

MICHAEL L. SAN MIGUEL, PETITIONER, VS. COMMISSION ON ELECTIONS AND CHRISTOPHER V. AGUILAR, RESPONDENTS.*G.R. No. 188240. December 23, 2009*

Ponente: CARPIO MORALES, J.

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Challenged via Certiorari and Prohibition are the Resolutions of February 25, 2009 and May 25, 2009 of public respondent Commission on Elections (Comelec) in SPR (Brgy) No. 106-2008 directing the issuance of a writ of execution pendente lite and denying the motion for reconsideration, respectively.

Petitioner Michael San Miguel and private respondent Christopher Aguilar vied in the October 29, 2007 elections for the position of Punong Barangay of Barangay Marcelo Green in Parañaque City where they obtained 2,969 and 2,867 votes, respectively.

After petitioner's proclamation, private respondent filed an election protest docketed as E.P. Case No. 07-4 before the Metropolitan Trial Court of Parañaque City which, after recount and revision of ballots from the contested precincts, ruled that private respondent garnered 2,898 votes or 12 votes more than the 2,886 votes received by petitioner and accordingly annulled petitioner's proclamation, by Decision of May 9, 2008.

Petitioner filed with the trial court a Notice of Appeal to the Comelec, docketed eventually as EAC No. 208-2008. The appeal is still pending.

Meanwhile, three days after the promulgation of the trial court's Decision or on May 12, 2009, private respondent filed an Urgent Motion for Execution Pending Appeal (Urgent Motion) which was received by petitioner on May 13, 2008 with notice of a May 14, 2008 hearing. The trial court calendared the hearing, however, on May 19, 2008, and eventually denied the Urgent Motion by Order of May 22, 2008.[1]

Private respondent elevated the matter on certiorari to the Comelec which reversed the trial court's May 22, 2008 Order, by the first assailed Resolution the dispositive portion of which reads:

WHEREFORE, premises considered, the instant petition for certiorari is hereby GRANTED. Accordingly, the assailed Order of May 22, 2008 in Election Protest Case No. 07-4 (Christopher Aguilar v. Michael San Miguel) of the Metropolitan Trial Court of Parañaque City is hereby SET ASIDE. Let a Writ of Execution pending appeal be issued in accordance with Section 11(b), Rule 14 of the Rules of Procedure in Election Contests to implement the May 9, 2008 Decision of the respondent Judge in the above-captioned case, which declared Protestant-CHRISTOPHER V. AGUILAR as the duly elected Punong Barangay of Marcelo Green, Parañaque City and annulled the proclamation and oath-taking of Protestee-MICHAEL L. SAN MIGUEL.

SO ORDERED.[2] (emphasis and italics in the original),

and denied reconsideration thereof by the second assailed Resolution.

Hence, the present petition, petitioner averring that the Comelec gravely abused its discretion by blatantly

misapplying Section 11, Rule 14 of the Rules of Procedure in Election Contests before the Courts involving Elective Municipal and Barangay Officials[3] (Rules of Procedure) which reads:

Sec. 11. Execution Pending Appeal – On motion of the prevailing party with notice to the adverse party, the court, while still in possession of the original records, may, at its discretion, order the execution of the decision in an election contest before the expiration of the period to appeal, subject to the following rules:

(a) There must be a motion by the prevailing party with three-day notice to the adverse party. Execution pending appeal shall not issue without prior notice and hearing. There must be good reasons for the execution pending appeal. The court, in a special order, must state the good or special reasons justifying the execution pending appeal. Such reasons must:

(1) constitute superior circumstances demanding urgency that will outweigh the injury or damage should the losing party secure a reversal of the judgment on appeal; and

(2) be manifest, in the decision sought to be executed, that the defeat of the protestee or the victory of the protestant has been clearly established.

(b) If the court grants an execution pending appeal, an aggrieved party shall have twenty working days from notice of the special order within which to secure a restraining order or status quo order from the Supreme Court or the Commission on Elections. The corresponding writ of execution shall issue after twenty days, if no restraining order or status quo order is issued. During such period, the writ of execution pending appeal shall be stayed. (emphasis, italics and underscoring supplied)

In not granting a special order to execute its decision pending appeal, the trial court explained that it could no longer order execution since the above-quoted rule allows the issuance of a special order only within the five-day period to appeal which, at that time, had already expired.

Echoing that of the trial court, petitioner posits that the Rules of Procedure expressly provide that the special order should be issued before the expiration of the five-day period to file a notice of appeal.

By petitioner's theory, the filing of the motion, the three-day notice to the other party, the hearing on the motion, and the issuance of the order resolving the motion should all take place within five days.

The petition lacks merit.

Evident from the usage of the word "may," the language of the subject provision denotes that it is merely directory, and not mandatory, for the trial court to issue the special order before the expiration of the period to appeal. The trial court may still thereafter resolve a motion for execution pending appeal, provided: (i) the motion is filed within the five-day reglementary period; and (ii) the special order is issued prior to the transmittal of the records to the Comelec.

Both parties concede that the motion for execution pending appeal must be filed within the five-day period to appeal. In the present case, the Urgent Motion was filed well within the reglementary period.

Indeed, in one case,[4] the Court construed a similarly phrased provision[5] to mean that the ruling on the motion for execution may issue after the period of appeal, as long as the motion for execution pending appeal was filed before the expiration of the time to appeal.

