past, were finally resolved only when the term of office was about to expire, or worse, had already expired. These Rules were purposely adopted to provide an expeditious and inexpensive procedure for the just determination of election cases before the courts.[23] Thus, we emphasize that the preliminary conference and its governing rules are not mere technicalities which the parties may blithely ignore or trifle with.[24] They are tools meant to expedite the disposition of election cases and must, perforce, be obeyed.

WHEREFORE, premises considered, the petition for certiorari is DISMISSED. The November 20, 2007 Resolution of the Commission on Elections First Division and the March 12, 2008 Resolution of the COMELEC en banc in SPR No. 18-2007 are AFFIRMED.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Carpio Morales, Azcuna, Tinga, Chico-Nazario, Velasco, Jr., Reyes, Leonardo-De Castro, and Brion, JJ., concur.
Corona, J., on leave.

[1] Rollo, pp. 23-29.

[2] Id. at 30-35.

[3] Id. at 7.

[4] Id. at 24-25.

[5] Promulgated on April 24, 2007 and became effective on May 15, 2007.

[6] Rollo, p. 25.

[7] Id. at 25-26.

[8] Id. at 26.

[9] Supra note 1.

[10] Rollo, pp. 53-57.

[11] Id. at 26-29. The dispositive portion of the COMELEC First Division's resolution reads:

WHEREFORE, premises considered, the Commission resolves to GRANT the petition. Consequently, the Resolutions dated June 20 and 28, 2007, denying [private respondent's] Motion to Dismiss and Motion for Reconsideration are ANNULLED and SET ASIDE.

ACCORDINGLY, Presiding Judge Juanita G. Areta of Branch 86, Taal, Batangas is hereby directed to CEASE and DESIST from continuing with the proceedings in Election Protest Case No. 1-2007 entitled "Librada M. Cabrera v. Michael D. Montenegro" as the same must be DISMISSED.

SO ORDERED. (Id. at 29.)

[12] Supra note 2.

[13] Rollo, p. 12.

[14] Fernandez v. Commission on Elections, G.R. No. 171821, October 9, 2006, 504 SCRA 116, 119.

[15] Supra note 5.

[16] Emphasis supplied.

[17] Supra note 10.

[18] Rollo, pp. 55-56.

[19] Id. at 56.

[20] Id. at 54.

[21] Id. at 53.

[22] Id. at 18.

[23] See the preliminary statement of A.M. No. 07-4-15-SC.

[24] See Vera v. Rigor, G.R. No. 147377, August 10, 2007, 529 SCRA 729, 734.

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