Keeping in mind that "hurried justice is not always authentic justice,"[6] the permissive nature of the rule allows the trial court to apply the same insofar as it is practicable, albeit the rigid compliance therewith is not altogether impossible, such that a motion for execution pending appeal may be filed at the latest on the second day after notice of the decision, and heard and resolved at the latest on the fifth day after notice of the decision, in

compliance with the mandatory three-day notice rule, barring any intervening resetting or non-working days.

It also appears that the prevailing party need not check first if the losing party actually appealed the case before the prevailing party could file a motion for execution pendente lite. The setting of the same period of five days for the filing of a motion for execution pending appeal, similar to that for a notice of appeal, allows the trial court to expediently rule on this incident, along with the notice of appeal, before transmitting the records to the Comelec, during which the trial court shall have already lost jurisdiction to resolve pending incidents.

In other words, the special order directing the issuance of a writ of execution pending appeal must be issued prior to the transmittal^[7] of the records to Electoral Contests Adjudication Department of the Comelec.

As interpreted by the Court in *Pecson v. Commission on Elections*,^[8] the same elements of possession of the records and non-lapse of the appeal period are necessary for the trial court's exercise of its residual jurisdiction to issue a special order. The writ of execution is a mere administrative medium of the special order, and the writ itself cannot and does not assume a life of its own independent from the special order on which it is based. *Pecson* explained that the writ itself may issue after the transmittal of the records, upon cessation of the 20-working-day waiting or suspension period^[9] without the other party having secured a restraining or status quo order.

In the present case, the Comelec correctly found that the trial court gravely abused its discretion when it *motu proprio* reset the hearing of the Urgent Motion from May 14, 2008 to May 19, 2008, and used such circumstance in denying the grant of a special order on the ground that it had lost its jurisdiction with the lapse of the five-day period.

Indeed, the trial court's patent and gross abuse of discretion amounted to an evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law. The whim is evident from the fact that if indeed the trial court really believed that the five-day period was mandatory, it should have resolved the Urgent Motion either way on the day it was set for hearing instead of rescheduling the hearing.

Petitioner's argument that the Comelec cannot direct the issuance of a writ of execution since no special order was issued by the trial court is specious. It begs the question and trivializes the remedy of certiorari available before the Comelec, rendering the latter inutile in annulling or modifying the proceedings to "keep an inferior court within its jurisdiction and to relieve persons from arbitrary acts, meaning acts which courts or judges have no power or authority in law to perform."^[10]

Petitioner also alleges that the finding of private respondent's electoral victory was based on a faulty arithmetic computation by the trial court, to thus negate the guideline in an execution pending appeal that the defeat of the protestee or the victory of the protestant must have been clearly established.

The Comelec pointed out that the trial court's decision itself made clear reference to the April 8, 2008 Order which formed part of the decision in arriving at the computation of the respective votes garnered by the parties.

The Court finds no abuse of discretion, much less a grave one, on the part of the Comelec when it found good and special reasons to justify the execution pendente lite of the trial court's 419-page decision that "laboriously elucidated the reasons for its invalidation or validation of each ballot."^[11] Absent any grave abuse of discretion, the Court will not disturb the Comelec's finding that the trial court's decision was rendered with due basis and substantiation on the computation of the votes.

The present disposition is without prejudice, however, to the appeal docketed as EAC No. 208-2008, which could fully ventilate the merits of the parties' claims and defenses that are evidentiary in nature, and to the other issues raised by the parties which the Court finds unnecessary to resolve.

WHEREFORE, the petition is DISMISSED. The assailed Resolutions of the Commission on Elections in SPR (Brgy) No. 106-2008 are AFFIRMED.

SO ORDERED.

Puno, C.J., Carpio, Corona, Velasco, Jr., Nachura, Leonardo-De Castro, Brion, Peralta, Bersamin, Del Castillo, Abad, and Villarama, Jr., JJ., concur.

[1] Penned by Presiding Judge Ramsey Domingo G. Pichay (Branch 78).

[2] Rollo, p. 67.

[3] A.M. No. 07-4-15-SC (effective May 15, 2007).

[4] *Lindo v. Commission on Elections*, G.R. No. 127311, June 19, 1997, 274 SCRA 511.

[5] 1964 Rules of Court, Rule 39, Sec. 2. This interpretation paved the way for the 1997 amendment of the same rule on ordering execution pending appeal "even before the expiration of the period to appeal," among other amendments.

[6] *Supra* note 4 at 519 citing *Universal Far East Corp. v. CA*, 216 Phil. 598, 603.

[7] The rules provide a 15-day period from the filing of a notice of appeal within which to transmit the records from the trial court to the Comelec (vide Rules of Procedure, *supra* note 3, Rule 14, Sec. 10).

[8] G.R. No. 182865, December 24, 2008, 575 SCRA 634. Notably, both parties in *Jecson* received a copy of the trial court's decision on November 26, 2007, yet the special order was issued only on December 3, 2006. The five-day period to appeal refers to the filing of the motion for execution pending appeal and not to the issuance of the special order [rollo (G.R. No. 182865), p. 133].

[9] Rules of Procedure, *supra* note 3, Rule 14, Sec. 11(b).

[10] *Ong v. People*, G.R. No. 140904, October 9, 2000, 342 SCRA 372, 386.

[11] Rollo, p. 103.

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